

CRR-3959-2016 (O & M)

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

CRR-3959-2016 (O & M)

Date of Decision: 09.02.2017

C-II Rakesh Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sumeet Puri, Advocate,
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

INDERJIT SINGH, J.

The present revision has been filed by petitioner-C-II Rakesh Kumar against respondent-State of Punjab under Section 401 Cr.P.C. challenging the impugned judgment of conviction and order of sentence dated 10.03.2014 passed by learned Judicial Magistrate Ist Class, Malerkotla, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹500/- and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days under Section 279 IPC; to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹500/- and in default of payment of fine, to further undergo

CRR-3959-2016 (O & M)

rigorous imprisonment for 15 days under Section 304-A IPC and to further undergo rigorous imprisonment for a period of six months and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days under Section 427 IPC and also challenging the judgment dated 12.10.2016 passed by learned Sessions Judge, Sangrur, vide which appeal filed by the petitioner was dismissed.

Notice of motion was issued. Learned State counsel put in appearance on behalf of the respondent-State and contested this revision.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against the petitioner in FIR No.03 dated 18.01.2009, under Sections 279, 304-A and 427 IPC, Police Station Ahmedgarh. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Malerkotla, are as under:

“Criminal Law was set in motion pursuant to the statement, suffered by Rajesh Kumar complainant to ASI Avtar Singh on 18.1.2009, to the effect that on 18.1.2009, he was going towards Ludhiana on his Hero Honda motorcycle bearing registration No.PB10BD-5514. Neel Ratan, his friend, who was doctor in Civil Hospital Malerkotla, was going ahead of him on his separate LML Vespa scooter bearing registration no.PB08W-6812. When, they reached near village Thalewal, a vehicle of Highway

CRR-3959-2016 (O & M)

Patrolling Police of Punjab bearing registration No.PB13R-1608, being driven rashly and negligently and at a higher speed, came from Ludhiana side and struck against the scooter of Dr. Neel Ratan, as a result thereof, Dr. Neel Ratan fell down, received multiple injuries and his scooter was damaged. Dr. Neel Ratan was brought to Civil Hospital Malerkotla in the offending vehicle, but he died in the way. The accused was driving the offending vehicle. On the basis of this statement, FIR was registered. Site plan was prepared. Post mortem of the dead body was got conducted. Offending vehicle and damaged vehicle were taken in police possession. Accused was arrested and released on bail. Both the vehicles involved in the accident were got mechanically checked. Statements of witnesses were recorded. After completion of further investigation, challan was presented in the court against the accused for trial in accordance with law.”

In support of its case, the prosecution examined Dr. Ramandeep Kaur as PW 1, Rajesh Kumar as PW 2, Ravinder Nath as PW 3, Dr. Daljinder Singh as PW 4, HC Avtar Singh as PW 5, ASI Nirmal Singh as PW 6, ASI Harnek Singh as PW 7, Bharpur Sen as PW 8, ASI Paramjit Singh as PW 9 and thereafter, the prosecution evidence was closed.

When the accused was examined under Section 313 Cr.P.C., he pleaded denial and false implication in the present case. In defence evidence, the accused examined ASI Jaspal Chand as DW 1, driver

CRR-3959-2016 (O & M)

Surinder Singh as DW 2, HC Dharam Pal as DW 3, Retired HC Rajpal Singh as DW 4, Nodal Officer Surjit Singh as DW 5 and thereafter closed his evidence.

Learned Judicial Magistrate Ist Class, Malerkota, 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 Sessions Judge, Sangrur, vide impugned judgment dated 12.10.2016.

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

At the time of arguments, learned counsel for the petitioner mainly argued that as per the record, the petitioner was not on duty on that day, rather Bharpoor Sen was driving the vehicle and the petitioner has been falsely implicated in this case.

I have gone through the judgments passed by the courts below.

Both the courts below have given concurrent findings on the basis of evidence that present petitioner-CII Rakesh Kumar was driving the police patrolling vehicle and disbelieved the defence version given by the petitioner-accused. PW 2 Rajesh Kumar, complainant, who is said to be an eye-witness, has consistently deposed that the present petitioner while driving the vehicle bearing registration No.PB-13R-1608 rashly and negligently hit the LML Vespa Scooter of Dr. Neel Rattan. It is also

CRR-3959-2016 (O & M)

in his statement that the accused brought the vehicle from wrong side. He also identified the accused present in the Court that he was driving the vehicle.

I have gone through the cross-examination of PW 2 Rajesh Kumar. There is nothing in his cross-examination which makes the statement of PW 2 Rajesh Kumar unreliable. PW 8 Bharpur Sen has also appeared in the Court. He specifically deposed in the cross-examination that he was not a driver on this vehicle on 18.01.2009. I have gone through the statement of the petitioner-accused under Section 313 Cr.P.C., in which he nowhere stated that Bharpur Sen was driving the vehicle in question. He simply stated that he was not the driver of the offending vehicle at the time of accident. Statement of DW 2 Surinder Singh also does not show that Bharpur Sen was the driver at the time of accident. This witness has produced the record that Bharpur Sen was appointed as driver on the vehicle and log book was also shown to be filled by Bharpur Sen. In the cross-examination, DW 2 Surinder Singh admitted that it is correct that as per log book, there is no record in respect of moving of the vehicle from 18.01.2009 to 11.02.2009. DW 4 Retd. HC Rajpal, who was sitting in that vehicle at the time of occurrence, though stated that Bharpur Sen was driving the vehicle, but he has not made any application or written intimation at any stage that case has been registered wrongly against the present petitioner. If Bharpur Sen was driving the vehicle, then as to why DW 4 HC Rajpal

CRR-3959-2016 (O & M)

had not made any application, representation or complaint to the higher authority stating that Bharpur Sen was driving the vehicle and not C-11 Rakesh Kumar, present petitioner. He also admitted in his examination-in-chief that C-II Rakesh Kumar was also in that vehicle which caused the accident. The present FIR was registered on 18.01.2009 and DW 4 Rajpal Singh deposed in the Court for the first time on 15.11.2013 by stating that Bharpur Sen was driving the vehicle. His statement cannot be believed.

I have also gone through the statements of prosecution and defence witnesses. There is nothing to show that findings given by the courts below are against the evidence or law. The eye-witnesses have identified the accused in the Court who was driving the vehicle and caused the accident by rash and negligent driving.

Therefore, from the above, I find that neither the reasoning of the courts below can be held as perverse or against the evidence nor these findings can be held as illegal. In no way, the judgments passed by the courts below can be held as perverse. No illegality has been committed while passing the impugned judgments. This is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence, like Court of an appeal and this Court is only to see whether any finding is perverse or some material evidence has not been considered. At the time of arguments, learned counsel for the petitioner failed to point out as to which material evidence has been misread or

CRR-3959-2016 (O & M)

which material evidence has not been considered by the courts below.

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

09.02.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No