

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2623 of 2010 (O&M)

Date of Decision:-September 8, 2017

Parbhash Chand Arora

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Karan Pathak, Advocate, for the petitioner.

Mr. Manoj Dhankhar, Additional Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Parbhash Chand Arora has filed this revision petition challenging judgment dated 20.09.2010 passed by learned Sessions Judge, Ambala whereby his appeal against judgment dated 12.4.2010 passed by learned Judicial Magistrate Ist Class, Ambala City convicting him for offences under Sections 279 and 304-A of Indian Penal Code, 1860 (for short, IPC) has been dismissed.
2. The facts, in nutshell, are that on 23.09.2001 when complainant Mahinder Kumar and Sohan Lal were returning from railway godown, Ambala Cantt. on foot, then at about 5.45 P.M. while they were crossing road, a car bearing registration No.DL-34-CK-3698, which was being driven negligently and at a

high speed hit Sohan Lal as a result of which he sustained injuries on his head, right hand and right leg. Sohan Lal was taken to Civil Hospital, Ambala Cantt from where an information was sent to the police and in pursuance thereof ASI Purshotam went to Civil Hospital, Ambala Cantt. and recorded statement of complainant Mahinder Kumar on the basis of which formal FIR was registered. The name of the offending driver came to be known as Parbhash Chand Arora r/o House No.301, Model Town, Delhi. Sohan Lal however, succumbed to his injuries while he was being taken to PGI, Chandigarh.

3. The police conducted requisite investigation. The post mortem report was collected. The accused was arrested on 25.09.2001. The driving licence of the accused as well as the registration certificate of the car were taken into possession. Statement of witnesses were recorded. After conclusion of investigation, challan was presented.
4. The learned Trial Court framed charges against the accused for offences under Section 279 and 304-A IPC. The prosecution in order to establish charges against the accused examined complainant Mahinder Singh as PW-1 who stated in detail about the accident and proved his statement Ex.PW-1/A and Ex.PW-1/B. PW-2 Head Constable Subhash Chander, motor mechanic, stated that he had mechanically examined the offending vehicle, parked in Police Station and proved his report Ex.PW-2/A. PW-3 Jagdamba Prasad stated that he had identified the dead body of deceased Sohan Lal. PW-4 SI Purshotam Dass who is the Investigating Officer in the present case stated in detail regarding the entire proceedings conducted at the spot right from the moment when the initial statement of complainant (Ex.PW-1/A) was recorded upto filing of challan.

5. 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.
6. The learned trial Court upon appreciating the evidence on record, found the accused guilty for having committed offences under Sections 279 and 304-A IPC. The accused challenged the said findings by filing an appeal, in the Court of Sessions, which was dismissed by the learned Sessions Judge on 20.09.2010. Aggrieved with the dismissal, the present revision petition has been filed by the accused.
7. The learned counsel for the petitioner while assailing the impugned judgment has submitted that infact the accused was never identified at the spot and the complainant identified him for the first time when his statement was recorded in the Court on 30.05.2009 i.e. after a gap of about 8 years. The learned counsel has submitted that the complainant neither had any opportunity of identifying the accused nor any test identification parade was conducted and that in these circumstances, identification of the accused for the first time in the Court cannot be said to be proper identification. The learned counsel further submitted that the case of prosecution is based solely on the testimony of the complainant without there being any corroboration of the same. The learned counsel thus submitted that the impugned judgment cannot sustain and is liable to be set aside and the petitioner is entitled to be acquitted.
8. 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 State counsel further submitted that there is no absolute rule of law that a person cannot be convicted on the basis of solitary statement or that the identification made in the Court is to be doubted in every case. The learned counsel has thus submitted that the impugned judgment does not suffer from any infirmity and has prayed for dismissal of the revision petition.

