

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 3852 of 2018 (O&M)

Date of Decision: 05.04.2019

Naresh Kumar
... Petitioner(s)

Versus

State of Haryana
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Amardeep Sheoran, Advocate
for the petitioner(s).

Ms. Tanushree Gupta, Deputy Advocate
General, Haryana.

Shekher Dhawan, J.

Present revision petition is against judgment of conviction dated 25.09.2017 and order of sentence dated 26.09.2017, passed by the learned Judicial Magistrate Ist Class, Rewari, whereby the petitioner was convicted for the commission of offence under Sections 279 and 304-A IPC and sentenced as under:-

S.No.	Sentenced for the offence	Sentence awarded
1.	Section 304-A IPC	To undergo simple imprisonment for a period of one year and to pay a fine of Rs.9,000/-.
2.	Section 279 IPC	To undergo simple imprisonment for a period of three months and to pay a fine of Rs.1,000/-.

Both the sentences were ordered to run concurrently. Petitioner preferred an appeal against the above said judgment of conviction and order of sentence.

The learned Appellate Court affirmed the judgment of conviction and order of sentence, passed by the learned trial Judge.

Being aggrieved of passing of the judgment of conviction dated 25.09.2017 and order of sentence dated 26.09.2017, by the learned Judicial Magistrate Ist Class, Rewari and judgment dated 03.11.2018, passed by the learned Additional Sessions Judge, Rewari, petitioner preferred present revision petition before this Court.

Facts relevant for the purpose of decision of the revision petition that motor vehicular accident had taken place on 29.07.2013 during early hours. At that time, complainant-PW.6 Raj Kumar and his father, namely Prem Chand (since deceased) were going for morning walk at about 4.45 a.m. At about 5.15 a.m., when they reached near Railway Line, Rohtak, complainant and his father were going side by side. Meanwhile, one canter, which was being driven in a rash and negligent manner, hit against the father of complainant from back side. Resultantly, his father fell down on the road and sustained serious injuries on legs and head. The driver of the canter stopped on the spot for some time, but thereafter, fled away as a number of persons, who were passersby, started gathering there. The complainant had noted down the number of canter to be UP-12T-5905. Thereafter, father of the complainant was taken to Trauma Centre, Rewari, where he succumbed to his injuries because of motor vehicular accident. The matter was reported to the police and the investigation was carried out. After completion of the investigation, challan was presented in the Court.

During the course of trial, the learned trial Judge completed various proceedings of trial including framing of charge against the accused

persons, recording the statements of prosecution witnesses, statements of accused under Section 313 Cr.P.C. and in defence evidence, the accused opted not to lead any evidence. After considering the prosecution as well as defence versions, the learned trial Judge held the petitioner guilty and convicted him for the commission of offence under Sections 279 & 304-A IPC and sentenced him thereunder. Thereafter, appeal, preferred by the petitioner, was also dismissed by the learned Additional Sessions Judge, Rewari.

Learned counsel for the petitioner contended that both the learned Courts below have completely ignored certain basic facts, which resulted into miscarriage of justice.

The main contention of learned counsel for the petitioner that prosecution case is based upon the sole testimony of PW.6 Raj Kumar, whose testimony itself is not believable for more than one reason. Firstly, if he was present on the spot, how he had not sustained any injury, secondly he had not identified the accused person on the spot and accused was not arrested from the spot. Thereafter, no test identification parade was carried out and merely connecting the accused on the basis of some identification in the trial Court does not establish his guilty, especially in the light of background that accused was arrested after eight/nine months from the date of accident. More so, as per testimony of PW.6 Raj Kumar himself, the canter was stopped at a distance of 20 to 30 meters. By any stretch of imagination, it cannot be said that canter bearing No. UP-12T-5905 was in fact involved in the accident. Apart from that, there is no material or evidence available on the file. The other witnesses i.e. PW.4 Vinod Kumar

is a formal witness, who had identified the dead body of Prem Chand, PW.5 Dr. Krishan Kumar, Medical Officer, had conducted the post mortem examination on the dead body of Prem Chand (since deceased), PW.2 Sub Inspector Inder Singh had recorded FIR Ex.PW.2/A and PW.3 Head Constable Sanjay Kumar is the Investigating Officer of the case.

Learned counsel for the State contended that the accused person was in fact involved in the accident and death of Prem Chand had taken place because of rash and negligent driving of canter bearing No. UP-12T-5905 by the petitioner. The accused was seen by complainant-PW.6 Raj Kumar on the spot and thereafter, he had identified him in the trial Court. In these circumstances, no test identification parade was required. There is nothing bad, as per law, to base the conviction upon the testimony of sole eye witness if his testimony is reliable and well-stood by the cross-examination.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the learned trial Judge has rightly relied upon the testimony of PW.6 Raj Kumar, who is an eye-witness of this case. He deposed specifically that he along with his deceased father, namely Prem Chand was going for morning walk and at about 5.15 a.m., when they reached near Railway Line, Rohtak canter bearing No. UP-12T-5905 struck against his father from back side, which resulted into injuries on his legs and head. Prem Chand was taken to Trauma Centre, Rewari, where he was declared dead. The driver of canter was present on the spot and PW.6 Raj Kumar had seen him there.

Thereafter, accused ran away from the spot. As per PW.6 Raj Kumar,

accident had taken place because of rash and negligent driving of the canter by the accused only. Thereafter, the accused was identified by PW.6 Raj Kumar in the trial Court. The complainant has been well-stood by the cross-examination and there is nothing to disbelieve his testimony. More so, the complainant had reason to implicate the accused person while allowing the real culprit to go scott-free.

As regard to plea taken by the defence that no test identification parade was carried out in this case, similar controversy was before the Hon'ble Apex Court in ***Dana Yadav alias Dahu and Others v. State of Bihar (2002) 7 Supreme Court Cases 295***, wherein it was held that an eye-witness can identify an accused in the Court. It is in the nature of substantive evidence. As a matter of prudence, such evidence may require corroboration. But it cannot be said that the identification in the Court is not admissible in evidence. It was further held that rule of corroboration has exceptions and as such exceptions were delineated in the latter part of the judgment. It was held to the following effect:

“5..... It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the persons who are alleged to have been involved in the offence. Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is

through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits....

6. *It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. Question is what is its probative value? Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous Identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence.....”*

As in this case PW.6 Raj Kumar had seen the accused on the spot at the time of accident and thereafter identified the accused in the trial Court, there was no need of test identification parade.

Apart from that, the plea of denial, taken by the defence, was rightly discarded by the learned trial Judge.

The learned Appellate Court has also affirmed the said finding of conviction and order of sentence having been recorded by the learned trial Judge.

As regard to the order of sentence, both the learned Courts below have already taken most lenient view on the point of sentence and no further leniency is called for in the present revision petition.

Resultantly, present revision petition stands dismissed being devoid of any merit therein.

(Shekher Dhawan)
Judge

April 05, 2019
“DK”

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No