

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

CRA-S-1835-SBA-2005
Date of Decision :23.05.2019

State of Haryana

.... Appellant

versus

Mahinder Singh

.... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Ayuwan Singh, AAG, Haryana.

Mr. Naresh Kaushik, Advocate and
Mr. Atul Pratap Dhankar, Amicus Curiae
for the respondent.

MANJARI NEHRU KAUL, J.

1. Feeling aggrieved, the State of Haryana has impugned the judgment and order of acquittal dated 04.05.2005 recorded by the First Appellate Court vide which the Appellate Court reversed the finding of conviction of the learned trial Court wherein the respondent-accused had been sentenced to undergo rigorous imprisonment for a period of three months under Section 279 IPC and to undergo rigorous imprisonment for a period of one year for the offence under Section 304-A IPC.

2. As per the prosecution case, when PW-1 Vilayati Ram, complainant along with his brother PW-2 Ramesh Kumar and his nephew deceased Sunny, aged 3 years, were standing in the street outside their house, a canter bearing registration No.DL-1L-2477 came rashly and negligently being driven by the respondent-accused and hit against the deceased Sunny. Due to the impact, the front wheel of the canter ran over

and crushed the deceased resulting in his death at the spot.

3. The appellant-State has impugned the judgment of acquittal primarily on the following grounds:

- i) The eyewitnesses PW-1 Vilayati Ram, PW-2 Ramesh Kumar and PW-3 Ajit Singh corroborated the prosecution version on all respects with regard to the rash and negligent driving on the part of the respondent-accused resulting in the death of deceased Sunny inasmuch as he having been crushed under the wheel of the vehicle involved.
- ii) The respondent-accused has admitted the factum of vehicular accident resulting in the death of Sunny.

4. Heard learned counsel for the parties and gone through the evidence as well as other material available on record.

5. So far as the factum of death of the deceased in the accident is concerned, the same stands proved. The only question, which thus, would require consideration is whether the death of the 3 year old child was as a result of rash and negligent driving of the respondent-accused?

6. However, in my considered view, the circumstances on record in the form of photographs of the site of accident narrate an altogether different tale, and when seen and appreciated in the light of the ocular testimony of PW-1 Vilayati Ram, complainant, PW-2 Ramesh Kumar and PW-3 Ajit Singh, the element of rash and negligent driving is totally amiss in the instant case. As per the complainant PW-1 Vilayati Ram, the vehicle in question was being driven recklessly and at an abnormally high speed as

a result of which after hitting the deceased, it ran over him and came to a halt after 60-70 paces from the site of the accident. This testimony is however, totally belied by the photographs of the site of accident, which are on record and clearly reflect that the deceased was not run over under the wheel of the vehicle. Rather the body of the deceased is shown to be lying without any crush injuries by the side of the vehicle. Still further, the photographs on record clearly show that there is a heap of bajri lying on the street in close vicinity to the site of the accident and just besides the vehicle in question. In this eventuality, coupled with the fact that it was a narrow street (gali), the possibility of the vehicle being driven negligently and rashly at an abnormally high speed would be highly improbable and thus, totally ruled out.

7. I also find merit in the contentions of the learned counsel for the respondent-accused that in fact when the alleged accident took place, none of the witnesses had witnessed the same. Further, the glaring contradictions pointed out by the learned counsel for the respondent-accused, which appear in the testimony of the prosecution witnesses specially the alleged eyewitnesses do raise a question mark qua their presence at the spot at the time of the accident. 'Men may lie but the circumstances do not'. This would be aptly applicable to the instant case. It appears from the circumstances and evidence on record that at the time of the alleged accident, the eyewitnesses were not present and were subsequently attracted to the spot. This shall have to be appreciated not only in the light of the photographs, which belies the testimonies of the eyewitnesses but also the material discrepancies appearing in the testimony of

PW-1 complainant Vilayati Ram, who on one hand had stated in his first statement Ex.PW-1/A that the deceased had gone into the street when he was struck and run over by the vehicle in question whereas in his testimony in the Court, the stand of the eyewitnesses including complainant PW-1 Vilayati Ram, PW-2 Ramesh Kumar and PW-3 Ajit Singh was that while standing in front of their house in the street, the offending vehicle came and struck against the deceased and ran over him.

8. At the cost of repetition, the story of the offending vehicle having run over the deceased is not only totally bereft of any merit but also a perusal of the postmortem report Ex.PW-8/A, does not reveal any external injury much less crush injuries on the person of the deceased. Had it been actually a case of reckless and rash driving as alleged by the prosecution, the body of the deceased would not have been totally intact, rather the body or some part of it, at least would have been mutilated as a result of injuries suffered during the accident.

9. In the light of the above discussion, I do not find any illegality or perversity in the impugned judgment dated 04.05.2005 passed by the First Appellate Court.

10. Accordingly, the present appeal is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

May 23, 2019
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Whether speaking/reasoned?	Yes / No
Whether Reportable?	Yes / No