

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

**CRR 2100-2015 (O&M)
Date of decision: 06.11.2017**

Ravinder

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kunal Dawar, Advocate for the petitioner
Mr.R.K.Makkad, DAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This revision petition is filed against judgment dated 12.5.2015, passed by the learned Additional Sessions Judge, Palwal, affirming the judgment of conviction dated 16.10.2013 with modification in order of sentence dated 19.10.2013, passed by the learned Sub Divisional Judicial Magistrate, Hathin, vide which the petitioner was convicted under Sections 279, 337, 338 and 304-A IPC and sentenced as under:-

Under Sections	Period	Nature	Fine
279 IPC	6 months	Rigorous Imprisonment	--
337 IPC	6 months	Rigorous Imprisonment	--
338 IPC	1 year	Rigorous Imprisonment	--
304-A IPC	1 ½ years	Rigorous Imprisonment	Rs.1000/-

In default of payment of fine, to further undergo Simple Imprisonment for one month. All the sentences were directed to run concurrently.

However, the learned Additional Sessions Judge, Palwal while maintaining other sentences, had reduced the sentence under Section 304-A IPC from one and half to one year.

Facts of the case are that on 26.11.2007 at about 8.00 a.m., Kunwar Pal was driving a Jeep bearing registration number HR-51-C-6626, carrying 10 passengers in the same and was going from village Bahin towards Palwal. When the jeep reached near Tunda Peer Temple, ahead of village Pahari, a pickup van bearing registration number HR-38-F-4006, being driven rashly and negligently by the present petitioner, namely, Ravinder, came from the opposite direction and hits the Jeep of complainant Kunwar Pal. As a result of the accident, jeep over turned. The passengers in the jeep received injuries. One of the passengers of the Jeep Yogesh Kumar was crushed under the jeep and died at the spot. The complainant inquired the name from the driver of pickup van to which he replied as Ravinder. It is further alleged that as the mob gathered at the spot, accused slipped away from the spot, leaving the vehicle at the spot. Police, on receiving the intimation, reached at the spot and recorded the statement of Kunwar Pal (Ex.PA) at the spot itself and made endorsement at 10.15 a.m., upon which, formal FIR No.261 dated 26.11.2007 under Sections 279, 337, 338 and 304-A IPC was registered at Police Station Hathin.

Trial Court charge sheeted the accused under Sections 279, 337, 338 and 304-A IPC, to which, he pleaded not guilty. To support its case, the prosecution examined Sukhchain as PW1, HC Sarup Singh as PW2, Kumar Pal as PW3, Sarabjeet as PW4, Sanjay Rawat as PW5, Leela Devi as PW6, ASI Chanderpal as PW7, Rohtash as PW8 and Deshraj as PW9. Remaining evidence of prosecution was closed by order.

In the statement recorded under Section 313 Cr.P.C., accused pleaded that he has been falsely implicated. He did not examine any witness in defence.

After hearing the prosecution and defence and going through the evidence, the learned Sub Divisional Judicial Magistrate, Hathin, convicted and sentenced the accused as aforesaid. Sentence under Section 304-A IPC was modified by the lower Appellate Court, as discussed above.

I have heard learned counsel for the parties and have also carefully gone through the record.

Before this Court, learned counsel for the petitioner has argued that in this case, the report of the mechanic was not proved. It is further argued that the complainant merely stated that pick up van came from the opposite side. He has not stated that it was being driven rashly and negligently. It was further argued that even from the photographs placed on file, it does not show that there is any dent on the jeep, showing that any vehicle had hit it, as a result of which, jeep over turned. Perusal of the lower Court file shows that mechanic report of the pickup van is on the file. However, the same has not been exhibited and therefore, cannot be read into evidence. Only photographs were proved by the photographer. It is case of the prosecution that the pickup van came from the opposite side. Photographs on the file shows that there is a damage on the left side of the pickup van and some damage on the right (driver) side of the pickup van, indicating that both the sides of the pickup van as well as front bumper is damaged. Both the vehicles are found parked diagonally. It is also case of prosecution that jeep had over turned. Whereas, in photographs jeep is found parked indicating that after the accident probably, it was again put in

standing position. Perusal of the photographs further shows that there is no damage at all on the right or left side of the jeep in question. Had the pickup van coming from the opposite side hit the jeep, there would have been damage on the front or right (driver) side of the jeep. Photographs shows that bumper, headlights and indicators of the jeep of the complainant are intact. There is no dent on the jeep or front wheel mud cover, indicating that no vehicle hit the right side of the jeep. Further, it is claimed by the prosecution witnesses that it was head on collision, whereas, there is no damage or dent on any portion on the front side of the jeep of the complainant. All the injuries to the injured witnesses and death of one Yogesh Kumar was due to overturning of the vehicle, as it is stated in the complaint itself that Yogesh Kumar was crushed under the jeep.

Statement of Kumar Pal (PW3) shows that the pickup van had hit the driver side of the jeep which is not made out from the photographs placed on file. Jeep was never mechanically examined nor any mechanic report of the jeep is placed on the file. Kumar Pal has further affirmed that the driver of pickup van ran away from the spot but he was apprehended at some distance. However, he has not stated this fact in the statement before the police.

Sarabjeet (PW4) injured had also stated that driver of pickup van had tried to run away but was apprehended. He has also stated that the pickup van hit the jeep. Leela Devi (PW6), who was also injured, has stated that pickup van had hit the jeep from the front side. However, photographs do not indicate that the jeep was hit by any incoming vehicle. There were about ten passengers travelling in the jeep. Though jeep was a private jeep of the complainant Kunwar Pal but it was being unauthorizedly

used for carrying passengers. Even though there are dents on the right and left side of the pickup van but these are not co-related with the pickup van hitting the jeep of the complainant. Therefore, it cannot be said that the jeep overturned after being hit by the pickup van being driven by the accused. Mere fact that pickup van was found at the spot after the accident, does not mean that the pickup van is involved in the accident.

As discussed above, the mechanic report of the jeep is not available on file and from the photographs no damage to the indicators, front mudguard, front bumper or any front portion of the jeep is found nor there is any damage to the right (driver) side of the jeep. Had the incoming vehicle hit the driver side of the jeep, there would have been damage to the right side of the jeep.

It being so, it is not proved that the jeep had overturned due to rash and negligent driving of the driver of the pickup van bearing registration number HR-38-F-4006 being driven by the present petitioner. Consequently, it cannot be said that passengers of the jeep were injured and one Yogesh Kumar died due to rash and negligent driving of the driver of the pickup van bearing registration number HR-38-F-4006 being driven by the present petitioner. Jeep appears to have overturned for the reasons other than being hit by incoming vehicle. Both the Courts below failed to appreciate this critical aspect of the evidence. Both the Courts below merely believed the statement of the witnesses, who stated that the pickup van had hit the jeep, without trying to corroborate their statements from the documentary evidence on file.

Consequently, the present revision petition is allowed.

Judgment dated 12.5.2015, passed by the learned Additional Sessions

Judge, Palwal and the judgment of conviction dated 16.10.2013 and order of sentence dated 19.10.2013, passed by the learned Sub Divisional Judicial Magistrate, Hathin are hereby set aside. Petitioner stands acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged.

06.11.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned: Yes

Whether Reportable: Yes