

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1932 of 2017 (O/M)
Date of decision : 25.9.2017

Bhupinder Singh

..... Revisionist

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anuj Balian, Advocate, for revisionist.

Mr. Pawan Garg, AAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

This is revision against the judgment dated 3.5.2017, passed by the learned Sessions Judge, Panchkula, affirming the judgment of conviction dated 2.11.2016 and order of sentence dated 4.11.2016, passed by the learned Judicial Magistrate 1st Class, Panchkula, vide which present revisionist was convicted under Sections 279 and 304-A IPC and was sentenced to undergo rigorous imprisonment for three months under Section 279 IPC and rigorous imprisonment for one year and fine of Rs. 2,000/-, in default thereof, to further undergo rigorous imprisonment for one month under Section 304-A IPC. The fine was paid. Both the sentences were directed to run concurrently.

The prosecution case is based on the statement (Ex.P1), made by Mohan Lal alias Sonu. It is stated that on 9.6.2013, at about 6:00/6:30 PM, Mohan Lal, who belongs to village Bardana Khurd, Police Station Raipur Rani, District Panchkula, was going on his motorcycle No.

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HR03-4154 from his fields to his village. Aman Kumar and Pankaj (sons of his uncle Hukam Chand) were also going ahead of him towards village Raipur Rani side on their motorcycle No. HR03L-6295. When they signalled to turn towards village Bardana Khurd, then a motorcycle make 'bullet' bearing registration No. HR03N-0747 came from Raipur Rani side, which was being driven by Bhupinder Singh (accused-present revisionist), hit on the backside of motorcycle No. HR03L-6295, being driven by Aman Kumar. As a result of the accident, Aman and Pankaj fell down on the road and sustained several injuries. Aman received head injury and became unconscious and Pankaj was also under shock. The bullet motorcyclist, namely, Bhupinder Singh, also received injuries. Mohan Lal alias Sonu arranged a three wheeler and put all the three injured in it and removed them to Civil Hospital, Raipur Rani. From there, Aman and Bhupinder were referred to GMCH, Sector-32, Chandigarh. During the treatment, Aman Kumar succumbed to the injuries. The post mortem was conducted and the police prepared the inquest report as well as crime report detail, which includes the site plan. Both the motorcycles were got mechanically examined. After completion of investigation, the challan was presented against Bhupinder Singh. The trial Court chargesheeted him under Sections 279, 304-A IPC.

I have heard the learned counsel for revisionist, the learned State counsel and have also carefully gone through the file as well as the lower Court file.

The learned counsel for revisionist has argued that both the Courts below have grossly erred in misreading the evidence. The evidence was not critically examined, which has resulted in miscarriage of justice. It

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has been argued that the presence of Mohan Lal alias Sonu and Pankaj at the spot is not proved as Pankaj was never medico legally examined and Mohan Lal alias Sonu being relation witness is a procured witness.

I am of the view that so far as Pankaj is concerned, he was riding the pillion of the motorcycle being driven by Aman Kumar (deceased). Therefore, he was also taken to the hospital alongwith present accused-revisionist. In the crime detail report, the name of Pankaj is mentioned as one of the victims. Therefore, it has to be accepted that Pankaj was riding the pillion of the motorcycle being driven by Aman Kumar, who died in the accident.

I am of the view that the trial Court has failed to appreciate certain material facts. As per the site plan (Ex.PW9/F), the accident took place slightly towards right side while going towards Raipur Rani. The place of accident is a crossing where two roads intersect each other, one from North to South and the other from East to West. The place of accident is right in the middle of the crossing slightly towards right side. While going towards village Raipur Rani, the village of deceased as well as the complainant, namely, Bardana Khurd is on the left side. It is claimed by Mohan Lal alias Sonu as well as Pankaj that the accident took place when deceased Aman Kumar gave a signal to turn towards village Bardana Khurd, which as per the site plan is on left side while going towards village Raipur Rani. It is the consistent stand of the witnesses that accused-revisionist was driving bullet motorcycle and was coming from village Raipur Rani. It is claimed that bullet motorcycle being driven by accused-revisionist hit the backside of motorcycle being driven by deceased Aman Kumar.

