

The facts of the case, as made out from the lower Court file are that on 11 May 2012, Jarnail Singh, brother in law (sister's husband) of Bhupinder Singh had come to village Talwandi Malak, falling within the

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jurisdiction of Police Station Sadar, Samana, on his scooter bearing registration No. PB44A-6983, mark 'Bajaj Chetak'. After taking meals in the evening, he left for Samana town. Bhupinder Singh and his cousin brother Sukhwinder Singh had also some domestic work at Samana. Therefore, they followed their brother in law Jarnail Singh on their motorcycle. However, at about 8:30 PM, when Jarnail Singh reached near Pipe Factory, Gajewas, on Bhiwanigarh-Samana road, a tractor, mark 'Swaraj' alongwith trolley (which was later on identified to be bearing registration No. PB-39A-7570) being driven by its driver (later on identified to be present revisionist Jagtar Singh) came out of the factory on the main road. Tractor trolley suddenly comes in front of the scooter, due to which the scooter of Jarnail Singh hit the trolley from backside. As a result of which, Jarnail Singh fell down on the road and the scooter fell down on the other side of the road. Jarnail Singh suffered multiple injuries in the accident. Bhupinder Singh and his cousin brother Sukhwinder Singh removed Jarnail Singh to Civil Hospital, Samana, where the doctor declared him brought dead. On receiving the intimation on telephone from MHC P.S. Samana about the death of Jarnail Singh, a police party headed by ASI Sahib Singh, Incharge Chowki Gajewas, reached Samana hospital and recorded the statement of Bhupinder Singh (Ex.PW1/1) and thereafter, after making the endorsement at about 11:00 PM, formal FIR (Ex.PW9/B) was registered. It also comes out that on the same day, Bhupinder Singh made a statement under Section 161 Cr.P.C. wherein he mentioned the name of the driver and number of the tractor. The site plan of place of accident was prepared. The photographs of place of accident were clicked. The post mortem of the dead body was got conducted on the next day i.e. 12.5.2012. Accused Jagtar

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Singh was produced before the police and was arrested. The tractor trolley was also taken into possession. The tractor trolley as well as the scooter was mechanically examined and the report of the mechanic (Ex.PW2/1 and Ex.PW2/2) was prepared and after conducting the investigation, challan was presented in Court.

In support of its case, prosecution examined Bhupinder Singh (PW1), HC Rajinder Kumar (PW2), Kali Charan (PW3), Vinod Singla (PW4), Dr. Usha Kandara (PW5), ASI Harjinder Singh (PW6), Kulwinder Singh, Data Entry Operator, DTO Office, Sangrur (PW7), Kuldeep Singh, Steno, DTO Office, Sangrur (PW8), ASI Sahib Singh, Investigating Officer (PW9) and Sukhwinder Singh, another eye witness (PW10) and thereafter closed the prosecution evidence.

In the statement recorded under Section 313 Cr.P.C., accused denied his involvement in accident. He stated that no accident took place with the tractor trolley, as alleged. False FIR was lodged. Jarnail Singh was driving his scooter negligently at a fast speed due to which, he fell down on the road and suffered injuries. To prove his defence, he examined Inderjit Singh (DW1), Budh Singh (DW2) and closed the defence evidence.

After hearing the learned Assistant Public Prosecutor for the State, the learned defence counsel, the learned Sub Divisional Judicial Magistrate, Samana, vide judgment dated 14.6.2016, convicted and sentenced the accused as aforesaid.

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

The learned counsel for revisionist has vehemently argued that there is mis-reading and mis-appreciation of evidence to the extent that

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grave injustice has been done. The learned counsel, while referring to the judgments of both the Courts below, has pointed out that both the Courts below fail to properly appreciate the facts and evidence. The lower Court, while reproducing the facts, has mentioned that the tractor trolley had rammed into the scooter and similarly, the learned Additional Sessions Judge, Patiala, has reproduced the same facts. However, the original statement of Bhupinder Singh when perused (PW1/1) shows that according to him, the tractor trolley suddenly came out of the Pipe Factory, Gajewas, on Bhiwanigarh-Samana road and that on account of sudden appearance of tractor trolley on road, the scooter of Jarnail Singh hit the trolley from behind. It goes to show that even according to the complainant, after coming out of the Pipe Factory, the tractor as well as trolley had come on the main road and that the scooter of deceased Jarnail Singh hit the trolley from behind. However, in the statement in Court as PW1, Bhupinder Singh had tried to improve his version by asserting that tractor trolley dragged the scooter to some extent and the tyres of the trolley passed over the scooter of the deceased Jarnail Singh. However, this is contradicted by the report of the mechanic (PW2/1), which shows that there was only minor scratches on the rear side of the trolley and during examination, HC Rajinder Kumar (PW2) has stated that these could appear due to loading and unloading in the trolley. So far as the mechanical report of scooter (Ex.PW2/2) is concerned, it shows that probably the front side of the scooter hit some object and thereafter the scooter fell down on the road, causing damage to the front mud guard dent, front show dent, denting of chasis, breaking of the handle and the head light. The site plan on the file shows that after hitting the trolley, the scooter was drifted to the right side and fell on the katcha path of

