

In the High Court of Punjab and Haryana at Chandigarh

CRR No.1147 of 2010 (O&M)

Date of Decision:-December 15, 2017

Baljit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Ms. Sarika Gupta, Advocate for
Mr. Sanjay Gupta, Advocate, for the petitioner.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab.

Ms. Divya Godara, Advocate for respondents No.4 to 6.

Gurvinder Singh Gill, J.

1. Baljit Singh has filed this revision petition assailing judgment dated 6.4.2010 passed by learned Sessions Judge, Rupnagar whereby appeal filed by the petitioner against judgment dated 5.12.2005 of learned Chief Judicial Magistrate, challenging his conviction for offences punishable under Sections 279 and 304-A of Indian Penal Code, 1860 (for short- IPC), has been dismissed.
2. The matter arises out of FIR No.270 dated 10.12.2002 under Sections 279, 338 and 304-A of IPC, Police Station Ropar, registered at instance of Ashok Kumari wife of Bhushan Lal. The complainant alleged that on 9.12.2002 she

along with her mother-in-law namely Brahmi Devi went to market for purchasing household articles. On their way back, her mother-in-law was walking ahead of her. When they reached near *Ram Leela* ground, Ropar, then a scooterist came from behind, at a fast speed, driving his scooter bearing registration No.CHP-9631 in a rash and negligent manner and hit against her mother-in-law Brahmi Devi. The scooterist disclosed his name as Baljit Singh son of Kashmira Singh. While the complainant was attending to her mother-in-law, the scooterist fled away from the spot on his scooter. Brahmi Devi, who had sustained multiple injuries was taken to Civil Hospital, Ropar, from where she was referred to PGI, Chandigarh, where she succumbed to her injuries.

3. The matter was investigated by the police. Upon completion of investigation, challan was presented in the Court of learned Chief Judicial Magistrate, Ropar. The learned trial Court, after framing charges against the accused, examined five witnesses i.e. PW-1 Dr. Parminder Singh, Medical Officer, PW-2 C. Satnam Singh, Mechanic, PW-3 ASI Gurmeet Singh, Investigating Officer, PW-4 HC Harbans Singh and PW-5 complainant Ashok Kumari.
4. After conclusion of evidence of prosecution, the entire incriminating evidence appearing against the accused was put to him to enable him to explain the same but the accused denied the prosecution allegations in entirety and pleaded innocence. The accused however, did not lead any evidence in defence. The trial Court, upon appraisal of the evidence, held that the charges framed against the accused for offences punishable under Sections 279 and 304-A of IPC stood established and accordingly convicted the accused vide judgment dated 5.12.2005. The accused was sentenced to undergo rigorous

imprisonment for 3 months under Section 279 of IPC and for 9 months in respect of offence under Section 304-A of IPC. A fine of Rs.500/- was also imposed upon the accused. In appeal filed by the petitioner, the learned Additional Sessions Judge, while maintaining conviction of the petitioner reduced the sentence of imprisonment in respect of offence under Section 304-A of IPC from 9 months to 6 months vide judgement dated 6.4.2010. Still aggrieved, the petitioner preferred the present revision petition.

5. The learned counsel for the petitioner, while assailing the impugned judgment, submitted that the case of prosecution is based solely upon testimony of complainant which is bereft of any corroboration and who, in any case, is an interested witness being daughter-in-law of deceased. It has been submitted that though admittedly the occurrence had taken place near market which is a crowded place but despite the same no independent witness had been associated. The learned counsel has submitted that there is delay in lodging the FIR which further shows that the same has been lodged after consultations and deliberations. Learned counsel has also submitted that though complainant Ashok Kumari stated that her statement was recorded on 9.12.2002 but the Investigating Officer(PW-3) stated that he recorded the statement of complainant on 10.12.2002. The learned counsel further submitted that since no test identification parade was conducted, therefore, identification of the petitioner for the first time in Court can not be relied upon. The learned counsel, thus, submitted that in view of the aforesaid infirmities the impugned judgment cannot sustain and the petitioner is entitled to be acquitted.

6. On the other hand, learned counsel representing the State has submitted that

the impugned judgment has been passed after appreciating the evidence on record and the testimony of the complainant cannot be doubted on any count as he had every opportunity to witness the accident and also to identify the accused at the spot. The learned counsel, thus, submitted that there is no infirmity in impugned judgement and that the revision petition deserves to be dismissed.

