

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

CRR-2241-2018 (O&M)
Date of Decision:-22.10.2018

Sonkha Singh	Versus	 Petitioner
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Yowan Sharma, Advocate for the petitioner.

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GURVINDER SINGH GILL, J.

1. The petitioner assails judgment dated 17.5.2018 passed by learned Sessions Judge, Panchkula whereby conviction of the petitioner, as recorded by learned Chief Judicial Magistrate, Panchkula vide judgment 8.11.2016 for offences punishable under Sections 279, 337 and 304-A of Indian Penal Code, 1860, has been upheld.
2. A few facts, necessary to notice for disposal of this revision petition, are that on 2.7.2013 when the complainant Madan Lal was going with his wife on 'Activa' scooter from Chandigarh to Amrawati Enclave, then a truck came from behind and hit into their scooter, as a result of which the scooter fell on the 'kachha' portion of the road. The wife of the complainant sustained injuries and ultimately expired. Even the complainant is stated to have sustained injuries on his head, legs and arms. The learned trial Court, upon appraisal of the evidence led before it, found the petitioner guilty for having

committed offence punishable under Sections 279, 337 and 304-A of Indian Penal Code, 1860 and consequently sentenced the petitioner to undergo rigorous imprisonment for one year and also to pay fine amounting to ₹ 1,000/-. The appeal filed by the petitioner was also dismissed, which has been challenged by way of filing the present revision petition.

3. The learned counsel, while assailing the impugned judgment, has first of all submitted that since no test identification parade was conducted in the present case, the identification of petitioner remains doubtful, and therefore, the entire case of the prosecution case falls to ground.
4. I have considered the aforesaid submission. In the present case, it is the specific case of the prosecution that immediately after the accident, the truck driver had got down from the truck and had also disclosed his name. The said assertions of the complainant cannot be doubted for the reason that the name of the truck driver finds mentioned in the FIR itself which came to be recorded shortly after the accident on the day of accident itself. As such, there was no necessity to hold any test identification parade. Hon'ble the Supreme Court in 2012(4) RCR(Criminal) 245 Ravi Kapur vs. State of Rajasthan while examining the relevance and importance of test identification parade held as follows:

“32. The Court identification itself is a good identification in the eyes of law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straightjacket formula can be stated in this regard. We may refer to a judgment

of this Court in the case of *Shyamal Ghosh v. State of West Bengal*, [2012(6) SCALE 381] wherein this Court has held that the Code of Criminal Procedure, 1973 (for short " Criminal Procedure Code) does not oblige the investigating agency to necessarily hold the test identification parade without exception.

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33. In our considered view, it was not necessary to hold the test identification parade of the appellant for two reasons. Firstly, the appellant was already known to the passersby who had recognised him while driving the bus and had stated his name and, secondly, he was duly seen, though for a short but reasonable period, when after parking the bus, he got down from the bus and ran away.”

5. The facts of present case, coupled with ratio of above cited case leave no room to doubt identification of accused or to hold that omission to hold 'Test Identification Parade' is fatal to the case of prosecution.
6. It has next been submitted that in the present case since the Investigating Officer has not been examined, therefore, the case of prosecution can not be said to be proved, inasmuch as even the site-plan in question, which is a material document in such cases, has not been proved.
7. I have considered the aforesaid submission. No doubt the role of the Investigating Officer is integral in criminal cases but omission to examine the Investigating Officer would not *ipso-facto* result in acquittal in every case. It is the facts and circumstances of each case, which have to be examined before reaching at any such conclusion. Hon'ble the Supreme Court in 2017(2) RCR 321 Dinesh Yadav vs. State of Jharkhand, : (2017)5 SCC 764 where neither the first informant had been examined nor the investigating officer had been examined, held as follows:

“Since the evidence of these witnesses has remained unimpeached, and as there are no major contradictions or omissions in the evidence of these witnesses, the non-examination of the Investigating Officer by the prosecution may not tilt the balance in favour of the defence. It has not been shown what prejudice has been caused to the appellant by such non-examination. Similar view is taken by this Court as back as in the year 2000 in the case of ***Bahadur Naik v. State of Bihar, 2000(3) R.C.R.(Criminal) 217 : AIR 2000 SC 1582*** wherein it is observed thus:

"The appellant has not been able to shake the credibility of the eye-witness. No material contradiction in the case of the prosecution has been shown to us. Under facts and circumstances, the non-examination of the Investigating Officer as a witness is of no consequence. It has not been shown what prejudice has been caused to the appellant by such non-examination."

