

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2496-2017 (O&M)
Reserved on 06.10.2017
Pronounced on 10th October -2017

Gurwinder Singh ..Petitioner

versus

State of Punjab ..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Dhivya, Advocate, for Mr. Navjot Singh, Advocate,
for the petitioner.

RAMENDRA JAIN, J

1. Through the instant petition under section 401 of the Code of Criminal procedure, the petitioner has assailed the legality of judgments dated 10.6.2016 of Sub Divisional Judicial Magistrate, Khamanon and dated 07.04.2017 passed by Additional Sessions Judge, Fathegarh Sahib, convicting and sentencing him under Sections 279/337/304-A IPC in the following terms:

304-A IPC To undergo simple imprisonment for two years with a fine of Rs.5,000/-. In default of payment thereof, he was directed to undergo SI for six months.

279 and 337 IPC To undergo simple imprisonment for six months each.

Besides the sentence awarded to the petitioner, he was directed to pay

Rs.50,000/- as compensation to the complainant after the expiry of period of

appeal or revision, if any. All the sentences were ordered to run concurrently.

2. The prosecution case, in brief, is that, on receipt of a medical ruqa from the Civil Hospital Khamanon with regard to admission of a dead body, the police party swung into action and reached the hospital, where Vinod Kumar complainant met them and got his statement recorded that he is resident of village Kot Ise Khan and is an agriculturist by profession. A vehicle, known as “Chhotta Hathi, bearing no. PB-08BH-9463 owned by them, was registered with the Union of Kot Ise Khan. On the day of occurrence, his brother Raj Kumar along with two other persons, namely, Manpreet Singh and Baljit Singh after loading iron faras in the said vehicle, proceeded towards Morinda, while he was in a car behind the said vehicle. It was around 6.00 A.M, when his brother was crossing the G.T.Road, Khamanon, one vehicle, make TATA-407 bearing registration no.PB-10CF-5057, being driven in a high speed with rash and negligent manner, came from the side of Morinda and struck against the front side of the vehicle of his brother in the right side. On account of this collision, the vehicle of his brother revolved and turned towards Khamanon and TATA- 407 also turned turtle on the right side of the kacha rasta. His brother succumbed to the injuries at the spot received in this accident, whereas the aforementioned two persons, namely, Manpreet Singh and Baljit Singh also suffered injuries. They were got admitted in the Civil Hospital, Khamanon. He also reached there. The doctor attending the injured, after giving first aid referred them to Government Medical College and Hospital, Sector 32, Chandigarh. The driver of vehicle TATA-407 ran away from the spot, but he can identify him.

3. On the basis of above statement, FIR was registered. The police, after completion of all necessary formalities, presented a final report under Section 173, Code of Criminal Procedure, before the trial court.

4. On finding a prima facie case, the accused was charge sheeted under sections 279, 337, 338 and 304-A IPC, to which he pleaded not guilty and claimed a trial.

5. The prosecution, in all, examined as many as 14 witnesses and thereafter closed its evidence. The statement of the accused under section 313, Code of Criminal Procedure was recorded, wherein he denied all the incriminating material appearing against him. He pleaded his innocence and false implication. He, however, chose not to lead any evidence in his defence.

6 The learned trial court, after evaluating the ocular as well as documentary evidence and dealing with the arguments raised by both the learned Public Prosecutor and the learned defence counsel in detail, convicted and sentenced the accused under sections 279/337 and 304-A IPC. Against the judgment of the trial court, appeal filed by the appellant was dismissed by Additional Sessions Judge, Fatehgarh Sahib, affirming the conviction and sentence awarded by the trial court, as set out in the preceding paragraph of this judgment.