7. I have considered rival submissions addressed before this Court and with able assistance of learned counsel, have also perused the record of the case.
8. As regards contention regarding delay in lodging the FIR, I find that while the occurrence had taken place on 9.12.2002 at about 4 P.M., the statement of complainant was recorded next day at 7.45 P.M. It however needs to be borne in mind that after the accident Brahmi Devi who had been injured was initially taken to the Civil Hospital, Ropar, from where she was referred to PGI, Chandigarh, and it was in PGI on the next day i.e. on 10.12.2002, where she breathed her last. Obviously in such a scenario, the complainant would have been busy in providing treatment to her mother-in-law Brahmi Devi and would not have herself approached the police for lodging FIR. In any case, in the absence of anything to suggest that the complainant had any enmity with accused or had any other motive for his false implication, it cannot be presumed that the accused has been falsely implicated or that the FIR has been lodged after deliberations and consultations. The aforesaid contention is thus devoid of merits and cannot be accepted.
9. The contention of the counsel for the appellant, that omission to conduct test identification parade would render identification of the accused doubtful as he

had been identified for the first time in the Court would not carry weight in the present case inasmuch as the accused is specifically named in the FIR itself and wherein it is specifically stated by the complainant that immediately after the accident, the accused had disclosed his name as Baljit Singh and thereafter while the complainant was attending to her mother-in-law, he fled away from the spot. In these circumstances the complainant had ample opportunity to see and identify the accused who had also disclosed his name and thus the identification of the accused cannot be called into question.

10. The contention of the learned counsel that non-joining of an independent witness is fatal to the case of the prosecution, has to be tested along with other facts and circumstances of the case as omission to associate an independent witness, *ipso facto* would not result in discarding the case of the prosecution especially if other evidence led by the prosecution is found to be reliable. In the present case, no doubt, the complainant is related to the deceased but at the same time she would also be a natural witness inasmuch as she along with her mother-in-law had gone to market to purchase household articles, which is quite natural as such like errands are normally attended to together in a family.
11. The learned counsel for the petitioner pointed out minor discrepancy in the statement of the complainant wherein she stated that her statement (Ex.PC) had been recorded by the police on 9.12.2002 whereas the same was actually recorded on 10.12.2002 and contended that the same is indicative of the fact that the accused has been falsely implicated. Minor inconsistencies are bound to be there even in case of most truthful witnesses especially when there is substantial gap between the occurrence and deposition. In the present case, the statement of the witness was recorded after about three years of the

occurrence. In these circumstances, minor discrepancies here and there would not dent the case of prosecution in any manner.

12. Despite lengthy cross-examination, PW-5 Ashok Kumari remained firm on her statement on all material aspects of the case. She stated consistently to substantiate the allegations levelled by her in the FIR to the effect that on 9.12.2002 when she along with her mother-in-law was returning back home from market after making purchases, the accused who was on a scooter bearing registration No. CHP-9631 came from behind and hit against her mother-in-law who was walking ahead of her, as a result of which she sustained multiple injuries and ultimately succumbed to her injuries. The medical evidence in the shape of statement of PW-1 Dr. Parminder Singh who had conducted post-mortem examination on the dead body of Brahmi Devi also supports the ocular version wherein she opined that the cause of death was due to 'oedema of brain due to sub arachnoid haemorrhage, extensive sub dural' following head injury. Despite opportunity of the cross-examination afforded to the accused, not even a single question was put to the witness during cross-examination. In these circumstances, the testimony of solitary eye witness i.e. PW-5 Ashok Kumari is sufficient to establish that the accused was driving the scooter at a fast speed and in a rash and negligent manner and had hit against the deceased from behind. Such like driving resulting in death of Brahmi Devi would surely render the accused liable for committing offences punishable under Sections 279 and 304-A of IPC.
13. I do not find any infirmity in the findings of the conviction as recorded by the trial Court and affirmed by the Appellate Court and the same are hereby affirmed. The learned counsel made an alternate prayer for release of the

petitioner on probation or for reduction of sentence. While considering the aforesaid submission, a reference needs to be made a judgement of Hon'ble Supreme Court in Dalbir Singh v. State of Haryana, (2000) 5 SCC 82, wherein it was held as under:

“13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence.”

14. In light of ratio Dalbir Singh's case (supra), there is no room for releasing the petitioner on probation or for further reduction in sentence.
15. No other point has been raised before this Court. There is no merit in the revision petition and the same is dismissed.

(Gurvinder Singh Gill)
Judge

December 15, 2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No