9. I have considered the rival submissions addressed before this Court and have also perused the record of the case.
10. The learned counsel for the petitioner assails the impugned judgment mainly on the ground that the identification of the accused for the first time by the complainant in the Court cannot be accepted to be a reliable identification as the complainant had no opportunity of seeing the accused earlier and his statement was recorded in the Court after about 8 years of the occurrence. Upon perusal of the record it transpires that it is not a case of "hit and run" inasmuch as the accused remained present at the spot even after the accident. The offending vehicle i.e. car bearing registration No.DL-34-CK-3698 which the accused was driving also remained at the spot. In fact, from the cross-examination of complainant it transpires that the injured was removed to hospital by the accused in some other vehicle along with the complainant. The translated gist of relevant extract from the cross-examination of PW-1 Mahinder Singh reads as follows:

“..... The accused had remained at the spot and was arrested from there. The vehicle of accused remained at the spot. However, the accused took Sohan Lal in some other vehicle to hospital. We also went with him. I had disclosed the name of accused to the police in my statement. I came to know about the name of the accused from the police. The name of the accused came to be known in Civil Hospital.”

11. Though, in his examination-in-chief complainant PW-1 Mahinder Singh stated that he had taken Sohan Lal to the hospital with the help of by-passers but the said statement cannot be said to be absolutely contradictory to his cross-examination as the car that was arranged must have been arranged with the help of by-passers and in that car the accused also accompanied the complainant and the injured to the hospital. The fact that the Driving Licence of the accused as well as the registration certificate of car in question was taken into possession by the police on 23.09.2001 itself vide recovery memo Ex.PW-4/F clearly shows that the accused had not run away from the spot and was present there. Once it is established that the accused was present at the spot then his identification cannot be called into question as the complainant had every opportunity to see the accused.
12. It is further pertinent to mention that the statement of the complainant (Ex.PW-1/A) was recorded on 23.09.2001 itself wherein also he had disclosed the registration number of the car in question indicating that the accused had not run away from the spot which also corroborates the statement made by the

complainant in his cross-examination that the offending vehicle remained at the spot. The accused having categorically stated about identifying the accused when his statement was recorded in the Court and the evidence showing that the accused had not run away from the spot and had even accompanied complainant to hospital leaves no room to doubt the factum of identification of the accused.

13. The complainant in the FIR as well as in his statement recorded in the Court has consistently stated that on the day of occurrence when the complainant along with the deceased Sohan Lal were going on foot then a car bearing registration No.DL-4CK-3698 driven by accused in a rash and negligent manner came there and hit against Sohan Lal as a result of which Sohan Lal fell down and sustained injuries on his head, arm and leg. He further deposed that Sohan Lal was admitted to Civil Hospital, Ambala from where he was referred to PGI, Chandigarh but Sohan Lal succumbed to injuries on way to PGI. The witness was cross-examined at length but nothing substantial could be elicited during his cross-examination so as to dislodge him. The witness remained firm on his statement.
14. A perusal of the vehicle inspection report (Ex.PW-2/A) duly proved by PW-2 HC Subhash Chander who had mechanically examined the car in question also reveals that the headlight, bumper, bonnet and radiator of the car in question were damaged, indicating that the car had met with an accident.
15. Though, the learned counsel for the petitioner has attempted to assail the case of the prosecution on the ground that apart from the testimony of the complainant there is no other eye witness to the occurrence, but I find that

testimony of PW-1 Mahinder Kumar is fully trustworthy, who, despite his cross-examination has remained firm on his statement. PW-1 was not known to the accused earlier and had no axe to grind against the accused so as to falsely implicate him. As such, there is no reason to disbelieve his statement and his statement can well be relied upon even if there is no other eye witness to the occurrence. From perusal of judgment of the trial Court as well as of the lower Appellate Court I find that there is no misreading of evidence and the judgments have been passed after duly appreciating the evidence on record in the correct perspective.

16. I do not find any infirmity in the impugned judgment and the same is upheld. No other argument has been raised or urged before this Court on behalf of the petitioner. There is no merit in this revision petition and the same is hereby dismissed.

(Gurvinder Singh Gill)
Judge

September 8, 2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No