

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 437 of 2011

Date of Decision:-November 10, 2017

Ram Khiladi

.....Petitioner

Versus

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Tapan Kumar, Advocate,
for the petitioner.

Mr. Manoj Dhankhar, AAG, Haryana.

Gurvinder Singh Gill J.

1. Ram Khiladi has filed this revision petition challenging judgment dated 10.1.2011, passed by learned Sessions Judge, Faridabad whereby his appeal against judgment dated 9.4.2010 passed by the Court of JMIC, Faridabad challenging his conviction under Sections 279, 337 and 304-A of IPC has been dismissed.
2. The case of prosecution, based on statement of complainant Vinod Kumar, in nut-shell, is that on 9.3.2001 his elder brother Sushil Kumar along with his son Rajesh Kumar and maternal grandson namely Ashu went to market to make purchases on a scooter. His nephew Rajesh Kumar was driving the scooter on which his brother Sushil Kumar was sitting on the pillion seat. They were following the complainant who was on his scooter. At about 10.30 AM when they reached near the turning of colony then a four wheeler bearing

Registration No.RJ-02S-3382 came from behind at a high speed, which was being driven rashly and hit the scooter of his brother on its rear side, upon which his brother's son and maternal grandson fell off the scooter. The complainant rushed near them and raised alarm and several persons were attracted there and took them out from under the truck and took them to Escort Medical Centre, Faridabad where his brother Sushil Kumar succumbed to his injuries. He further stated therein that he could identify the driver of four wheeler. He also stated that the Driver after leaving the truck ran away from the spot.

3. The hospital authorities sent information to the police and in pursuance thereof, aforesaid statement of complainant PW-8 Vinod Kumar was recorded leading to registration of FIR. The requisite investigation was conducted by the police. The accused was arrested on 21.3.2001.
4. Upon conclusion of investigation, challan was presented against the accused for offences under Section 279, 338 and 304-A IPC. Charges were framed against the accused for offences under Sections 279, 337/338 and 304-A IPC on 29.9.2001, to which the accused pleaded not guilty and claimed trial.
5. The prosecution examined eight witnesses to establish its case. While PW-1 Dr. Sangeeta Khurana stated about the injuries sustained by Mahesh Kumar, PW-3 Dr. S.K.Manoha proved the post-mortem report in respect of deceased Sushil Kumar. PW-2 Rajesh, PW-7 Mahesh Kumar and PW-8 Vinod Kumar are all eye-witnesses. PW-4 Bhagwan Sarup is the photographer. PW-5 SI Vijay Pal and PW-6 ASI Ram Kishan are official police witnesses who deposed about the investigation of the case.

6. The accused in his statement under Section 313 Cr.P.C. denied the prosecution case in toto and pleaded false implication. However, he did not lead any evidence in his defence.
7. The learned Trial Court upon appreciating evidence on record held the accused guilty for committing offences punishable under Sections 279, 337 and 304-A IPC vide judgment dated 9.4.2010 and sentenced him to undergo simple imprisonment for six months in respect of each of the three offences apart from imposition of fine amounting to ₹ 1,000/-, ₹ 500/- and ₹ 1500/- respectively for the aforesaid offences. However, the sentence were ordered to run concurrently.
8. The appeal filed by the petitioner Ram Khiladi challenging aforesaid judgment dated 9.4.2010 was dismissed by learned Sessions Judge, Faridabad vide impugned judgment dated 10.1.2011 which the petitioner has challenged by way of filing the present revision petition.
9. The learned counsel for the petitioner while assailing the impugned judgment submitted that the learned Trial Court fell in error in convicting the accused despite the fact that he was not identified either at the spot or during investigation and was identified for the first time by the witnesses in the Court. The learned counsel further submitted that in any case the statements of the alleged eye-witnesses would show that they could not possibly have any occasion to see the truck which was coming from behind so as to state that the same was being driven rashly and negligently. It has also been submitted that the omission to examine the Investigating Officer is fatal to the case of prosecution inasmuch as the investigation conducted in the case cannot be said

to be duly proved. The learned counsel thus submitted that the impugned judgment cannot sustain and thus prayed for acquittal of the accused.

10. On the other hand, the learned counsel representing the State has submitted that the prosecution has led sufficient evidence to establish that it is the accused, who had caused the accident by driving his truck rashly and negligently resulting in death of Sushil Kumar and injuries to other witnesses. It has further been submitted that the two of the eye-witnesses have consistently stated regarding having seen the accused at the spot and had identified him and that in these circumstances, there is no room to doubt the identification of the accused. The learned state counsel has thus prayed for dismissal of the revision petition.
11. I have considered the rival submissions addressed before this Court and with able assistance of learned counsel, have also perused record of the case.
12. As far as the contention regarding omission to examine the Investigating Officer is concerned, the present case is such which is mainly based on the testimonies of the eye-witnesses, who have categorically stated about the manner in which the truck was being driven. It is not in each and every case that non-examination of the Investigating Officer would be fatal. The present case is not such where any scientific investigation had been conducted requiring examination of the investigating officer. As stated above, the material question in the present case is the manner in which the truck was being driven and regarding which eye-witnesses have stated specifically. In these circumstances, the omission to examine the Investigating Officer loses significance.

