

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.2384 of 2010

Date of decision: 15th February, 2017

Vinod Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sunil Saharan, Advocate for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The revision petitioner Vinod Kumar having faced ignominy in repeated unsuccessful attempts to challenge his conviction whereby initially he was found guilty by the Court of learned Judicial Magistrate 1st Class, Hisar who through judgment dated 19.03.2009 convicted him for commission of offences under Sections 279/304-A IPC and vide orders dated 20.03.2009 sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for one month under Section 279 IPC whereas under Section 304-A IPC he was sentenced to undergo rigorous imprisonment for one year and to pay fine

of Rs.2000/-, in default whereof to further undergo simple imprisonment for four months.

Upon his appeal, the Court of learned Additional Sessions Judge, Hisar through impugned judgment dated 17.08.2010 upheld these findings thereby dismissing his appeal and that is how he is before this Court.

Heard Mr. Sunil Saharan, Advocate for the petitioner, Mr. Deepak Sabharwal, Addl. Advocate General, Haryana on behalf of the respondent/State and perused records of the case.

The factual matrix, what permeates through the submissions and is well highlighted in the records which have been called for, is to the effect that on 06.02.2001 complainant Inder Singh made statement before the police that on that fateful day along with Hardev Singh driver on tractor-trolley laden with sugarcane crop followed by other vehicles they were going towards Bhuna Mill when around 8.30 p.m. near Nandhari bus stand from the opposite side of Agroha a jeep make Commander bearing registration No.DL-2CB-3893 came being driven rashly and negligently by the revision petitioner and struck against the tractor-trolley of the deceased whereby the same overturned upon the driver deceased Hardev Singh who died instantaneously leading to registration of the present case.

Upon completion of investigations, when the accused denied the charges so levelled against him, prosecution to romp home the same at the trial examined Investigating Officer PW1 Sub Inspector Subh Ram who detailed his investigations proving the statement of the complainant Ex.P1, police proceedings Ex.P2, FIR Ex.P3, application for post-mortem Ex.P4, post-mortem report Ex.P5, rough site plan Ex.P6, memos Ex.P7 and P8, application Ex.P9, report under Section 174 Cr.P.C. Ex.P10 and receipt of dead body Ex.P11, followed by the testimony of PW-2 Inder Singh complainant who detailed the incident leveling allegations of rash and negligent driving against the accused. Dr.Himani Gupta deposed as PW3 proving post-mortem report of the deceased as Ex.P5 followed by Chinder Singh PW4 who received the dead body through receipt Ex.P11 and another witness Inderjit Singh PW5 who mechanically tested the vehicles involved in the accident and proved his reports Ex.P12 and P13. Another witness Jit Singh PW6 identified the dead body proving report Ex.P10 and receipt of dead body Ex.P11. Photographer Shanti Sarup who clicked the photographs of the accident appeared as PW7 and proved photographs Ex.P14 to P27 and their corresponding negatives Ex.P28 to P34. Owner of the tractor trolley Nar Singh deposed as PW8 to prove engagement of deceased as driver of the tractor trolley and taking into police possession the tractor trolley through memo Ex.P8, jeep through memo Ex.P7 and proved his signatures on the sapurdari of the vehicle

Ex.P35. PW9 Nanak Singh driver of another vehicle gave eye-witness account. Prosecution proved arrest of the accused through PW10 ASI Niranjana Lal and thereafter closed the evidence.

The accused when put the entire incriminating evidence, denied the allegations in his statement under Section 313 Cr.P.C. taking a plea that the tractor trolley due to overloading had tumbled over leading to death of the deceased, and in his defence examined DW1 Bahadur Singh who claimed himself to be an eye-witness of the accident and has sought to support the case of the defence. Thereafter, defence evidence was closed down and that is how the parties are before this Court.

Appreciating the submissions of the two sides, as is the own stand of the defence taken by the accused during cross-examination of eye-witnesses PW2 complainant Inder Singh and PW9 Nanak Singh as well as his own stand in his statement under Section 313 Cr.P.C. and so the testimony of his defence witness DW-1 Bahadur Singh, the accused admits that the deceased has died as a result of accident on the date, time and place but not attributable to him but because of overloading of the vehicle. Thus, as has been contended by learned State counsel in terms of Sections 101, 102 and 103 of the Evidence Act the onus shifts heavily upon the defence to have established it so by preponderance of probabilities. The photographs which have been proved by PW7 Shanti Sarup and could not be rebutted in the submissions of learned counsel for

the revision petitioner, proves that the ill-fated tractor trolley was on the left side of the road and it was the offending jeep which has come on the wrong side of the road and struck against the tractor trolley leading to accident and which query learned counsel for the revisionist could not controvert in his submissions on behalf of the his client. It is not the case of the defence that no such accident has taken place and rather a feeble attempt is sought to be made by the revisionist over the identity of driver of the offending jeep but the same does not impresses the Court much, firstly on account of own stand of the accused taken throughout the trial, testimony of the defence witness DW1 Bahadur Singh who accepts the presence of the accused at the time of occurrence and his identity as well and even the apprehension of the accused and recovery of the documents of the offending vehicle and the admission by the accused that he was driver on the offending vehicle are matters which certainly pins down the accused in the case. Even learned Court below has taken note of this stand of the accused in the impugned judgment and the utter failure of the defence to controvert the case of the prosecution and successfully put forth their defence certainly goes to the detriment of the petitioner. More so, the entire set of eye-witnesses have identified the accused at the time of accident and who have never been even put suggestions over this question of identity. Thus, learned counsel for the petitioner could not convince this Court how the consecutive findings of two courts below

were in any manner illegal or perverse. Since by virtue of powers of the revisional Court which are very restrictive to the extent of illegality or perversity of the findings and which are not established in the submissions of the counsel for the petitioner. Thus finding no merit, the revision petition stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

February 15, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No