

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Revision No.4112 of 2017 (O&M)
Date of Decision: September 05, 2018

Angrej Singh
.....PETITIONER(s).

VERSUS

State of Punjab
....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. Manu Loona, Advocate
for the petitioner (s).

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

SURINDER GUPTA, J.

In case bearing FIR No.15 dated 26.03.2013 registered at Police Station Khuian Sarwar, Abohar, for the offence punishable under Sections 304-A, 279, 337, 338 and 427 of Indian Penal Code (for short-IPC), petitioner was convicted and sentenced as follows:-

Sr. No.	Conviction Under Section	Sentence.
1	279 IPC	Rigorous imprisonment for a period of Six months and to pay fine of Rs.500/- and in default of payment of fine the convict shall undergo rigorous imprisonment for a period of fifteen days.
2	304-A IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.2000/- and in default of payment of fine the convict shall undergo rigorous imprisonment for a period of two months.
3	338 IPC	Rigorous imprisonment for a period of one year and to pay fine of Rs.1000/- and in default of payment of fine the convict shall undergo rigorous imprisonment for a period of one month.

Sessions Judge, Fazilka and the conviction and sentence as awarded by the trial Court was maintained. Against the order of his conviction and sentence, petitioner has filed the present revision petition challenging the legality and validity of the judgments of the Courts below.

As per the case of prosecution, on 25.03.2013, complainant Rachhpal Singh with his relative Parvinder Singh son of Jag Singh were returning to Ganga Nagar with two trolleys and a tractor bearing registration No.RJ-07-RA-2336, which was being driven by Prem Kumar while Ladhu Ram was sitting with him. Complainant and his relative Parvinder Singh were following the tractor-trolleys in their jeep. When they reached one kilometer ahead of village Kallar Khera, at about 8.30 P.M., a canter bearing registration No.HR-63-A-8920 (later referred to as 'the canter') came from Ganga Nagar side. It was being driven in a rash and negligent manner by its driver (petitioner), who brought it on the wrong side of the road and hit the tractor. Prem Kumar and Ladhu Ram suffered injuries and were shifted to Civil Hospital, Sri Ganganagar, where Prem Kumar succumbed to his injuries. The tractor-trolleys and canter were taken into possession from the spot. Petitioner was arrested on 10.04.2013 and after completion of investigation, challan against him was presented before the trial Court.

On finding a prima facie case, petitioner was charge-sheeted for the offences punishable under Sections 279, 337, 338 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined Rachhpal Singh complainant as PW1, Parvinder Singh eyewitness as PW2, Injured Ladhu Ram as PW3, Investigating Officer ASI Baldev Singh as PW4, Dr. Vijay

Ahuja, Orthopadics, Sri Bala Ji Hospital, Sri Ganganagar (Rajasthan) as PW5, Hardial Singh retired mechanic as PW6, Bhagwan Dass Informatics Assistant DTO Office, Sri Ganganagar as PW7, Ishwar Singh, Transport Sub Inspector Office of Secretary RTA, Sirsa (Haryana) as PW8. Thereafter, the evidence of prosecution was closed by order of the Court.

Entire incriminating evidence was put to the petitioner while recording his statement under Section 313 Cr.P.C., wherein he denied the allegations against him and pleaded his false implication. In his defence, he has stated as follows:-

“I am innocent and I am falsely implicated in the present case. No accident took place in my presence. I was not driver of the alleged canter bearing No.HR-63A-8920.”

Learned counsel for the petitioner has assailed the judgments of the Courts below on the ground that the identity of the petitioner as driver of the offending vehicle was not proved by the prosecution as no test identification parade was conducted. Prosecution version is not supported by any independent witness. It has not taken note of the fact that tractor in question was carrying two trolleys, as such, possibility of accident having taken place due to negligence on the part of driver of the tractor, cannot be ruled out. The damaged tractor was not produced during trial, as such, the trial Court was not in a position to see the tractor. Non-production of case property is a serious lacuna in the prosecution case, which has been overlooked by the Courts below.

Learned State counsel has argued that none of the submissions of learned counsel for the petitioner has any merit. The petitioner was identified at the spot. Complainant, injured and eyewitness of the

occurrence while appearing in the witness box has stated that they have seen the petitioner after the accident, as such, there was no need to conduct test identification parade. The complainant, injured and eyewitness examined by the prosecution have the status of independent witness as they were having no enmity, ill-will or grudge against the petitioner, as such, non-examination of independent witness is not fatal to the case of the prosecution. The offending vehicle came from the opposite side and hit the tractor by coming on the wrong side of the road, as such, this fact is immaterial that tractor was carrying two trolleys. The tractor got damaged to such an extent that it was not taken on *superdari* and remained in police custody and could not be produced during trial before the Court.

