

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 3890 of 2018

Date of Decision: 28.05.2019

Deepak Jain
... Petitioner(s)

Versus

State of Haryana
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Deepinder Singh, Advocate
for the petitioner(s).

Mr. Neeraj Poswal, Assistant Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

Present revision petition against the judgment of conviction dated 18.08.2017 and order of sentence dated 19.08.2017, passed by the learned Judicial Magistrate Ist Class, Faridabad in case FIR No. 357 dated 09.05.2013, registered under Sections 279 & 304-A IPC at Police Station Sector 7, Faridabad, whereby petitioner was convicted for the commission of offence under Sections 279 & 304-A IPC and sentenced as under:-

S.No.	Sentenced for the offence	Sentence awarded
1.	Section 279 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/-, in default whereof to further undergo rigorous imprisonment for a period of 15 days.
2.	Section 304-A IPC	To undergo rigorous

S.No.	Sentenced for the offence	Sentence awarded
		imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default whereof to further undergo rigorous imprisonment for a period of 30 days.

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, vide judgment dated 20.11.2018, affirmed the judgment of conviction and order of sentence, passed by the learned trial Judge and dismissed the appeal.

Facts relevant for the purpose of decision of the revision petition that on the intervening night of 8th/9th of May, 2013, a telephonic message was received in the Police Post regarding admission of Surrender son of Bharoti in B.K. Hospital, Faridabad, upon which the police party reached there and the doctor informed that patient had already been referred to the Safdarjung Hospital at New Delhi. On 09.05.2013, a telephonic message was received in the Police Post that injured had died, upon which Assistant Sub Inspector Balbir recorded the statement of Parmod Kumar, an eye witness of the alleged occurrence. As per complainant, on 08.05.2013 at about 9.30 pm, he, along with Roshan Lal and Surrender, had left the company for Mewla Maharajpur. They reached on the main road and there was traffic signal indicating red light and they started crossing the road on their feet. Meanwhile, a bike came from Ballabhgarh side, which was being driven at a very high speed and in a rash & negligent manner and hit against Surrender. Resultantly, Surrender fell down and sustained injuries on his head.

The registration number of the bike was HR-29-AC-5771. The complainant and Roshan Lal were taking care of Surender and meanwhile, the offending driver fled away from the spot whom they could identify if produced before them. Thereafter, the injured was taken to B.K. Hospital, Faridabad and then he was referred to Safdarjung Hospital, New Delhi, where he succumbed to his injuries..

On this information, police had investigated the matter, statement of the witnesses were recorded, site plan was prepared, offending bike was taken into police custody and accused was arrested. After completion of investigation, challan was presented in the Court.

The learned trial Judge completed the proceedings of trial including framing of charge against the accused person, recording the statements of prosecution witnesses, statement of accused under Section 313 Cr.PC. In defence evidence, the accused examined his brother Hemant Jain as DW.1 and thereafter, he closed his defence 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 Sessions Judge, Faridabad. As such, present revision petition before this Court.

Learned counsel for the petitioner contended that both the learned Courts below have not appreciated the correct facts and legal proposition of this case. As per learned counsel, the accused/petitioner was

not apprehended on the spot and no test identification parade of petitioner was conducted in this case and mere identification of the accused person in the Court does not mean anything, but both the learned Courts below have completely ignored this fact. Petitioner has been arrayed as an accused simply on the ground that the offending vehicle is in the name of his relative, namely Prabh Dayal.

Learned counsel for the petitioner also contended that there are material and legal defects in the trial of the case as statement of PW.5-Roshal Lal, who is the material witness, has not been put to the accused in his statement under Section 313 Cr.P.C. As such, the judgment of conviction dated 18.09.2017 and order of sentence dated 19.08.2017, passed by the learned trial Judge and judgment dated 20.11.2018, passed by the learned lower Appellate Court are liable to be set aside and present revision petition be accepted.

Learned counsel for the respondent-State contended that the point regarding test identification parade of the accused was raised before both the learned Courts below, who have rightly negated the same because the complainant and eye witness had identified the accused person firstly at the spot and thereafter, during the course of trial.

