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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1859 of 2009 (O&M)
Date of Decision : August 20, 2019

Suresh Kumar Petitioner

Versus

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present : Mr. S.K. Verma, Advocate
for the petitioner.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment of conviction dated 19.12.2007 and order of sentence dated 20.12.2007 passed by learned Sub Divisional Judicial Magistrate, Hansi vide which the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
U/s 304-A IPC	to undergo Rigorous Imprisonment for a period of one and a half years and to pay a fine of Rs. 1,000/-.	To undergo further Rigorous Imprisonment for a period of two months.
U/s 279 IPC	to undergo Rigorous Imprisonment for a period of three months and to pay a fine of Rs. 100/-.	To undergo further Rigorous Imprisonment for a period of fifteen days.
U/s 337 IPC	to undergo Rigorous Imprisonment for a period of three months and to pay a fine of Rs. 100/-.	To undergo further Rigorous Imprisonment for a period of fifteen days.

Both the sentences were ordered to run concurrently.

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2. The appeal preferred by the present petitioner against the said judgment of conviction and order of sentence was dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 04.07.2009 .

3. Facts relevant for the purpose of decision of the present revision petition; that on the statement of PW-1 Madan Lal (complainant), FIR No.270 dated 19.11.1998 was registered under Sections 279, 337 and 304-A IPC at Police Station Sadar, Hansi against the present petitioner. As per the complainant on 18.11.1998, he along with his brother Devi Dayal, his son Naresh, sister-in-law Nirmala Devi and nephew Rajesh had gone to Ding in a Maruti Car bearing Registration No. DL-3C-K 8481 to see his brother Sat Narain. When they had covered distance of 4-5 kms from Hansi towards Hisar side, a TATA vehicle bearing registration No.HR-39-2960 came at a very high speed in a rash and negligent manner from wrong side and struck their car which was being driven by his son Naresh Kumar. Resultantly, all of them received injuries. His son Naresh Kumar and sister-in-law Nirmala Devi died while they were being taken to the hospital for treatment. On this, police started investigation, medical examination of the injured and postmortem examination of Naresh Kumar and Nirmala Devi was got done. After completion of investigation proceedings, challan was presented before the trial Court.

4. At the trial stage, prosecution examined Madan Lal (complainant) as PW1, who had proved his complaint Ex.P1 and memos Ex.P2 and P3. PW-4, Rajesh Kumar is another eye-witness to the occurrence, who had also supported the prosecution case. Apart from recording testimony of remaining witnesses, accused (petitioner herein)

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was examined under Section 313 Cr.P.C. After considering the material and evidence available on record, vide judgment dated 19/20.12.2007, learned trial Court held the petitioner guilty and convicted and sentenced him as detailed in para No.1 above.

5. The appeal preferred by the present petitioner against the said judgment of conviction and order of sentence was dismissed by learned first appellate Court vide judgment dated 4.7.2009.

6. At the time of arguments, learned counsel for the petitioner contended that learned Courts below have not considered the factual and legal points involved in this case. He mainly contended that the alleged eye-witnesses to the occurrence had nowhere deposed that the accident had taken place because of rash and negligent driving of the present petitioner. That fact becomes more relevant because the petitioner was not arrested on the spot and there was no Test Identification Parade. It was further contended that identity for the first time in the Court does not mean anything.

7. Learned counsel for the petitioner further contended that learned trial Judge had not recorded the statement of the accused-petitioner under Section 313 Cr.P.C. and the petitioner is entitled to acquittal in this case.

8. Learned State counsel while arguing on this point contended that the complainant, Madan Lal (PW-1) as well as eye-witness, Rajesh Kumar (PW-4) have categorically deposed that the accident had taken place because of rash and negligent driving of the present petitioner. The statement of the accused-petitioner under Section 313 Cr.P.C. was

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recorded by the trial Magistrate on 13.02.2007 and that was just a *bona fide* mistake on the part of the trial Court to observe that the statement of the accused was dispensed with and as such, the petitioner is not entitled to be acquitted on that count.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Judge has rightly come to the conclusion that Madan Lal (PW-1) as well as another eye-witness, Rajesh Kumar (PW-4) had deposed that the accident had taken place because of rash and negligent driving of the present petitioner. PW-1 has stated that the accident had taken place because of fast speed and rash driving of the accused and PW-4, Rajesh Kumar, who is another eye-witness to the occurrence had also deposed that the accident had taken place because of rash and negligent driving of the present petitioner. The plea taken by learned counsel for the petitioner on this point is contrary to the record and is not tenable.

10. As regard to the plea of identification of accused person for the first time in the Court, in this case, PW-1, Madan Lal and PW-4, Rajesh Kumar had identified the accused persons on the spot. Thereafter the accused had fled away from the spot and he was identified by PW-1 and PW-4 in the Court and there is no reason to disbelieve the testimony of these witnesses. Law on the point is also settled that if the eye-witnesses to the occurrence are in a position to identify the accused persons on the spot and subsequently in the Court, no Test Identification Parade would be required in such like case because the concept of Test Identification

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Parade is to rule out such a possibility. On this point, learned trial Judge has rightly placed reliance upon the judgment from Hon`ble Apex Court in **Budhsen and Anr. Vs. State of UP, AIR 1970 SC 1321**, wherein it has been observed as under:-

“7. Now, facts which establish the identity of an accused person are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration...”

11. Identical view was taken by Hon`ble Apex Court in **S.N. Dube Vs. N.B.Bhoir, 2000(1) R.C.R. (Criminal) 848**.

12. As regard to the plea taken by learned counsel for the petitioner that statement of the accused under Section 313 Cr.P.C. was not recorded by learned trial Court, the same is factually incorrect because statement of the accused-person was duly recorded by the trial Magistrate

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on 13.2.2007. This was just a *bona fide* mistake on the part of learned trial Magistrate while dictating the judgment of conviction that statement of accused under Section 313 Cr.P.C. was dispensed with. Otherwise, both the Courts below have scanned the evidence available on the file and rightly held the revisionist guilty and convicted and the present revision petition against the judgment of conviction is not maintainable.

13. As regard to quantum of sentence, both the Courts below have already taken most reasonable view in the matter because the sentence of 1-1/2 years has been awarded under Section 304-A IPC for the rash and negligent driving of the petitioner, which had taken two precious human lives and no interference on the point of sentence is warranted in this case.

14. Resultantly, the present revision petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 20, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes