

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-3611-2018 (O&M)

Date of decision: 30.10.2018

Sukhwinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Amardeep Singh, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision, challenge has been laid to the judgment of Ist Appellate Court dated 09.08.2018, whereby appeal filed by the petitioner against judgment of conviction and order of sentence dated 14.07.2017 of the trial Court, convicting him under Sections 279, 337, 427, 304-A IPC, was partly allowed, acquitting him under Sections 337 and 427 IPC and maintaining his conviction and sentence under Sections 279 and 304-A IPC.

Briefly, the petitioner was booked and tried in case FIR No. 53 dated 25.03.2010 registered under Sections 279, 304-A, 337 and 427 IPC, Police Station Salem Tabri, District Ludhiana, for causing a motor vehicular accident, resulting into the death of a qualified doctor, namely. Dr. Vijay Kumar, while driving his truck bearing registration No. HR-55-E-8279, in a rash and negligent manner. The petitioner also killed another motorcyclist by his rash and negligent driving of aforesaid truck. When the complainant

tried to stop the truck of the petitioner, he struck the same into the car of

complainant-Harvinder Singh, bearing registration No. PB-10-BS-5673 make 'Tata Indica'. As a result thereof, occupant of the car as well his son also suffered injuries and the car also got damaged. In fact, on that day, the petitioner struck his truck against 2-3 more vehicles, while driving the same in a rash and negligent manner.

After holding trial, vide judgment of conviction and order of sentence dated 14.07.2017, the trial Court held the petitioner guilty under Sections 279, 337, 427 and 304-A IPC and sentenced him to undergo rigorous imprisonment for a maximum period of two years under Section 304-A IPC.

Being aggrieved, the petitioner approached the Ist Appellate Court, but remained un-successful, as his appeal was partly allowed, maintaining his sentence under Sections 279 and 304-A IPC, while acquitting him under Sections 337 and 427 IPC, vide impugned judgment dated 09.08.2018.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have failed to appreciate that there were major contradictions in the statements of prosecution witnesses, inasmuch, as PW-1 Harvinder Singh-complainant, has not supported the prosecution case, by admitting in his cross-examination that he had not witnessed the accident, rather stopped on the way, visualizing that some accident had occurred and huge crowd had gathered there and that he did not know the petitioner present in Court and was also not present at the spot. He was told by the people that some persons had caused accident and after causing the same, he had ran away. No test identification parade was got conducted.

He had no personal knowledge about the accident in question, allegedly,

caused by the petitioner. Similarly, PW-4 SI Manjit Singh, Investigating Officer, had also smashed the entire prosecution story by admitting in his cross-examination that he had arrested the petitioner on suspicion on the basis of statement of PW-1 Harvinder Singh-complainant. The accident had not occurred in his presence.

That apart, there are major contradictions in between the site plan and deposition of the prosecution witnesses. No mechanical examination of the alleged offending truck or the motorcycle was got conducted for the reasons best known to the Investigating Officer. Consequently, link evidence is also missing. PW-5 Dr. Davinder Kumar (also numbered as PW-3) had also not supported the prosecution story, inasmuch, as he testified that cause of death was due to shock led to cardio pulmonary arrest i.e. failure of heart due to shock. The injuries could be self suffered or due to fall. He was not sure that the injuries on the body of deceased were due to accident or due to fall. The site plan (Annexure P-5) also belies the version of the prosecution, because according to it, body of deceased is shown to have been lying at place 'A', whereas motorcycle is shown lying at place 'B', which shows that motorcyclist had struck his motorcycle from backside against the alleged offending truck driven by the petitioner. Presence of complainant-Harvinder Singh, is disputed on the spot as site plan (Annexure P-5) was not signed by him.

Having given anxious consideration to the submissions of learned counsel for the petitioner, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

No question of law, much less substantial question of law has been raised in this revision.