(i) Identification of the petitioner as driver of canter:-

Prosecution has examined complainant Rachhpal Singh as PW1. He has stated that when the tractor-trolley driven by Prem Kumar was going towards Ganganagar side, the offending canter came from the opposite side. It was being driven in a rash and negligent manner; came on the wrong side of the road and hit the tractor. He has specifically stated that 'accused present in Court today, after hitting the tractor, 'flee away from the spot after leaving the canter there. He had seen the accused while he was running from the spot.'. He has further stated that "police got the accused identified from him on 10.04.2013". Investigating Officer ASI Baldev Singh PW4 has also stated that he got identified the accused from complainant on 10.04.2013 but he has not prepared any identification memo. PW2 Parvinder Singh has also identified the petitioner at the spot. He had stated that "accused present in Court today was driving the canter in

a rash and negligent manner. Accused present in Court today after hitting canter flee away from the spot. I have seen the accused while he was running (away) from the spot.”

PW3 Ladhu Ram injured has stated that accused was driving the canter in a rash and negligent manner. He brought the canter on the wrong side of the road and hit the tractor. While identifying the accused, he has stated that “accused present in Court today after hitting the tractor flee away from the spot.”

Petitioner is resident of Shahpura, Tehsil and District Fazilka while PW1 Rachhpal, PW2 Parvinder and PW3 Ladhu Ram, all are residents of Ganganagar. It has not been suggested to them that they have any enmity, grudge or reason to depose against the accused and to falsely implicate him in the present case. When accident takes place in the manner as stated by the prosecution witnesses, the driver of the offending vehicle, who is not injured, take time to come down from vehicle involved in accident before fleeing away from the spot. This provide opportunity to the injured and other witnesses present at the spot to see and identify him. In view of overwhelming evidence, I am of the view that identity of the petitioner as driver of the offending vehicle was duly proved and both the Courts below have committed no error while recording finding on this score.

(ii) Effect of non-examination of independent witness:

Complainant Rachhpal Singh, eyewitness Parvinder Singh and injured Ladhu Ram have supported the prosecution case, whose testimony carries the same value as the testimony of independent witness. Prem

Kumar, driver of the tractor had died and as already discussed, the aforesaid witnesses had ample opportunity to see and come across the petitioner. It cannot be believed that these witnesses will let the real accused go scot-free and falsely implicate the petitioner without any reason. It is usually seen that anyone from the public who is not concerned with the victim in an accident, avoids to become witness or to depose in Court. Non-examination of independent witness in no manner affects the case of the prosecution in this case.

(iii) Effect of non-production of tractor in Court and that it was carrying two trolleys:-

The tractor involved in the accident was not produced in Court. Learned Public Prosecutor has taken the adjournment to produce the tractor in Court but the same could not be produced as it was totally damaged in the accident and was lying with the police at Police Station Khuian Sarwar, Abohar. This has been so stated by PW2 Parvinder Singh. The canter and trolleys were produced in Court. Hardial Singh, Mechanic, who mechanically examined the tractor and canter, while appearing as PW6 has stated that on inspection, he found that the clutch system and starter of the tractor were not in working condition.

Keeping in view the above facts, non-production of tractor in Court has not effected the case of the prosecution in any manner. The canter was coming from Ganganagar side and the tractor with trolleys was going towards Ganganagar side. As per prosecution witnesses, canter came on the wrong side of the road and hit the tractor. The site plan of the place of occurrence produced on file Ex.P4/C shows that canter after the accident

was on extreme right hand side of the road. This shows that canter had came on the wrong side of the road and hit the tractor. Carrying of two trolleys, in such circumstances, has no role in causing the accident.

On perusal of the judgments of the Courts below, I find that both the Courts below have properly looked into and appreciated the evidence on record while recording/upholding the conviction of petitioner for the offences punishable under Sections 279, 304-A and 338 IPC. The well-reasoned judgments of the Courts below call for no interference in this revision so far as the conviction of petitioner for the aforesaid offences is concerned.

Learned counsel for the petitioner has also requested for lenient view regarding quantum of sentence awarded to the petitioner. He has submitted that petitioner is not a previous convict. He is only bread earner of the family and has to take care of his minor children and old age parents. He has already undergone actual imprisonment of 11 months and after including the remissions earned by him, his total sentence is around 15 months. He has suffered for the offence committed by him, as such, sentence awarded to him for the offence punishable under Section 304-A IPC be reduced to the period of sentence already undergone by him.

Learned State counsel has not contested the submission of learned counsel for the petitioner to the extent that as per custody certificate, petitioner is not a previous convict. He has, however, argued that sentence awarded to the petitioner commensurate with the nature of offence as one person got killed and another suffered serious injuries in accident, which was caused due to rash and negligent driving of offending

vehicle by the petitioner.

The petitioner was 32 years of age at the time of accident. Custody certificate produced on record shows that he is not a previous convict. Keeping in view the above facts and circumstances, I am of the opinion that awarding sentence of rigorous imprisonment for 18 months for offence punishable under Section 304-A IPC to the petitioner will serve the ends of justice. Consequently, the request of learned counsel for the petitioner is accepted to the extent that the sentence awarded to the petitioner under Section 304-A IPC is reduced from rigorous imprisonment for 2 years to rigorous imprisonment for 18 months. However, sentence of fine and sentence awarded in other Sections of Indian Penal Code is maintained.

As a sequel of my above discussion, this revision is partly accepted. Upholding the conviction of petitioner for the offences punishable under Sections 279, 304-A and 338 IPC, the sentence awarded to the petitioner is reduced as discussed above.

September 05, 2018

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No