13. During the course of arguments, the learned counsel also contended that the statement of the accused recorded under Section 313 Cr.P.C. has not been recorded correctly inasmuch as it is in the nature of a composite nature where the entire case of prosecution evidence has been put to him in one go rather than putting the statements of witnesses to him individually.
14. I have considered the aforesaid submission. A perusal of statement of accused recorded under Section 313 Cr.P.C. shows that all the material documents relied upon by prosecution have been put to him. The accused has simply denied the prosecution case in toto. Each of the individual statement of witnesses is certainly not required to be put to the accused. Hon'ble the Supreme Court in 2017(4) RCR(Criminal) 1 Suresh Chandra Jana vs. State of West Bengal held as follows:

“Sub-section (b) of Section 313 requires the court to question the accused generally on the case after the prosecution evidence is over. It does not require to re-write hundred pages evidence in another hundred pages to record the statement of the accused under the Section. It should be borne in mind that entire evidence has been recorded in the presence of the accused or his counsel, and before he enters into his defence, what is required is that he is generally asked on the case, after the prosecution evidence is over, to explain any circumstances in the evidence against him. It does not require that each and every sentence of the prosecution evidence has to be re-written and read over once again while examining the accused under Section 313 of the Code of Criminal Procedure.”

15. It is the broad case of the prosecution and the documents on which the case of the prosecution is based which are required to be put to accused to enable him to put forth his explanation regarding the same. The same having been done would meet with the requirements of law. Nothing was shown to this Court as

to how the accused had been prejudiced. There is no substance in the aforesaid submission and the same is thus rejected.

16. As per the FIR, the complainant Vinod Kumar PW-8 along with his brother Sushil Kumar (deceased) and his son were going on a scooter when they were hit by four wheeler from behind resulting in death of Sushil Kumar.
17. The prosecution has examined PW-2 Rajesh and PW-8 Vinod Kumar who have both identified the accused. PW-2 Rajesh stated that the driver of truck had remained at the spot for a while before he left after leaving the truck there. Apart from the aforesaid two witnesses, who were specifically named in the FIR, it infact transpires that before hitting the scooter of the deceased, the truck had hit against one Mahesh Kumar who was going on foot and who also sustained injuries.
18. The prosecution, in order to prove the factum of existence of injuries on said Mahesh Kumar, has examined PW-1 Dr. Sangeeta Khurana who stated that on 9.3.2001 when she was posted at B.K. Hospital, Faridabad she had medico-legally examined Mahesh Kumar and had found the following injuries on his person :-
 1. Query Fracture of right leg bones. No sign of external injury. Extreme tenderness present.

Advised x-ray right leg AP lateral. Ortho surgeon opinion.
19. Aforesaid Mahesh Kumar also stepped into the witness box as PW-7 wherein he deposed that on 9.3.2001 when he was coming from market after making purchases then a TATA 407 vehicle bearing Registration No.RJ-02S-3382 came from direction of Delhi at a high speed, which was being driven rashly and negligently and hit him from behind as a result of which he sustained injuries.

20. The aforesaid eye witnesses were cross-examined at length but nothing substantial could be elicited during the course of their cross-examination. The testimony of PW-7 Mahesh Kumar is in the nature of testimony of stamped witness as he had sustained injuries in the accident. As such, his testimony can not easily be discarded with. In this context, reference may be made to a judgment of Hon'ble the Supreme Court in Balwan and others versus State of Haryana (2014)13 SCC 560, wherein it has been held as follows:-

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.

21. There is nothing on record to doubt the veracity of the witnesses. Since all of them have identified the accused, therefore, there is no room to doubt the identification of the accused.
22. The contention of the accused that the complainant could not have possibly seen the truck as he was driving his own scooter ahead of the scooter of the deceased would not carry much weight as the witness during cross-examination have explained that the moment he heard the noise of collision, he immediately turned back. In any case, PW-2 Rajesh was driving the scooter on which the deceased was sitting on pillion seat and as such, he would surely be in a definite position to state regarding the manner of accident. Furthermore, PW-7 Mahesh Kumar is in the nature of an independent witness and stamped witness and thus, his testimony is on a much higher pedestal. Since all the witnesses have stated consistently about the manner of accident to the effect that the deceased was driving his vehicle at a high speed and in a rash and

negligently manner and which hit Mahesh Kumar and also the Scooter of the deceased from behind, there is no room for interference in findings of trial Court.

23. There is no infirmity in the impugned judgment and the same is affirmed. There is no merit in this revision petition and the same is hereby dismissed.

(Gurvinder Singh Gill)
Judge

November 10, 2017
kamal

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