

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR-2276-2017 (O&M)

Date of Decision: 31.7.2017

Nishan Singh

..Petitioner

versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vipin Mahajan, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Prayer in the revision petition has been made for setting aside the judgment of conviction and order of sentence, both dated 19.8.2016 passed by Judicial Magistrate 1st Class, Batala, whereby the petitioner was convicted under sections 279/304-A IPC and sentenced to undergo rigorous imprisonment for a period of two years under section 304-A IPC and to pay a fine of Rs.1000/-. In default thereof, the petitioner was ordered to undergo rigorous imprisonment for two months. Further, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year under section 279 IPC and to pay a fine of Rs.500/-. In default thereof, the petitioner was directed to undergo rigorous imprisonment for one month. Both the sentences were ordered to run concurrently. Further prayer has been made to set aside the judgment dated 03.05.2017 passed by learned Additional Sessions Judge, Gurdaspur, dismissing the appeal of the petitioner while affirming the aforesaid judgment of conviction and sentence dated 19.8.2016, but for reducing the sentence from one year to six

months only under section 279 IPC.

Briefly stated, the allegations against the petitioner are that on 26.5.2012, he, while driving the truck Mini Tata 407 bearing registration no.PB-06-N-9175 in a rash and negligent manner and also in high speed, struck his truck against the motor-cycle of Gurdial Singh. As a result thereof, Gurdial Singh died at the spot.

After completion of necessary investigation, the prosecution submitted a final report before the trial court against the petitioner under section 173 of the Code of Criminal Procedure and on finding a prima facie case, the petitioner was charge sheeted under sections 279 and 304-A IPC. The prosecution, in support of its case, examined as many as 09 witnesses. After closure of the prosecution evidence, the statement of the petitioner was recorded under section 313, Code of Criminal Procedure, putting entire incriminating material produced on record against him, to which he denied and pleaded his innocence. However, the petitioner did not lead any evidence in defence.

After hearing learned counsel for the defence, the learned Public Prosecutor and appreciating the evidence adduced on record, the trial court convicted and sentenced the petitioner under Sections 279/304-A, IPC in the manner, as narrated above, in the opening paragraph of the judgment. Being aggrieved, the petitioner filed an appeal, which too was dismissed vide judgment dated 03.05.2017 by the first appellate court, but for reducing the sentence of the petitioner from one year to six months only under section 279 IPC.

Learned counsel for the petitioner has contended that the prosecution has not been able to establish the identity of the petitioner for

causing the accident in question. PW1 Tarlok Singh, an eye witness to the occurrence, has deposed before the trial court that he had seen the truck from a distance of half a killa and thus, it is highly improbable that this witness could identify the petitioner from such a vast distance. Even the petitioner was not the owner of the alleged offending vehicle and thus, in the absence of examination of owner of the same, it is not proved on the record beyond reasonable doubt that the petitioner was driving the vehicle in question at the time of accident. The petitioner was identified by PW1 Tarlok Singh, for the first time, in the court, which had no evidentiary value in the eyes of law. The conviction of the petitioner has been based on sole testimony of PW1 Tarlok Singh, who is the brother of the deceased Gurdial Singh and was an interested witness. His testimony is not at all corroborated by any independent witness and thus, both the courts below erred in convicting and sentencing the petitioner under sections 279/304-A IPC.

I have given thoughtful consideration to the submissions made by learned counsel for the petitioner.

It is needless to mention that as per settled propositions of law, the statement of a witness has to be read as a whole and not in isolation. Therefore, learned counsel for the petitioner cannot be permitted to read the statement of PW1 Tarlok Singh in piece-meal. In the instant case, if the statement of PW1 Tarlok Singh is read as a whole, in that eventuality, the only irresistible conclusion which can be drawn is that he had identified the petitioner at the time of accident itself. The quality of the evidence has to be read and not the quantity. In the instant case, non-examination of any independent witness to corroborate the statement of PW1 Tarlok Singh, is

not fatal to the case of the prosecution, more particularly, in view of the fact that now-a-days, no one from the general public comes forwards to become as a witness with intent to save himself from the wrath of the accused and also of the courts, which generally consume considerable time in conclusion of the trial. It is pertinent to mention that PW1 Tarlok Singh was cross-examined at length by learned defence counsel, but nothing favourable to the petitioner could be elicited from his mouth. The identification of an accused by a person, whose brother has been murdered by him, cannot be doubted even from a distance of half a killa, which, otherwise, is a very short distance. All the points raised before this court have already been adjudicated upon elaborately by both the courts below and therefore, the impugned judgments do not call for any interference by this court.

In view of the above discussion, I do not find any illegality or perversity in the impugned judgments of conviction passed by both the courts below under sections 279/304-A IPC and are, therefore, affirmed. Likewise, the sentence imposed upon the petitioner under section 279 IPC by the first appellate court is affirmed. Rest of the sentence awarded by both the courts below under section 304-A IPC shall remain unchanged. Consequently, the instant revision fails and is hereby dismissed.

31.7.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |