

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

Crl. Revision No.383 of 2009 (O&M)

Date of Decision: 07.03.2018

Nirmal Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ravinder Malik, Advocate,
for the petitioner.

Mr. Ravi Partap, AAG, Haryana

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner challenges his conviction by the learned trial Court (JMIC, Kurukshetra), for the commission of offences punishable under Sections 279 and 304-A IPC, thereby sentencing him to rigorous imprisonment for a period of 6 months in respect of the former offence and one year in respect of the latter offence, in addition to also imposing a fine of Rs.500/- for the commission of offence punishable under Section 304-A IPC, with the conviction having been upheld in appeal by the learned Sessions Judge, Kurukshetra, vide the impugned judgment, though with the sentence of imprisonment for the commission of the offence punishable under Section 304-A IPC, having been reduced to 6 months rigorous imprisonment, (the fine imposed by the trial Court having been kept 'intact').

2. As per the case of the prosecution, on 30.05.1998 Head

Constable Nachhattar Singh alongwith ASI Sudarshan Kumar and Constable Surender Singh were going towards Jhansa for patrolling, with ASI Sudarshan Kumar riding on a motorcycle bearing registration no.HR07B-9449 ahead of the other two. When they reached an over bridge, from the opposite side, i.e. from the side a chowk known as Mohan Nagar Chowk, a truck bearing registration no.PB-11G-8960 came at a high speed, driven in a negligent manner, and hit the motorcycle of ASI Sudarshan Kumar, due to which he fell down on the road.

HC Nachhattar Singh (complainant in the FIR) and Constable Surender Singh are stated to have followed the truck and stopped it, upon which they came to know about the identity of the driver as Nirmal Singh son of Kashmir Singh (the petitioner herein). However, it is further contended that while the complainant was in the process of looking after Sudarshan Kumar, the driver of the truck ran away with his truck, after which Sudarshan Kumar was brought to the Government Hospital, from where he was later referred to the PGI, Chandigarh. (He, seemingly (as per inference drawn from the judgment of the learned appellate Court), had also been taken to the Apollo Hospital, Delhi, thereafter). He is stated to have unfortunately died on 08.10.1998, on account of the injuries sustained by him in the accident.

In the meanwhile, the petitioner is stated to have been arrested on 31.05.1998, FIR no.399 already having been registered at Police Station Thanesar, on 30.05.1998, making out therein the commission of offences punishable under Sections 279 and 304-A IPC.

3. Before the trial Court, the prosecution examined 11 witnesses, including the complainant HC Nachhattar Singh and Constable Surender

Singh, other than various other police officials, a photographer, the doctor who conducted the post mortem examination at the LNJP Hospital, and a mechanic who had inspected both the vehicles.

By way of documentary evidence, a recovery memo of the motorcycle, the statement of the complainant recorded before ASI Ishwar Singh, (leading to the registration of the FIR); the mechanics' test report on the condition of the motorcycle of the deceased, as also a test report on the condition of the truck, a site plan, photographs, the post mortem report, the inquest report, an application seeking the opinion of the doctor, were also exhibited.

The petitioners' statement under Section 313 Cr.P.C. was also recorded though he led no evidence in his defence.

4. Upon considering the aforesaid evidence, the learned trial Court mainly relied upon the testimonies of the two persons stated to be eye witnesses, i.e. PWs3 and 8, HC Nachhattar Singh and Constable Surender Singh, observing that the photographs led by way of evidence did not help the prosecution much.

Thus, essentially on the basis of the eye witnesses' testimonies, the petitioner was convicted and sentenced.

5. The learned appellate Court also appreciated the evidence in the same manner, though noticing the testimonies of the two persons claiming to be eye witnesses in slightly greater detail.

The contention of learned counsel for the petitioner (appellant before the learned Sessions Judge), was duly noticed to the effect that actually the alleged eye witnesses were not present at the time of the accident, because

they made contrary statements in their testimonies, with Constable Surender Singh stating that the deceased (then injured) was sent in a car, whereas HC Nachhattar Singh stated that he had been sent in a van. Similarly, PW3 Nachhattar Singh stated that the truck driver had fled away from the spot with the truck and was chased and was stopped at the Bus-stand from where he was brought back after 10 minutes, whereas PW8 Surender Singh stated that it was stopped at Mohan Nagar Chowk within two minutes.

