

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

CRR No.3740 of 2016 (O&M)
Date of Decision: January 23, 2017

Jamshed

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarfraj Hussain, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Jamshed respondent State of Haryana, challenging the impugned judgment of conviction and order of sentence dated 22.12.2015 passed by learned Judicial Magistrate Ist Class, Ferozepur Jhirka, vide which the petitioner was convicted and sentenced to pay fine of ₹1000/- under Section 279 IPC and further to undergo simple imprisonment for a period of six months and to pay fine of ₹3000/- under Section 304-A IPC and in default of payment of fine, to undergo simple imprisonment for a period of two months and also challenging the judgment dated 22.09.2016 passed by learned Addl. Sessions Judge, Mewat, vide which appeal filed by petitioner was dismissed.

From the record, I find that the challan was presented against petitioner in case FIR No.209 dated 27.12.2013. The brief facts of the case as noted down in the judgment passed by learned JMIC, Ferozepur Jhirka, are as under:-

“2. Brief facts of the prosecution case are that on 27.12.2013, on the information, ASI Balwan Singh along with H.C. Dhan Singh, H.C. Surender Kumar No.56 reached at G.H. Mandikhera, where they met with complainant Tahir son of Sakrulla, resident of village Mewli, P.S. Nuh and recorded his statement to the effect that he is resident of aforesaid address and Advocate by profession. On 27.12.2013, at about 10.30 AM, Imran Ahmad and Furkan Ahmad sons of Matiulah, resident of Ward No.1, Ferozepur Jhirka, were going on their duties on Motorcycle bearing registration No.HR-28-C-2557. Complainant was also going behind the deceased by his car. When they reached near to village Jatka Shiswana, then a L.P. Truck bearing registration No.HR-74-8861 driven by unknown driver came there from front side in a very rash and negligent manner and gave direct hit to the Motorcycle of Imran Ahmad, due to spot due to receiving of multiple grievous injuries. Driver of the alleged L.P. Truck fled away from the spot leaving behind the alleged vehicle. On the basis of the statement, case was got registered. Investigation was started. During the course of investigation, site plan was prepared. Statements of prosecution witnesses under Section 161 Cr.P.C. were recorded. Accused was arrested. After completion of all other usual formalities of investigation, accused was sent up for trial by filing challan under Section 173 Cr.P.C.”

In support of its case, prosecution examined PW-1 Tahir Hussain Khan, complainant and eye witness, PW-2 Dr.Shameem Ahmad, Medical Officer and PW-3 SI Balwan Singh.

Statement of the accused under Section 313 Cr.P.C. was recorded. He denied the correctness of the evidence and pleaded himself as innocent. No witness was examined in defence.

Learned JMIC, Ferozepur Jhirka, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl.

Sessions Judge, Mewat, vide judgment dated 22.09.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

At the time of arguments, learned counsel for the petitioner argued that the judgments passed by both the Courts below are not as per law. Only complainant has been examined by the prosecution to support the prosecution case and his presence on the spot is doubtful. He further argued that owner of the truck has not been examined nor the mechanical report has been proved. The eye witness could not tell whether on the day of the occurrence, it was raining or not, which shows that his presence is doubtful.

On the other hand, learned State counsel argued that concurrent findings have been given by both the Courts below regarding guilt of the accused and the present petitioner has been convicted and sentenced correctly, while appreciating the evidence in right perspective.

After hearing learned counsel for the petitioner as well as learned State counsel and after going through lower Court record as well as the judgments passed by the Courts below, I find that both the Courts below have given concurrent findings. The findings have been given as per evidence and in no way, the judgments can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. Nothing has been argued as to how the findings are illegal or against the law.

convict the accused if statement is reliable one. The complainant in this case has supported the prosecution version and there are no material contradictions and improvements in the statement of the complainant. The mere fact that eye witness could not tell whether on that day, it was raining or not, will not create any doubt regarding his presence on the spot nor it amounts to material discrepancy. The witness was deposing in the Court after gap of long time and such type of discrepancies may occur in the statement of truthful witness.

Further, the owner of the vehicle is not a material witness. The prosecution has proved the accident caused by present petitioner by rash and negligent driving in which two persons have died.

The perusal of the record as well as judgments passed by the Courts below, I find that no illegality has been committed by the Courts below while passing the impugned judgments of conviction and order of sentence. The findings have been given by the Courts below while appreciating the evidence in right perspective. This is a revision petition and this Court is not to re-appreciate the evidence like Court of an appeal.

Therefore, finding no merit in the present revision petition, the same is dismissed.

January 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No