7. Learned counsel for the petitioner contended that both the courts below committed a grave error in not considering that the presence of complainant PW2 Vinod Kumar, the brother of the deceased, at the spot, is doubtful. According to this witness, the deceased started from Kot Ise Khan at 3.00 A.M., whereas he started at 5.00 A.M after two hours later than his brother Raj Kumar and accident took place at 6.00/630 A.M.,

therefore, how could he witness the accident. Learned counsel has assiduously argued that PW13 Baljit Singh and PW14 Manpreet Singh, who were accompanying the deceased, did not depose in their testimony before the trial court that complainant PW2 Vinod Kumar was also travelling in a car behind them. These witnesses have also not identified the driver of the vehicle and as such, the identity of the petitioner is not established on the record.

8. Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the view that the revision petition, being without any merit, deserves to be dismissed for the reasons to follow:-

9. As is evident from the testimony of the prosecution witnesses beyond reasonable doubt that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle involved in the accident. Even otherwise, it is not the plea of the defence that the accident did not take place between the two aforementioned vehicles in which precious life of a human being was cut short and other persons, who were sitting therein, sustained multiple injuries.

10 The prosecution, in order to substantiate its case, examined as many as 14 witnesses. But this court has to see the quality and not the quantity of the witnesses. As per the prosecution case, PW2 Vinod Kumar-complainant, the brother of the deceased, namely, Ram Kumar, was sitting in a car behind the vehicle of the deceased. PW13 Baljit Singh and PW14 Manpreet Singh, were accompanying the deceased Ram Kumar in Tata Ace bearing registration no. PB 08 BH 9463 at the time of accident. Both these witnesses have categorically deposed that they were sitting along with

deceased Raj Kumar in the aforementioned vehicle. At about 6.00 A.M. when they reached near Khamanon, one vehicle make TATA-407, being driven in a very high speed with rash and negligent manner, came from the side of Morinda and struck against their vehicle, as a consequence of which, they sustained multiple injuries. The testimony of PW13 Baljit Singh is duly corroborated by PW2 Vinod Kumar and PW14 Manpreet Singh. Complainant PW2 Vinod Kumar, an eye witness account to the occurrence, testified that accident took place due to rash and negligent driving of accused Gurwinder Singh, resulting in death of his brother at the spot. The testimony of this witness is corroborated by medical evidence. PW3 Dr. Surinderpal Bhagat, Medical Officer, Civil Hospital, Manimajra, Chandigarh, deposed that on 26.03.2012 he conducted the post mortem upon the dead body of deceased Raj Kumar at Civil Hospital, Khamanon and found the following injuries:-

- “1. An open wound about 15 cm. bone deep below right knee with fracture of Tibia and fibula right patellar fracture.
 2. Fracture right hand radius and ulna.
 3. An open wound below right thigh about 20 cm x bone deep.
 4. Fracture left femur with fracture forehead and nasal bone with depressed face.
 5. Clotted blood present in the cranial cavity.
 6. Open wound on the left leg about 10 cm bone deep.
- Bleeding from mouth nose and ear was present.

11 In the opinion of the doctor, the cause of death was head injury, which, in ordinary course of nature, is sufficient to cause death. All

injuries were ante mortem in nature. The time duration between injury and death was immediate. He proved the carbon copy of post mortem report as Ex.PG and pictorial diagram showing the seats of the injuries as Ex.PH.

12 From the testimony of PW3 Dr. Surinderpal Bhagat, Medical Officer, duly corroborated by the ocular evidence, it stands proved beyond the shadow of reasonable doubt that the death of Ram Kumar took place on account of head injury caused to him by the accused, while driving the vehicle in a rash and negligent manner. The impact of the accident was so intense that vehicle Tata Ace rotated and turned towards Khamanon.