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I am of the view that even if the version given by Mohan Lal as well as Pankaj is accepted as such then in case of motorcycle coming from village Raipur Rani i.e. North to South hit the motorcycle coming from Mauli (from South to North) which was to take turn to West side towards village Bardana Khurd, then it can be head on collision or if the motorcycle of the deceased had taken a slight turn towards left, then would have hit the right side of motorcycle of deceased.

The report of the mechanic will help to arrive at the conclusion as to which side of the motorcycle was hit. Deceased was driving motorcycle bearing registration No. HR3L-6295 . The damage recorded by the mechanic is as under :-

1. Headlight shoe is bent
2. Side mirror is broken
3. Left side leg guard is bent
4. Lever damaged
5. Both the indicators of left side broken.

The damage recorded to the motorcycle of accused bearing registration No. HR03N-0747 is as under :-

1. Headlight having scratch
2. Front mudguard is bent
3. Right side footrest bent
4. Side mirror is missing.

It goes to show that the front side of the motorcycle of accused hit the vehicle coming from opposite side and both the vehicles fell down. Therefore, it is apparent that motorcycle of deceased fell on the left side causing damage to motorcycle on the left side. There is no damage on any

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part of the right side of motorcycle of deceased bearing registration No. HR03L-6295. In this way, had the motorcycle coming from village Raipur Rani hit the motorcycle coming from opposite side, it could either hit on the front side or on the right side, which may be on the front side or on the rear of right side, but certainly cannot hit the backside of the motorcycle of deceased. It is claimed by both the witnesses that after accident, Aman and Pankaj fell down and accused Bhupinder Singh also fell down and sustained several injuries and all the three were removed to the hospital.

This Court is to see that whether the accident took place as claimed by prosecution and whether the said act is rash and negligent act to attract the penalty under Section 304-A IPC ?

I am of the view that it is not proved that motorcycle of accused-revisionist hit the backside of motorcycle of deceased and that revisionist was driving the motorcycle rashly and negligently. It was a crossing and the possibility is there that deceased might have taken a sudden turn towards left and in this process, he himself fell down and motorcycle coming from village Raipur Rani hit the fallen motorcycle or while deceased turned to left side, the motorcycle coming from opposite side slightly touched the motorcycle of deceased and both the motorcycles fell down, causing injuries to two occupants of one motorcycle and one occupant of bullet motorcycle. Had the accident taken place when deceased Aman Kumar was turning towards left side, the place of accident would have been on the left side of the crossing towards village Bardana Khurd, which is not there in the present case. It being so, it cannot be said that revisionist was driving the motorcycle rashly and negligently and hit the motorcycle of deceased Aman Kumar from backside as claimed

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by the prosecution. It appears that it was a crossing and for one or the other reason, both the motorcycles slightly collided without causing major damage to either of the motorcycle. Since the head of Aman Kumar hit the road, he died, whereas injuries to Pankaj were so negligible that he was not recorded to have been examined by any doctor. No helmet was found by the investigating officer. Therefore, it appears that both the parties were not wearing the helmets at the time of the accident and after falling from motorcycles on road, head of deceased Aman Kumar hit against the road, which resulted in his untimely death.

From the foregoing discussion, I come to the conclusion that rash and negligent driving by revisionist is not proved beyond all reasonable doubts. Accordingly, he is granted benefit of doubt and is acquitted of the charges framed against him. The judgment dated 3.5.2017, passed by the learned Sessions Judge, Panchkula, and the judgment of conviction dated 2.11.2016 and order of sentence dated 4.11.2016, passed by the learned Judicial Magistrate 1st Class, Panchkula, are hereby set aside. Revisionist be set at liberty, if not required in any other case. The fine already paid be refunded to revisionist.

(KULDIP SINGH)
JUDGE

25.9.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes