

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 1709 of 2018

Date of Decision: 26.10.2018

Kuldeep Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Tapan Yadav, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.

This is revision filed by petitioner against judgments of Courts below convicting and sentencing him for offences punishable under Sections 279 and 304-A of Indian Penal Code (for short 'IPC').

2. The case of prosecution, in brief, is that on 29.10.2012, complainant-Om Parkash Dhingra, had gone to see his sister and brother-in-law at their factory in Jamai Colony, Faridabad. They had to go to another factory in village Pali. Brother-in-law of complainant, his sister and their son proceeded towards village Pali in their car bearing registration no. DL-2CAC-0078 while complainant followed them in his separate car bearing registration no. HR-99-NSTT-7222. When they reached near village Bakhari (near Asharam turn), a car (Maruti SX4) bearing registration no. HR-51AH-5047 (later referred to as 'the offending vehicle') came from opposite side, which was being driven in a rash and negligent manner and hit the vehicle of brother-in-law of complainant. With great difficulty complainant could save his vehicle and went near the vehicle of his brother-in-law and found both his brother-in-law and sister entangled inside the

vehicle. With the help of passerby, sister and brother-in-law of complainant were taken out of the car. Both were unconscious. In the meanwhile, police reached there and took both the injured to B.K. Hospital, where doctor declared both of them as brought dead. The offending vehicle, which hit car of brother-in-law of complainant, was being driven by petitioner-Kuldeep Singh. Petitioner also suffered injuries and was taken to Appurva Hospital, where he was medically examined by Dr. Prem Kumar (PW-7), who found following injuries on his person:-

- (i) Tenderness present on the both side of the chest, and advised CT chest.
- (ii) Lacerated wound present in the right parietal region 3x2 cm. in size. Patient was advised CT head.
- (iii) Lacerated wound in the right elbow 2x2 cm and bleeding present. X-ray was advised.

3. FIR was registered on the statement of Om Parkash (Ex. PW-2/A), which was recorded at about 12.25 a.m. on 30.10.2012. The damaged cars of deceased as well as petitioner were taken into possession and after completion of investigation challan against petitioner was present in Court.

4. Learned trial Court on perusal of evidence held offences punishable under Sections 279 and 304-A IPC as proved against the petitioner and he was convicted and sentenced as follows:-

Section	Imprisonment
279 IPC	Convict to undergo rigorous imprisonment for two months and to pay a fine of ₹500/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one week.
304-A IPC	Convict to undergo rigorous imprisonment for one year and to pay a fine of ₹500/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one week.

5. Against judgment of his conviction and sentence, petitioner filed appeal, which was dismissed by Sessions Judge, Faridabad.

6. Learned counsel for the petitioner has argued that firstly there is delay in recording of FIR. The accident took place at about 08.00/08.30 p.m. The police has reached the spot, but the FIR was registered on the statement of complainant at 12.25 a.m. in the same night after about four hours of the accident. The Court below while convicting the petitioner has observed that accident was caused while petitioner was overtaking some vehicle but the complainant while appearing as PW-2 has nowhere stated that the petitioner was overtaking some vehicle at the time of accident. No test identification parade of petitioner was conducted in this case. As per complainant, the vehicle of petitioner had overturned and took U-turn, which shows that it was the vehicle of deceased, which was at high speed and not the vehicle of petitioner. The complainant has stated that speed of the vehicle of deceased as 20 kms to 30 kms per hour and speed of his vehicle, which was following the vehicle of his brother-in-law (deceased) at 30 kms to 40 kms per hour. In view of the speed of both the vehicles as mentioned by him, it was not possible that a vehicle going at high speed will follow the vehicle going at lesser speed. The petitioner is not owner of the offending vehicle and Pawan Bhadana, who is owner of the offending vehicle, was not associated in the investigation of the case. The petitioner was falsely implicated as he was taken to hospital at about same time with injuries suffered by him. As per case of prosecution, it was a head on collision and after the accident, the vehicle of petitioner had taken U-turn, which shows that it was a case of contributory negligence. Learned lower Courts have not taken note of these facts while convicting and sentencing the petitioner.