13 The learned defence counsel has assailed the testimony of complainant PW-2 Vinod Kumar on the ground that he was not present at the time of accident, inasmuch as he, during his cross-examination, has deposed that he started from Kot Ise Khan at 5.00 A.M., whereas the deceased started from his house at 3.00 A.M. and the accident took place at 6.00/6.30 A.M. Having gone through the statement of complainant PW2 Vinod Kumar, this court finds that he is an eye witness account to the occurrence. This witness has, in unequivocal terms, deposed that at the time of the accident, he was going along with his cousin in his car from Kot Ise khan towards Morinda and his brother, who had already left his house after loading the iron faras in his vehicle, was also going from Kot Ise khan to Morinda along with Baljit Singh and Manpreet Singh and when they crossed Khamanon after about crossing 2-3 Kms, a vehicle make TATA-407 bearing registration no. PB-10CF-5057, being driven in a rash and negligent manner and while coming on a wrong side, collided with the vehicle of his brother. The intensity of the accident was so high that the vehicle of his brother rotated towards Khamanon side and his brother died

at the spot. PW13 Baljit Singh and PW14 Manpreet Singh sustained multiple injuries. During cross-examination of this witness, no suggestion of any kind was put to him that the deceased was on wrong side and accident took place on account of his fault. The plea of the learned defence counsel that the presence of PW2 Vinod Kumar at the time of accident is doubtful, is not sustainable, keeping in mind the sequence of events in the manner in which it was narrated by this witness during his deposition before the trial court. Again the plea of the learned defence counsel raising a finger of doubt regarding the presence of PW2 complainant Vinod Kumar at the spot by pointing out the discrepancy as to the time of departure of the accused from his house as this witness, during his cross-examination, has deposed that the petitioner left his house at 3.00 A.M., whereas he started from Kot Ise Khan at 5.00 A.M., and accident took place at 6.00/6.30 A.M, hardly makes no difference, inasmuch as a perusal of the record shows that the statement of the complainant PW2 Vinod Kumar, at the first instance, was recorded in the year 2012, whereas his testimony before the trial court was recorded in the year 2014, after about a gap of 02 years. Such minor discrepancy is bound to occur with the passage of time when the witnesses do depose truthfully before the court after efflux of sufficient time. More so, every individual has his own perception regarding time and distance. No body is perfect in this world. Generally, there is always a difference of opinion in the opinion of two persons. The same is always narrated by approximation and not exactly. Considering the above aspect, the disclosure of time of start of journey of the deceased as well as of this witness hardly put any dent in the prosecution case as the same might have told by approximation and that too after sufficient long time. Even otherwise, that

does not go to the root of the case when the factum of the accident has duly been proved by other cogent and clinching evidence. Both the courts below have dealt with this point in detail, giving sound reasoning therein on the strength of testimony of the witnesses produced on the record by the prosecution, which, in my considered opinion, do not call for interference.

14 An argument that the identity of the petitioner on the record has not been established by PW13 Baljit Singh and PW14 Manpreet Singh, does not cut any ice, keeping in view the testimony of complainant PW2 Vinod Kumar, wherein he has categorically deposed that after the accident took place, the petitioner had fled away from the spot, which fact is clearly proved from the identification memo Ex.PF, where the accused was identified by the complainant on 04.04.2012. More importantly, complainant PW2 Vinod Kumar had identified the petitioner in the court as well. It is well known that court identification itself is good identification in the eyes of law. This witness has deposed that the accused, present in the court, was the same person, whom he saw at the time of accident. No reason, motive or any enmity, whatsoever, has been putforth by the petitioner that he has been falsely implicated in the present case. The offending vehicle was taken into possession on 26.03.2012 vide recovery memo Ex.PE. Even at the time of release of the vehicle on supardari, the owner of the vehicle had not taken any plea that his vehicle was not involved in the said accident. Both the learned courts below have discussed and dealt with this plea of the learned defence counsel elaborately assigning marvellous reasoning therein on the basis of ocular as well as documentary evidence produced on the record. Therefore, the observations made by both the learned courts below, in my considered view, do not call for interference.

15 In view of the foregoing reasons, I do not find any infirmity or perversity in the impugned judgments passed by both the courts below in exercise of revisional jurisdiction that may warrant interference. Consequently, revision, being without any merit, fails and is dismissed.

10th October, 2017
VK

(RAMENDRA JAIN)
JUDGE

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