As per PW3 Nachhattar Singh, the speed of the motorcycle was 30-35 km per hour, whereas according to PW8 it was only 10 to 12 km per hour.

6. Holding these discrepancies in the statements of the two witnesses to be minor discrepancies, the learned appellate Court also agreed with the findings of the trial Court and upheld the conviction of the petitioner, though reducing the sentence imposed upon him by 6 months.

7. Before this Court, learned counsel for the petitioner submits that there are too many discrepancies in the testimonies of the prosecution witnesses, which have been ignored by both the Courts below.

He firstly points to the fact that PW-3, Nachhattar Singh, testified that the speed of the truck driven by the petitioner was at a high speed, whereas PW-8, Surender Singh, had testified that the speed of the truck was at 30-40 k.ms. per hour.

He next submits that both the witnesses deposed that the deceased was sent to the hospital, but neither of them accompanied him. He next points to the testimonies to reiterate that PW-8, Surender Singh, testified that the petitioner was apprehended by him and PW-3, Nachhattar Singh, at

Mohan Nagar Chowk after about two minutes of the accident, whereas PW-3 testified that the petitioner was apprehended at the bus-stand after about 10 minutes.

Learned counsel on query specifically submits that the bus-stand and the Mohan Nagar Chowk are 1 k.m. apart from each other.

He next refers to the report of the mechanic, Ex.PW-4/B, the mechanic having testified as PW-4, Seth Pal, wherein it is stated that the front portion of the truck driven by the petitioner was in a good condition, whereas the silencer of the truck, which was on its rear side, had a bend/dent.

As regards the motorcycle driven by the deceased, its mud guard and the leg guard were found to be damaged.

Learned State counsel, on the other hand, points to the testimony of the two eye witnesses, PW-3 and PW-8, to submit that there would be no reason for them to testify falsely against the petitioner, even if the deceased was their colleague, and as both the Courts below had believed their version, there would be no reason for this Court to disbelieve it even as per what has been pointed out by the learned counsel for the petitioner.

Having considered the aforesaid arguments, in the opinion of this Court, the petitioner deserves the benefit of doubt, in view especially of the fact that the front side of the truck was shown to have been undamaged, with its rear silencer in fact having been damaged and the right rear tyre having 'abrasion' marks on it, possibly because the deceased hit his motorcycle from behind, with the fender and the leg guard therefore also damaged (which of course would also be damaged if it was a head-on collision).

Further, in fact, the photographs exhibited before the trial Court

are only those of a motorcycle, with not even a single photograph present of the truck, obviously not taken by the investigating agency deliberately, as it would weaken their case, which is why the learned trial court itself has noticed that not much support could be taken by the prosecution from the photographs.

Further, it would be highly unnatural for neither of the two eye witnesses, who were colleagues of the deceased, to have taken the deceased to the hospital and sent him in the care of some other person.

It is also to be noticed that in the testimony of PW3 Nachhattar Singh, he stated in cross-examination that he was not sure whether the petitioner was driving the truck properly or not, and further he also could not give the colour of the truck, though he is stated to have apprehended the petitioner after following the truck up to the Bus-stand and having brought it back.

Yet further, the discrepancy of where the petitioner was apprehended from, i.e. one witness saying he was apprehended from the bus-stand after about 10 minutes and the other witness saying he was apprehended from a little ahead of Mohan Nagar Chowk within 2 minutes, in my opinion also further adds to the doubt created with regard to the negligence of the petitioner in causing the accident, with it being quite possible that it was the negligence of the deceased himself that caused the accident.

The learned Courts below therefore wholly erred in not appreciating the aforesaid facts, even as per the evidence led, including especially the fact that though the front part of the motorcycle of the deceased

was damaged, it was the silencer behind the truck that was also damaged, with abrasion marks on the right rear wheel, with no damage at all to the front side of the truck.

Consequently, the petition is allowed, the judgments of the Courts below are set aside and the petitioner is acquitted of the charges framed against him, by giving him the benefit of doubt.

His bail and surety bonds be discharged as per procedure.

07.03.2018
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned: Yes

Whether reportable: Yes