7. Learned State counsel has argued that learned Courts below

have looked into all the aspects put-forth by learned counsel for the petitioner and concluded on the basis of evidence on file before it that petitioner was rash and negligent while driving his vehicle 'Maruti SX4', which hit the car of deceased, which was going on left side of the road. This fact is evident from the site plan and photographs placed on file and also from statement of complainant. So far as test identification parade of the petitioner is concerned, the same was not required as complainant had occasion to see driver of the offending vehicle after the accident and had identified him in Court. It is nowhere the case of petitioner in his defence that it was a case of contributory negligence and no such suggestion was given to complainant in cross-examination.

8. First question, which arises for consideration is as to whether petitioner was driver of Maruti SX4 car involved in the accident? He has been named in the FIR. The complainant while appearing as PW-2 has also identified him. When both the cars were involved in the accident, complainant had gone there and took out his brother-in-law and sister. The car of petitioner was also nearby and this has given opportunity to complainant to see him, as such, statement of complainant identifying the petitioner as driver of the offending vehicle cannot be discarded even in the absence of test identification parade.

9. The complainant has not stated in examination-in-chief that the petitioner was overtaking some vehicle at the time of accident. He has stated that the petitioner was driving the offending vehicle in a rash and negligent manner and hit the vehicle of his brother-in-law by coming towards the side of his vehicle. This shows that the vehicle of the petitioner was on wrong side of the road when it hit the vehicle of the deceased. This argument of

learned counsel for the petitioner that the vehicle of the deceased was going at a very high speed than the vehicle of petitioner also has no merit as the vehicle of the deceased got crushed after the accident and both, brother-in-law of complainant and his sister could be extracted from the damaged vehicle with great difficulty. Had the vehicle of the deceased been at faster speed than the speed of vehicle of petitioner, there were chances of more injuries to petitioner. The mere fact that it was a head on collision is no reason to draw the inference of contributory negligence particularly when petitioner is proved to have brought his vehicle on wrong side of the road. Admittedly, this defence was neither set up nor any prosecution witness was suggested that the accident was caused due to contributory negligence of the deceased.

10. The accident had taken place around 08.30 p.m. The complainant has stated that after the accident he was busy in looking after his brother-in-law and sister. After 10/15 minutes the police vehicle also reached the spot and both the injured were taken to hospital, where they were declared as brought dead. The petitioner was also shifted to hospital where he was medically examined at about 08.30 p.m. Injuries suffered by him were tenderness on both side of chest, wound on right parietal region and right elbow. The petitioner has not explained that he suffered injuries in any other accident than the accident in question. The delay of four hours in reporting the matter to police is not significant as first priority of complainant and also of the police was to take care of the injured. It was only after the injured had been declared as brought dead by the doctor that the matter was reported to the police. The complainant had witnessed the ghastly accident in which he lost his sister and brother-in-law and he

certainly required sometime before attaining his senses and reporting the matter to the police. Moreover, he had no reason or motive for the false implication of the petitioner, who was not known to complainant prior to this accident.

11. The complainant has stated that speed of the vehicle of his brother-in-law was 20 kms. to 30 kms. per hour. It appears that he was stating speed of the car of his brother-in-law at the time of accident and at that time he had also slowed down his vehicle at the speed of 30 kms. to 40 kms. per hour, as such, in the facts and circumstance, there is no merit in the submission of learned counsel for the petitioner that the vehicle going at a speed of 30 kms. to 40 kms. per hour could not follow the vehicle going at a speed of 20 kms. to 30 kms. per hour. It has been argued that owner of the offending vehicle was not associated in the investigation. The accident was caused in this case by the petitioner and not by owner of the offending vehicle, as such, his non-joining in the investigation does not effect the case of prosecution in any manner.

12. On perusal of judgments of both the Courts below, I find that prosecution has duly proved on record that the accident was caused due to rash and negligent driving of the offending vehicle by the petitioner resulting in death of brother-in-law and sister of the complainant. Judgments of Courts below call for no interference in this revision, which has no merit and the same is dismissed.

October 26, 2018

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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No