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the road while going from Bhiwanigarh to Samana. The accident took place around 8:30 PM. It was month of May and it was dark. Bhupinder Singh had admitted in cross examination that the head light of the scooter of his brother in law was not on, which goes to show that Jarnail Singh was driving the scooter without head light and when it is quite dark, he is likely to misjudge. It is not to be lost sight that according to initial complaint of Bhupinder Singh and corroborated by the report of mechanic, the scooter must have probably hit the tractor trolley from back and Bhupinder Singh has also asserted in cross examination that the speed of scooter of deceased brother in law was about 20 kilometer per hour. If it is so, the scooter cannot hit the tractor trolley going ahead of it and drag the scooter on the katcha path of the road. His assertion that the rear tyres of trolley passed over the scooter is also not corroborated by the report of the mechanic. Bhupinder Singh had not mentioned the registration number of tractor, nor he mentioned the name of the driver in his statement recorded by the police about 2 ½ hours after the accident when he claimed that he alongwith his cousin brother Sukhwinder Singh was following the deceased Jarnail Singh on a motorcycle as they were also to go to Samana in connection with domestic work.

I am of the view that at 8:30 PM, when the shops are about to close or almost closed, it is doubtful that Bhupinder Singh and Sukhwinder Singh could have domestic work at Samana.

Bhupinder Singh had admitted that Bhiwanigarh-Samana road is wide enough, on which three vehicles can ply side by side indicating that even if the tractor trolley was going on the road, there was sufficient space for the scooter to pass. However, it appears that the scooter was at a high

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speed i.e. more than the speed of tractor trolley, that is why the scooter hit the trolley from behind violently with the result that ribs of deceased were fractured and he fell down alongwith the scooter. Bhupinder Singh had claimed in his cross examination that his brother in law had also received head injury, which is not supported by medical evidence. Similarly, the statement of Sukhwinder Singh also does not inspire confidence. According to Sukhwinder Singh, he had reached the spot after the accident and according to him, the tractor trolley had rammed into the scooter, which is neither proved from the record, nor stated so in the initial complaint of Bhupinder Singh, made to the police. Sukhwinder Singh has admitted in cross examination that the accident took place before his arrival at the spot and that when he arrived at the spot, two persons were standing, who had come out from the factory. The trolley was also parked there with broken pipes and Jarnail Singh had suffered head injury. The head light of scooter was on. However, as per the case of Bhupinder Singh, he alongwith Sukhwinder Singh was riding the same motorcycle. Therefore, it is not possible that Sukhwinder Singh reached the spot after the arrival of Bhupinder Singh. In such circumstances, Bhupinder Singh and Sukhwinder Singh must have reached the spot on the same time and, therefore, the presence of both Bhupinder Singh and Sukhwinder Singh at the spot is doubtful as they even did not know that the deceased had not received any head injury.

As per the statement of Dr. Usha Kandara, due to fracture in the ribs, the lungs were punctured and there was damage to the liver.

In these circumstances, I am of the view that at the first instance, the presence of Bhupinder Singh and Sukhwinder at the spot is

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doubtful. Secondly, even if the story put forth by Bhupinder Singh is admitted as such, the driver of tractor trolley was not at fault. The scooter of Jarnail Singh was at high speed on the main road, which is wide enough to accommodate three vehicles side by side and he hit the trolley from behind.

In addition to this, the identity of tractor trolley is sought to be proved on the spot by Vinod Singla (PW4), who claimed that he had produced the accused before the police and the tractor trolley is registered in the name of his brother and that his father is the owner of the firm M/S Shiv Pipe Factory, Gajewas, out of which, the said tractor trolley came out. However, neither the owner of tractor trolley nor owner of Pipe Factory was examined. Therefore, statement of Vinod Singla cannot be believed to establish the identity of accused. However, the statements of DWs Inderjit Singh and Budh Singh are also not reliable.

In these circumstances, I am of the view that even if it is assumed that accused-revisionist was driving the tractor trolley, there is no fault on his part and it is not rash and negligent act of revisionist. The deceased himself was driving the scooter without head light on the main road and hit the tractor trolley from behind. Therefore, grave error was committed by both the Court below in not properly appreciating the evidence and convicting the revisionist. As such, revision is allowed. The judgments of both the Courts below are hereby set aside and revisionist-Jagtar Singh is acquitted of all the charges framed against him. Consequently, he be released forthwith, if not required in any other case.

(KULDIP SINGH)
JUDGE

22.8.2017
sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	Yes