As mentioned supra, the injured had expired prior to commencement of the trial of Sessions Case. Hence, he could not be examined.”

8. This Court in *Vijay Kumar vs. State of Punjab 2014(1)RCR(Criminal) 939* while upholding conviction in a case under 304-A IPC in somewhat identical circumstances held as follows:

“16. The scaled site plan is only a piece of circumstantial evidence. Eye witnesses which provide direct evidence have been examined . If the *scaled plan* is not proved or *Investigating Officer* is not examined , it will not falsify the testimonies of the eye witnesses.”

9. In the present case, when the eye-witness was present alongwith the deceased and had narrated about the entire incident, therefore, the fact that the Investigating Officer was not examined cannot be said to be fatal to the case of the prosecution.
10. It has next been submitted that since in the statement of the accused recorded under Section 313 Cr.P.C., it has not been specifically put to him that he was driving the vehicle rashly and negligently and it was as a result of rash and

negligent driving that the alleged accident had occurred, such omission had seriously prejudiced the accused.

11. It is no doubt correct that the statement under Section 313 Cr.P.C. is an invaluable right afforded to the accused so as to enable him to explain all the circumstances appearing against him, but statement under Section 313 Cr.P.C. cannot be interpreted to mean that entire statements of the prosecution witnesses have to be put to accused. Hon'ble Supreme Court in 2017(4) RCR(Criminal) 1 Suresh Chandra Jana State of West Bengal, while underlining the purpose of recording statement of accused u/s 313 Cr.P.C., made the following observations regarding the manner of recording such statement:

“Sub-section (b) of Section 313 requires the court to question the accused generally on the case after the prosecution evidence is over. It does not require to re-write hundred pages evidence in another hundred pages to record the statement of the accused under the Section. It should be borne in mind that entire evidence has been recorded in the presence of the accused or his counsel, and before he enters into his defence, what is required is that he is generally asked on the case, after the prosecution evidence is over, to explain any circumstances in the evidence against him. It does not require that each and every sentence of the prosecution evidence has to be re-written and read over once again while examining the accused under section [313](#) of the Code of Criminal Procedure.”

12. In view of ratio of above referred judgement, the contention raised by learned counsel as regards defective 313 Cr.P.C. statement can not be accepted since it has not been shown as to which material circumstances has not been put to the accused, resulting in he being prejudiced in explaining the same.

13. The learned counsel for the petitioner has next vehemently argued that there is no evidence worth credence from which it can be established that the truck driver was driving the truck rashly and negligently and that the bald statement of the petitioner, in this regard, can not be made a basis for conviction.
14. I have considered the aforesaid submission. In the present case, the offending truck in question had hit the 'Activa' scooter of the complainant from behind. Under normal conditions of driving, such like act of hitting another vehicle from behind would lead to an inference that it is the vehicle coming from behind, which was being driven rashly and negligently unless it is established that the vehicle being driven in front was itself been driven rashly and negligently say in zig-zag manner or was being driven in middle of the road. Hon'ble the Supreme Court in 2012(4) RCR(Criminal) 245 Ravi Kapur vs. State of Rajasthan while examining the applicability of doctrine of *res ipsa loquitur* in criminal cases held as follows:

“18. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of *res ipsa loquitur* is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of *res ipsa loquitur*. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases,

the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as :

The event would not have occurred but for someone's negligence.

The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

Accused was negligent and owed a duty of care towards the victim.”

15. A perusal of the statement of the complainant Madan Lal, which has been shown to this Court by learned counsel for the petitioner, shows that not a single question was ever put to the complainant Madan Lal that the deceased himself was driving the scooter negligently or was driving the same in the middle of the road. The facts of the present case when examined in light of above referred judgment leave no manner of doubt that the accident had occurred due to rash and negligent driving on part of accused. I do not find any infirmity in the concurrent findings as recorded by the Courts below as regards negligence of the petitioner and consequently the same are hereby affirmed.
16. It has next been submitted that the sentence as imposed upon the petitioner may be reduced to the one already undergone since the petitioner has already undergone 5 months of imprisonment out of the total imposed sentence of one year.
17. Having considered the aforesaid submission and the fact that the sentence of one year cannot be said to be on higher side and also that it is not a case that the petitioner has been suffering incarceration of trial for decades, there is no room for reduction of sentence of imprisonment. The aforesaid contention

sans any merit and does not merit acceptance. There is no merit in revision
petition and the same is hereby dismissed.

22.10.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No