

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

CRR-1597-2012(O&M)

Date of decision:-19.9.2017

Ravinder

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.P.S. Hundal, Senior Advocate with
Mr.Sunil Bhardwaj, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 1.5.2012 passed by learned Sessions Judge, Jind vide which the judgment dated 11.8.2011 passed by learned Additional Chief Judicial Magistrate, Jind convicting accused Ravinder for offences under Sections 279 and 304-A and order dated 12.8.2011 sentencing him for those offences were upheld, whereas the appeal filed by accused-convict was dismissed.

The accused-convict – Ravinder, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence by Additional Chief Judicial Magistrate, Jind and judgment in appeal by learned Sessions Judge, Jind be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that on 1.2.2008, complainant Ram Niwas working as a Typist in District Courts, Jind, after getting free from work had gone to Jind City, where he met his cousin brothers Rajender and Subhash; that then all of them proceeded towards their village on their respective motorcycles inasmuch as Subhash was driving his motorcycle bearing No.HR-33A/5647 on which Rajender was a pillion rider, whereas complainant was following their motorcycle on his own motorcycle; that at about 7:00 p.m., when they were in the area of near bus-stand village Lochab, a truck having registration No.HR-56-1430 came from opposite side being driven by accused Ravinder and it struck against motorcycle of Subhash, resultantly Subhash and Rajender suffered injuries; that Rajender succumbed to those injuries at the spot, whereas Subhash died as a result of such injuries suffered in the road side accident at the hospital. After causing the accident, the accused sped away his truck. The complainant Ram Niwas got recorded his statement regarding mishap before the police, which formed basis for registration of the FIR. The matter was investigated. The accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Jind, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Additional Chief Judicial Magistrate, Jind finding

that charge for offence under Sections 279 and 304-A IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as eleven witnesses, namely, Dr.Rajesh Gandhi, Medical Officer as PW1, Dr.Jagdish Sethi, Medical Officer as PW2, Rakesh, eye-witness as PW3, Amit, eye-witness as PW4, Ram Niwas, complainant as PW5, Ishwar as PW6, HC Bijender Singh as PW7, SI Dilawar Singh, Investigating Officer as PW8, Harish Kumar, Photographer as PW9, Ramphal, Constable as PW10 and Jagbir Singh, ASI as PW11.

Thereafter, the prosecution evidence was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

In defence evidence, accused tendered copy of judgment dated 7.4.2009 passed by Motor Accident Claims Tribunal as Ex.DX and closed the defence evidence.

Learned trial Magistrate formulated following points for determination:

- (i) Whether accused drove truck bearing No.HR-56-1430 on 1.2.2008 rashly and negligently so as to endanger

human life and personal safety of others or not?

- (ii) Whether the accused while driving the aforesaid vehicle rashly and negligently caused the deaths of Rajender and Subhash on 1.2.2008 or not?

After hearing arguments, learned Additional Chief Judicial Magistrate, Jind vide judgment dated 11.8.2011 convicted accused Ravinder for the offences under Sections 279 and 304-A IPC and order dated 12.8.2011 the said accused was sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for 15 days for the offence under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months for the offence under Section 304-A IPC, both the sentences were ordered to run concurrently. The appeal preferred against the judgment of conviction and order of sentence passed by the Additional Chief Judicial Magistrate, Jind was also decided against the accused by learned Sessions Judge, Jind, which left petitioner – accused Ravinder aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the revision petition.

Here PW5 Ram Niwas, complainant, PW3 Rakesh, PW4

Amit, PW6 Ishwar provided the eye-witness account of the mishap categorically stating that accused was author of the accident by his rash and negligent driving of the offending truck. Although they were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of all the witnesses to be likely and probable and account given by both of them to be worthy of reliance. Ram Niwas – complainant having lost his cousin brothers would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason. Admittedly, till date the accused has not submitted any written representation to the higher police officers complaining against his

alleged false implication in this case. If the accused had been roped in wrongly, he would not have kept quiet with damoclean sword of conviction hanging over his head. His silence and inaction goes to show that his plea of false implication lacks merits. There is nothing on record to show that the Investigating Officer had any axe to grind with the accused spurred by which he might have involved the accused in this case wrongly while letting off the real culprit. Had the same been done, in normal circumstances, the accused would have agitated the matter bringing it to the notice of higher police authorities but then admittedly none of that sort was done by the accused. As a matter of fact, the investigation has been conducted in a fair and impartial manner. The medical evidence corroborates the ocular evidence so does the remaining evidence adduced by the prosecution.

