

CRR No.2983 of 2017 (O&M)

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

CRR No.2983 of 2017 (O&M)

Date of Decision: 24.08.2017

Radhey Shyam

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Abhimanyu Singh, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Instant revision petition has been filed challenging the judgment dated 17.08.2017 of First Appellate Court, Panipat affirming the judgment of conviction and order of sentence dated 05.08.2015 of trial Court holding the petitioner guilty under Sections 279/337/338/304-A IPC and sentencing him as follows: -

“Under Section 279 IPC	To undergo rigorous imprisonment for three months and to pay a fine of ₹ 500/-.
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Under Section 337 IPC	To undergo rigorous imprisonment for six months and to pay a fine of ₹ 500/-.
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Under Section 338 IPC	To undergo rigorous imprisonment for one year and to pay a fine of ₹ 500/-.
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Under Section 304-A IPC	To undergo rigorous imprisonment for two years and to pay a fine of ₹ 500/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.”
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fatal to the prosecution case, inasmuch as the identity of the petitioner could not be established by any of the prosecution witnesses beyond reasonable doubt. The trial Court and the First Appellate Court have wrongly interpreted the mechanical report, wherein some fresh scratches were shown on the bus in question owned by Haryana Roadways. DW1 Surender Kumar, Conductor of the offending bus and one passenger, namely, Rajender DW2, travelling in the alleged offending bus, most relevant witnesses have denied the accident in question and, thus complicity of the petitioner in causing the same was doubtful.

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

Undisputedly, the petitioner is a permanent driver with the Haryana Roadways. In case, he was not deployed as driver on the offending bus on the date of accident, in that eventuality it was very easy for him to produce the muster roll, attendance register and other documentary evidence to show that he was not driving the offending bus on the date of accident. Contrary to it, duty slip (Ex.P1) produced by the prosecution, makes it abundantly clear that it was the petitioner only, who was driving the offending bus at the relevant time and, thus, was responsible for causing the accident.

Qua non-examination of the injured accompanying the deceased, the First Appellate Court has observed that according to the statement of injured Reena (Ex.PX) made before the Magistrate on 12.05.2015, she sustained injury on her head in the impugned accident and, therefore, her mental condition was not good, inasmuch as she was unable to remember things and, therefore, was not in a position to depose before the Court. PW3

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his affidavit Ex.PW3/B has testified that according to NCCT head done on 22.11.2010, Reena had suffered axonal injury grade II and thin subdural haemorrhage along with right front convexity, which means that she had suffered head injury. Therefore, her non-examination has been well-explained by the prosecution.

Statement of DW1 Surender Kumar and that of DW2 Rajender are not trustworthy and worth reliance for the simple reason that though DW2 Rajender claimed himself to be a traveller in the bus, but did not produce any ticket and, thus, he, at the most, can be termed as a procured witness. Similarly, DW1 Surender Kumar, though claimed himself as a Conductor on the bus in question at the relevant time, but feigned his ignorance about the accident by testifying that he came to know about the same at the bus stand, Panipat. This witness did not move any application/complaint before his higher authorities or the police authorities regarding false implication of the petitioner and involvement of the bus in question.

As far as holding the petitioner guilty on the basis of mechanical report Ex.PW6/A is concerned, the same is rightly interpreted by the Courts below, inasmuch as the petitioner could not explain as to when and where the fresh scratch marks had appeared on the offending bus.

In view of the above discussion, I do not find any illegality or perversity in the impugned judgments passed by both the Courts below. Consequently, the same are affirmed and revision petition is dismissed.

August 24, 2017
R.S.

(RAMENDRA JAIN)
JUDGE