As regard to statement of PW.5-Roshan Lal having not been put to the accused in his statement under Section 313 Cr.P.C., learned counsel for the respondent-State contended that petitioner has not able to make out any case that any prejudice has been caused to him. More so, no such plea was taken before both the learned Courts below. As such, present revision

petition is not maintainable and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that the prosecution case is based on the testimony of PW.5-Roshan Lal, who is an eye witness of the alleged occurrence. As per statement of PW.5, he had seen the accused person on the spot, who had caused the accident and then he fled away from the spot and thereafter, identified him in the learned trial Court. The said witness was cross-examined at length and maintained that petitioner-Deepak Jain was driving the offending vehicle at a very high speed and in a rash & negligent manner, which resulted into accident. Thereafter, bike, involved in the accident, was taken into police custody on 11.05.2013 from Prabh Dayal, owner of the vehicle. The mechanical examination of the offending vehicle was also got done. Apart from that, prosecution has been able to examine PW.4-Dr. Lokesh Gupta, who had conducted the medical examination of deceased when he was taken to B.K.Hospital and copy of his medicolegal report is Ex.PW.4/A. Thereafter, he was referred to Safdarjung Hospital, New Delhi and ruqa was sent to the police immediately.

As regard to identification of the accused in the Court and there being no test identification parade, both the learned Courts below have rightly placed reliance upon the judgment rendered by the Hon'ble Apex Court in ***Ravi Kapoor v. State of Rajasthan 2012(4) RCR (Criminal) 245***, wherein it was observed that the Court identification itself is a good identification in the eyes of law. It is not necessary that it must be

preceded by the test identification parade. Similar view was also taken by the Hon'ble Apex Court in ***State of Himachal Pradesh v. Lekhraj (2000) 1 SCC 247***, wherein it was observed that test identification parade is only corroborative piece of evidence and it is not binding that the same must be held if it is, otherwise, proved by statement of witnesses. Applying the same principle of law, in this case, prosecution has proved its case as per statement of eye witness PW.5-Roshan Lal and other oral and documentary evidence, which has been discussed in length by both the learned Courts below.

As regard to statement of PW.5-Roshan Lal having not been put to the accused in his statement under Section 313 Cr.P.C., it is settled proposition of law that mere not putting the statement of a witness to the accused in his statement under Section 313 Cr.P.C., does not make out a case for retrial, especially when no prejudice is shown to have been caused to the accused person. Similar matter was before the Hon'ble Apex Court in ***Liyakat and Another v. State of Rajasthan 2014 (4) Crimes 271***, wherein it was held as under:-

“19. From bare perusal of the aforesaid provision, it is manifest that the Section intended to afford a person accused of a crime an opportunity to explain the circumstances appearing in evidence against him. Sub-section (1) of Section 313 empowers the Court to put such question to the accused as is considered necessary at the stage of the inquiry for trial. At the same time it imposes a duty and makes it mandatory on the Court to question him generally on the prosecution having completed the examination of its witnesses and before the

accused is called on to enter upon his defence. Indisputably, the attention of the accused should be invited to inculpatory piece of evidence or circumstances laid on record and to give him an opportunity to offer an explanation if he chooses to do it. The purpose of examination of the accused under Section 313 of the Code is to give the accused an opportunity to explain the incriminating material which has come on the record. The scope and purpose of Section 313 of the Code came for consideration before this Court in a number of judgments, few of which are discussed for the present case.”

As per view taken by the Hon’ble Apex Court in ***Liyakat’s*** case (*supra*), the facts of the present case and background of the matter that the entire trial was conducted in the presence of the accused, who was ably assisted by his learned counsel, the entire prosecution evidence was led before him. There was nothing on the file that he was taken by way of surprise, rather the evidence, which was against him, was available on the file. More so, no such plea was taken by the petitioner before the learned trial Judge or the learned lower Appellate Court, making out a case that any prejudice has been caused to him. As such, the matter cannot be remanded back on this ground, at this stage. Otherwise, both the learned Courts below have thoroughly scanned the prosecution evidence and rightly came to the conclusion that the motor vehicular accident was caused by the petitioner whose identity has been established during the course of trial and defence evidence is just a plea of denial which does not find support from any

the commission of offence under Sections 279 & 304-A IPC.

As regard to 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.

In view of above, present revision petition is without any merits and the same stands dismissed.

(Shekher Dhawan)
Judge

May 28, 2019
“DK”

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