

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-4049 -SB of 2013 (O&M)

Date of decision : 14.3.2018

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Bhupinder Singh

.....Appellant

vs.

UT of Chandigarh and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.S. Bains, Advocate
for the petitioner.

Mr. T.S. Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate for respondent No.2.

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H. S. Madaan, J.

Accused Madhu Rehal faced trial by Additional Chief Judicial Magistrate, Chandigarh, for offences under Sections 279, 304-A IPC, on the allegations that on 23.11.2005 at about 1.00 A.M., in the area of light point of Sector 27/28, she drove a Maruti Zen car of white colour bearing registration No. CH-01 P0306, on a public way in a manner so rash and negligent, so as to endanger human life and personal safety of others and by her such driving hit the motorcycle No. HR-10-G-5468 being driven by complainant Karan Antil, on which Harbir Singh was pillion riding. In the process, Harbir Singh suffered injuries to which he died, not amounting to culpable homicide. The trial ended in conviction of the accused and

vide judgment dated 9.12.2008 and vide order of the even date, she was sentenced to undergo rigorous imprisonment for a period of 6 months for an offence under Section 279 IPC and as regards offence under Section 304-A IPC to undergo rigorous imprisonment for a period of 1-1/2 years and a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months. Both the substantive sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment of her conviction and sentence, she had preferred an appeal in the Court of Sessions, which was accepted by the learned Sessions Judge, Chandigarh, who vide his judgment dated 15.11.2012 acquitted the accused of the charge framed against her. Now, the complainant has approached this Court by way of filing the present appeal, notice of which was given to the State as well as to the complainant.

I have heard, learned counsel for the appellant, learned State counsel, as well as learned counsel for the complainant, besides going through record and I find that there is no merit in the appeal.

The star witness for the prosecution in this case happened to be PW-2 Karan Antil, who provided the ocular account of the accident. A perusal of his statement goes to show that though he stated that when the motorcycle reached at the light point of Sector 27/28, then a Maruti Zen car, white in colour, came from the side of Sector 27 at a high speed in a rash and negligent manner and struck against their motorcycle; that he fell on the road and Harbir Singh fell down on the road at a distance; that he had sustained a little

injuries, whereas Harbir Singh had sustained severe head injuries, to which Harbir Singh succumbed later on. But he has left several vital things unexplained. Firstly, the accident is stated to have taken place on the light point of Sector 27/28, but it has not been disclosed as to whether the lights were working at that time or not. It is not clear as to whether any of the vehicles involved in the accident had jumped red light, though learned counsel for the appellant during the course of arguments stated that normally at 1.00 A.M., the time when the accident had taken place, traffic lights do not function and only an indicating light is there so that the commuters are careful in using the road. Some evidence in that regard should have been there, which is lacking. As is commonly understood and in terms of the dictionary meaning, “rashness is acting in the hope that no mischievous consequences shall ensue though aware of likelihood of such consequences and negligence is want of care and caution to ones duty or business”. Vehicles like cars and motorcycles are meant to be driven at a speed and the speed only does not determine the rashness. Merely by saying that car was being driven at high speed does not result in attributing rashness to the motorcar driver and as regards the car being driven in a negligent manner, it has not been dilated as to how it was so. It has not been clarified as to what care and caution was not taken by the accused car driver while driving the offending car which she was expected to take care of while driving the car on public way. If we see the cross examination of this witness, he was unable to tell on which side the motorcycle struck against the car. He further stated that since he was not in his full

senses at the time of accident, so he does not know the car struck against the motorcycle. What does he mean by not in full senses at that time, is not very clear but then a suggestion was given to him earlier in his cross examination that he was under the influence of liquor, which he had denied, but his stating that he was not in his full senses, at the time of accident is indicative of the fact that everything was not well with him while he was driving the motorcycle.

He further stated that his motorcycle struck on the backside of the car. If it was so, the accused-car driver can certainly be not blamed for the accident.

Learned Sessions Judge, Chandigarh, while accepting the appeal, has given the reasoning for coming to the conclusion in paragraphs 8 to 10 of the judgment, which for ready reference are reproduced as under:-

8. After hearing learned counsel for the appellant and Sh. Rajinder Singh, Public Prosecutor for the State it is found that prosecution has failed to connect the accused with the commission of offence under Section 279 and 304-A of Indian Penal Code. It is the specific allegation of the prosecution that appellant-accused while driving car No. CH01-P-0306 in rash and negligent manner hit the motorcycle No. HR10-G-5468 thereby causing death of Harvir Singh. However, from the perusal of mechanical report Ex.PW-7/M, it

transpires that the front door left side and body portion rear left side of car bearing No. CH01-P-0306 were reported to be dented, whereas the head light, horn and brake of the above said vehicle were O.K. On the other side, the front mudguard of motorcycle No. HR10-G-5468 was dented, front shocker, headlight Assy complete and clutch lever were broken. Meaning thereby, it was the motorcyclist who hit the car on its left side while driving the same rashly and negligently. Had the driver of the car been negligent in driving the car, the front portion i.e. Head light or bumper of the car would have damaged. Further, non-examination of the mechanic defeated the right of the appellant-accused to cross examine him. In such a scenario, the Court of first instance was not justified in holding that the accused was driving the offending vehicle in rash and negligent manner.

9. It is cardinal principle of law that the accused cannot be convicted on the basis of surmises and conjectures. The benefit of doubt, as and when the same arises, however, marginal same may be, is bound to tilt in favour of the accused.

10. In the light of what is discussed above and without elaborating further, it is held that the prosecution cannot be said to have established the charge against the accused. Consequently, the appeal is accepted. The judgment of the conviction and order of sentence passed by the learned trial Magistrate is hereby set aside and the accused is acquitted of the charges framed against her. The amount of fine deposited by appellant with the trial court, shall be refunded to her by the learned trial court after the expiry of time allowed for the appeal and in case the appeal is preferred, subject to the disposal of the same. Record of trial court be returned along with copy of the judgment passed by this court and the appeal file be consigned to the Record Room.

I do not find any illegality or infirmity in the judgment passed by the learned Sessions Judge which might call for interference by this court while exercising the appellate jurisdiction. Therefore, finding no merit, the appeal stands dismissed.

14.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No