

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Revision No.1243 of 2017 (O&M)
Date of Decision: May 25, 2017

Surender
.....PETITIONER(s).

VERSUS

State of Haryana
...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner (s).

Ms. Harpreet Kaur, A.A.G. Haryana.

Mr. S.S. Khurana, Advocate
for the complainant.

SURINDER GUPTA, J.

This is revision petition filed by petitioner Surender against the judgment of learned Additional Sessions Judge, Rewari, whereby appeal against his conviction and sentence as awarded by Judicial Magistrate, Kosli, was dismissed.

Petitioner was convicted for offences punishable under Sections 279, 337 and 304-A of Indian Penal Code (for short-IPC) and sentenced as follows:-

Under Section	Sentence	Fine	In default
279 IPC	To undergo rigorous imprisonment for 3 months	₹500/-	To undergo further imprisonment for 1 month.
337 IPC	To undergo rigorous imprisonment for 3 months	₹500/-	To undergo further imprisonment for 1 month.
304-A IPC	To undergo imprisonment for one year	₹5000/-	To undergo further imprisonment for 3 months.

Case of the prosecution, in brief, is that on 03.06.2006 at about 2.45 P.M., complainant Vishal Yadav along with Pardeep Sharma (deceased) was going towards village Gurawara on motorcycle bearing registration No.HR-36E-8114. When they reached near Lord Krishna School, he overtook a tractor. In the meanwhile, tanker bearing registration No.HR-38-0672, which was being driven by its driver in a very rash and negligent manner, came from behind and hit the motorcycle. Pardeep fell down and came under the tyre of the tanker and was dragged. Driver of the tanker stopped it and ran away from the spot. He had seen driver of the tanker and could identify him. Pardeep was taken to hospital, where he died.

Learned counsel for the petitioner has argued that both the Courts below have held the petitioner guilty for the offences punishable under Sections 304-A, 279 and 337 IPC without looking into the fact that identity of the petitioner was not duly established. He was not named in the FIR and was identified in Court only after a period of more than two years. As per version in the FIR, driver of the tanker had run away from the spot and complainant would have no reason to see him. Even if prosecution version is to be believed, it was a case of contributory negligence as the complainant had overtaken the tractor-trolley going ahead of him without observing the offending vehicle coming from behind.

Both the Courts below have considered the point of identity of the petitioner and have concluded that the same is duly proved. On perusal of the FIR, I find that complainant has specifically stated that he can identify the driver, if comes before him. While appearing as PW3, he had

deposed that driver of the offending vehicle was caught by the villagers but later on he escaped from the spot. He had disclosed his name when he was caught by the public. This shows that the petitioner had the opportunity to see the driver of the offending vehicle. Even otherwise, when such an incident took place, which has resulted in injuries to complainant and death of his companion, he will not forget the face of the person who had caused the accident. The image of such person got imprinted in his mind which he could recollect even after a long period. The complainant had duly identified the petitioner. He had no enmity or reason for his false implication. As such, I find no reason to interfere with the findings of the Courts below that the identity of the driver is duly established.

Second contention of learned counsel for the petitioner that it is a case of contributory negligence has no basis. No suggestion was given to the complainant when he appeared as PW3 that the accident was caused due to his contributory negligence. This argument appears to have been raised for the first time by learned counsel for the petitioner and has no basis, as such, is discarded.

The sentence awarded to the petitioner commensurate with the gravity of the offence and I find no reason to interfere with the same.

As a sequel of my above discussion, the present petition has no merits and the same is dismissed.

May 25, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No