

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

CRR-3073-2012

Date of decision:-26.2.2018

Krishan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gaurav Mohunta, Advocate and
Mr.Sudhir Kashyap, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.P.K. Ganga, Advocate
for the complainant.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 5.9.2012 passed by learned Additional Sessions Judge, Sirsa vide which the judgment dated 11.1.2010 passed by learned Judicial Magistrate Ist Class, Sirsa for offences under Sections 279 and 304-A and order dated 12.1.2010 sentencing him for those offences were upheld, whereas the appeal filed by accused-convict was dismissed.

The accused-convict – Krishan, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence by Judicial Magistrate Ist Class, Sirsa and judgment in appeal by learned Additional Sessions Judge, Sirsa be set

aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that on 20.1.2004 when HC Des Raj along with other police officials from Police Station Rania was present near bus stop of village Bani then Som Nath and Tarsem sons of Shiv Dayal went there and informed him regarding happening of a road side accident; that HC Des Raj recorded statement of complainant Som Nath wherein he stated that on the said day i.e. 20.1.2004 at 12:45 p.m. while he was sitting in his *kiryana* shop, he observed a tractor trolley being driven in a rash and negligent manner coming from the side of Bacher road and when it reached near house of Hira Ram then it hit a child, who was coming from the side of Gurudwara. According to the complainant, he rushed to the spot and found that the child, who had been hit by the tractor trolley was in fact his nephew, namely, Bhola Ram, aged about 5 years; that the complainant informed father of the child, namely, Tarsem Lal, who is his brother and other family members; that a vehicle was arranged and injured Bhola Ram while being taken to Government Hospital, Sirsa succumbed to the injuries suffered by him on the way; that dead body of the child was brought back to the house; that driver of the tractor No.HNB-1055 make Ford of blue colour had ran away from the spot leaving the tractor trolley behind. In that very statement, the complainant stated that one Mohan Lal son of Kashmiri Lal had also witnessed the incident. Such statement of the complainant was recorded and a ruqa was sent to the Police Station Rania, which formed basis for registration of the FIR. The matter was investigated. Post mortem examination was got performed on the dead

body of Bhola Ram. Accused was formally arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Sirsa copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Sirsa finding that charge for offence under Sections 279 and 304-A IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as ten witnesses, namely, Mohan Lal as PW1, ASI Ranjit Singh as PW2, Som Nath as PW3, Brij Lal as PW4, Ranjit Sijng, Lamberdar as PW5, Dr.Gorav Bishnoi, MO, GH Sirsa as PW6, Constable Balwant Singh as PW7, Inspector Jagdish Kumar as PW8, ASI Des Raj Investigating Officer as PW9 and Sandeep Kumar, Photographer as PW10.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

Learned trial Magistrate formulated following points for determination:

- (i) Whether on 20.1.2004 in the area of village Bacher the accused Krishan drove his tractor bearing No.HNB-1055 on the public road in a rash or negligent manner so as to endanger human life and personal safety and that whether he has thereby caused the death of child Bhola Ram due to his rash and negligent act and thereby committed offences punishable under Sections 279/304-A of IPC?

After hearing arguments, learned Judicial Magistrate Ist Class, Sirsa vide judgment dated 11.1.2010 convicted accused Krishan for the offences under Sections 279 and 304-A IPC and vide order dated 12.1.2010 the said accused was sentenced to undergo rigorous imprisonment for a period of three months for the offence under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years for the offence under Section 304-A IPC, both the sentences were ordered to run concurrently. The appeal preferred against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Sirsa was also decided against the accused by learned Additional Sessions Judge, Sirsa, which left petitioner – accused Krishan aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana

assisted by learned counsel for the complainant besides going through the record and I find that there is no merit in the revision petition.

Here PW1 Mohan Lal and PW3 Som Nath, complainant provided the eye-witness account of the mishap categorically stating that accused was author of the accident by his rash and negligent driving of the offending tractor trolley. Although they were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of all the witnesses to be likely and probable and account given by both of them to be worthy of reliance. Som Nath – complainant having lost his nephew would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some

innocent person in his place without any rhyme or reason.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

Learned counsel for the revision-petitioner has contended that identity of the driver is not established inasmuch as in the FIR his name is not mentioned and no identification parade was arranged to get him identified from the eye-witnesses. Whereas learned State counsel has contended that the accused had been identified by the eye-witnesses in the Court as they had seen him at the spot, their identifying the accused in the Court was not for the first time. As such there was no necessity of holding of any test identification parade. As a matter of fact, the accused himself did not request for doing so. Furthermore, since the offences for which the accused was booked happened to be bailable, the police did not get any opportunity to have his custody and then to make him participate in the test identification parade. Therefore, the identity of the accused stands established and duly proved on record.

After hearing the rival contentions, I find that the arguments so advanced by learned counsel for the petitioner are without any merit. Though accused is not named in the FIR, but then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a

person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story. Though FIR was registered on 20.1.2004 and accused was arrested on 1.2.2004, after a lapse of 11 days having been brought by Ranjit Singh, Lambardar to the Police Station but then that by itself does not go to show the innocence of the accused. As already observed, after registration of FIR during investigation if accused is not named in the FIR, it does take some time to know the identity of the criminal involved in the incident and delay of 11 days in arrest of the accused does not point out towards his non involvement in the accident. Although Ranjit Singh, Lambardar did not support the prosecution story and stated that he does not know about the incident and he was declared as a hostile witness and permission was granted to the Public Prosecutor to cross-examine him. During his cross-examination, he admitted his signatures on Ex.PW5/A stating that he does not remember those were procured on blank papers or some written papers. However, PW9 ASI Des Raj had stated that on 1.2.2004, Ranjit Singh, Lambardar had produced the accused along with RC of the tractor regarding which a memo Ex.PW5/A was prepared. If Ranjit Singh, Lambardar had not brought the accused and produced him before the Police Station along with the RC of the tractor, then his signatures on memo Ex.PW5/A would have been there. He has failed to render any reasonable and plausible explanation for his signatures on such memo which goes to show that he intentionally did not support the

prosecution story. If the accused had nothing to do with the incident, then why did he appear before the police and tendered the bonds. If the accused had been roped in wrongly, he would not have kept quiet with damoclean sword of conviction hanging over his head. His silence and inaction goes to show that his plea of false implication lacks merits. There is nothing on record to show that the Investigating Officer had any axe to grind with the accused spurred by which he might have involved the accused in this case wrongly while letting off the real culprit. Had the same been done, in normal circumstances, the accused would have agitated the matter bringing it to the notice of higher police authorities but then admittedly nothing of that sort was done by the accused.

The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. The courts below were justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

The learned counsel for the revision petitioner has prayed that sentence of the accused – convict be reduced keeping in view the fact that he is a first offender, a poor man and sole bread winner of his family.

I on my part feel that the accused by rash and negligent driving of the tractor had caused death of five years old child. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road and such type of elements have to be dealt with sternly otherwise there would be more instances of causalities due to road side accidents. For that reason,

no leniency can be shown to the accused – convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly.

Krishan petitioner – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Sirsa is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

26.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No