All the best possible defences which can be taken or pleading in a case under Sections 279 and 304-A IPC, are being raised by learned counsel for the petitioner leaving no stone unturned for acquittal of the petitioner, but is not able to succeed, in view of the settled proposition of law that statement of a witness is to be read as a whole and not in isolation. If the statement of PW-1 Harvinder Singh-complainant is scrutinized as a whole, in that eventuality, the only irresistible conclusion which can be drawn is that he had fully supported the prosecution story. For ready reference, relevant portion of his statement is reproduced as under:-

“..... at about 9:00 am when I reached near Karabara Chowk, a Truck bearing registered No. HR-55E-8279 Tata 2516 came from backside and strucked into a motorcycle rider having motorcycle Hero Honda. The said truck also struck into my car from back side because of which I and my son suffered injuries and my car got damaged. The driver of the said truck i.e. the accused present in Court namely Sukhwinder Singh driving the truck in a rash and negligent manner he caused the death of two motorcycle rides and also injured me and my son alongwith two three other persons on different vehicles. In the said accident one Dr. Vijay Kumar and the other person Balwinder Singh died. I made statement to the police in which disclosed the vehicles and their number which was damaged by the accused present in Court while driving the abovesaid truck in a rash and negligent manner. My statement was recorded by the police which

is Ex. PA on which I identify my signature at point Ex. PA/1 police has taken into police possession the accidental truck vide memo Ex. PB on which I identify my signature M, car along with photostat RC was also taken into police possession vide memo Ex. PC by the police and the accidental motorcycle were also taken into police possession by the police vide memo Ex. PD, PE & PF. The police also took into police possession the blood broken glass of vehicles, broken helmet from the accidental spot vide memo Ex. PG. The accused was arrested in my presence. I identify the accused present in Court.”

From the above testimony of complainant-Harvinder Singh, it is evident on record beyond any doubt that it was only the petitioner, who had struck his truck into a motorcycle from behind and not the deceased, while driving the same in a rash and negligent manner. This witness had categorically stated that after striking against the motorcyclist of the deceased, petitioner since was driving his truck in a rash and negligent manner also hit 2-3 vehicles including his car. This fact in itself is sufficient to draw an inference against the petitioner that he was driving the alleged offending truck in a rash and negligent manner.

Some vague admissions of this witness in cross-examination do not go to the root of the case or in other words and do not prove innocence of the accused for the reason that this witness seems to be a genuine witness not knowing the intricacies of law and repercussions of his vague admissions. His narration of facts in a truthful manner without bothering

the result of case shows that this witness was very much present on the spot and had witnessed the accident.

Non-signing of site plan (Annexure P-5) by this witness relates to insignificant aspect of the case, because signing of site plan of an accidental spot is not a condition precedent or requirement of law. It is prepared by the Investigating Officer, during the course of investigation and signed by him.

In his statement, under Section 313 Cr.P.C., as usual the petitioner simply denied the evidence which had come against him during trial, but did not lead any evidence in his defence. Quality of evidence is to be seen, not the quantity.

As far as, cross-examination of PW-4 SI Manjit Singh, is concerned, he had specifically identified the petitioner in Court for causing accident in question which had taken two lives, out of whom one was a qualified doctor. The identification in Court is best identification. Therefore, there was no necessity for any identification parade to establish the identity of the accused. Admission of PW-4 SI Manjit Singh, in his cross-examination that he had arrested the petitioner on the identification of PW-1 Harvinder Singh, does not find favour with the petitioner from any angle, in view of the fact that in his examination-in-chief, he had testified that he had arrested the accused at the spot vide arrest memo Ex. PW-4/J. He had also taken into possession the offending truck vide recovery memo Ex. PB, duly signed by HC Ravi Kumar and the car of PW-1 Harvinder Singh and motorcycles vide recovery memos Ex. PC to PE. This witness had denied the suggestion that he was deposing falsely and that no accident was caused by the petitioner and further that FIR was registered against the

petitioner on the basis of suspicion.

Since, PW-1 Harvinder Singh, was an independent public person, who had lodged the FIR, therefore, it was not required to join any other independent person in the investigation, more particularly, joining of an independent witness under Section 100(4) Cr.P.C., is a rule of prudence and not a rule of thumb.

Statement of PW-5 Dr. Davinder Kumar (wrongly mentioned as PW-3 also), who conducted the post-mortem examination of the dead body of deceased also does not favour the petitioner, inasmuch, as he had specifically stated that all the injuries suffered by the deceased are ante mortem in nature and could be due to road side accident. He has given definite opinion about the cause of death. Therefore, his statement qua some vague suggestions put to him by learned defence counsel, does not create any dent in the prosecution story.

The site plan (Annexure P-5) depicts the actual state of affair of the spot which, by in itself, does not cause any dent in the prosecution story that the offending truck being driven by the petitioner in a rash and negligent manner hit the motorcycle from behind.

There are concurrent findings of both the Courts below against the petitioner. I have carefully gone through the judgments of both the Courts below and find no illegality or perversity in the same.

The instant revision, being completely devoid of any merit, is dismissed.

October 30, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No