Learned counsel for the revision-petitioner has contended that identity of the driver is not established inasmuch as in the FIR his name is not mentioned and no identification parade was arranged to get him identified from the eye-witnesses. Whereas learned State counsel has contended that the accused had been identified by the eye-witnesses in the Court as they had seen him at the spot, their identifying the accused in the Court was not for the first time. As such there was no necessity of holding of any test identification parade. As a matter of fact, the accused himself did not request for doing so. Furthermore, since the offences for which the accused was booked happened to be bailable, the police did not get any opportunity to have his custody and then to make him participate in the test identification parade. Therefore, the identity of the accused stands

established and duly proved on record.

After hearing the rival contentions, I find that the arguments so advanced by learned counsel for the petitioner are without any merit. Though accused is not named in the FIR, but then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the munute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story. Though FIR was registered on 1.2.2008 and accused was arrested on 12.2.2008, after a lapse of 12 days but then that by itself does not go to show the innocence of the accused. As already observed after registration of FIR during investigation if accused is not named in the FIR, it does take some time to know the identity of the criminal involved in the incident and delay of 12 days in arrest of the accused does not point out towards his non involvement in the accident.

As regards their being no signs of any collision or impact on the truck as the truck had been taken into possession after about 12 days of the mishap, there could be every possibility of those signs having been got removed by getting it repaired and painted at that place (s).

Learned trial Magistrate referring to authority **Sudama Devi and others Versus Kewal Ram and others 2008(1) PLR 444 (P&H)** observing that mere silence for a long time on the part of driver in itself is

sufficient to prove that he was negligent in driving the offending truck as a result of which the accident took place. She has also placed reliance upon *M/s Swadesh Karyala (P) Ltd. Versus Bakshish Kaur and others 2007(2) LJR 288 (P&H)*. Learned counsel for the revision petitioner has contended that the claim petitions filed by the legal heirs of the deceased had been dismissed by learned Motor Accident Claims Tribunal, Jind vide judgment dated 7.4.2009 observing that it is not established that truck was present at the place of incident at the relevant time rather, it had gone to village Bhalkana for unloading the bricks for their customer Dalbir.

Thus according to learned counsel for the revision petitioner this judgment is a relevant piece of evidence, therefore relying upon it, the petitioner deserves to be acquitted and given a clean chit. Whereas learned State counsel has contended that such judgment is not relevant in the instant case since this judgment is summary proceedings only.

After giving a thoughtful consideration to the arguments advanced by learned counsel, I find that judgment of Motor Accident Claims, Tribunal, Jind is not of much relevance in the present case. Section 166 of the Motor Vehicles' Act is a piece of welfare legislation. Its purpose is to provide financial help to the victims of motor vehicular accidents. The proceedings are summary in nature, where technical aspects are not given much importance, therefore, that judgment does not have much bearing on the merits of the case and cannot form basis for giving verdict of innocence in favour of the petitioner.

Another argument put forward by learned counsel for the petitioner was that in statements of witnesses recorded during inquest

proceedings, the witnesses have not given the name of the driver and registration number of the truck. Again I find little merit in these contentions. The purpose of recording statement of witnesses under Section 175 Cr.P.C. is only for identification of the deadbody and giving the cause of death. The minute details which they had given i.e. death in the road side accident caused by a truck. They were not required to give the detailed version of the accident, as such the defence cannot take advantage of these statements.

Learned counsel for the revision petitioner has referred to citation **Balaka Singh and others Versus The State of Punjab, 1975 AIR(SC) 1962** by Hon'ble Supreme Court. As per facts of that case, it was a murder case when in the inquest report names of four out of nine accused were found missing in the inquest report. This omission was not explained. The prosecuting party was found to be inimical to the accused. Complicity of four accused was held doubtful. The FIR was found to have been written after inquest report was prepared by ASI. Under the circumstances, the FIR was found to have lost its authenticity. In the instant case, the name of the accused has not been mentioned. No enmity between the complainant side/eye-witnesses and accused has been alleged or proved. FIR is shown to have been written prior to holding the inquest proceedings since in the inquest report had been written after registration of the FIR. Therefore, this authority does not help the petitioner in any manner.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and

sentence part, those are upheld and appeal is found to be without any merit and is dismissed accordingly.

Ravinder petitioner – accused is stated to be on bail granted to him by this Court vide order dated 6.8.2012 while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Jind is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

19.9.2017

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**