

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-2135-2019
Date of Decision:19.11.2019

Gurinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ghulam Nabi Malik, Advocate for the petitioner.
Mr.SPS Tinna, Addl. Advocate General, Punjab.
Mr.S.S.Narula, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Through criminal revision petition, correctness of the judgment of conviction and order of sentence dated 05.08.2009 passed by the learned Additional Sessions Judge under Sections 279/337/338/304-A of the Indian Penal Code, while reversing the judgment of acquittal passed by the learned Judicial Magistrate 1st Class, has been challenged. The petitioner has been sentenced as under:-

Name of convict	Under Section	Sentence and fine
Gurinder Singh	279 IPC	Rigorous Imprisonment for Six Months and fine Rs. 1000/- in default of payment of fine, simple imprisonment for 15 days in addition to rigorous imprisonment as passed above.
	337 IPC	Rigorous Imprisonment for Six Months and fine Rs.500/- in default of payment of fine, simple imprisonment for 15 days in addition to rigorous imprisonment as passed above.

	338 IPC	Rigorous Imprisonment for one year and fine Rs. 1000/- in default of payment of fine, simple imprisonment for 15 days in addition to rigorous imprisonment as passed above.
	304-A IPC	Rigorous Imprisonment for two years and fine Rs. 5000/- in default of payment of fine, simple imprisonment for one month days in addition to imprisonment as passed above.

In nutshell, the case of the prosecution is that on 18.01.2013 first informant (Manmohan Singh, PW-5) got recorded his statement before ASI Jaspal Singh that he is resident of House No.649, House Fed Complex, Amritsar while working as Senior Manager with Bank of Baroda at Amritsar. Today, on 18.01.2018, he in his vehicle bearing No.PB-02AY-8070 came to meet his brother Jaspal Singh, resident of Dogra Mohalla, opposite Mardan Da Gurdwara, Patiala. Jaspal Singh (on the driving seat) along with Manjit Kaur-wife and two children Anmol Singh and Prabhleen kaur were going to Ludhiana in their Santro Car No. PB-11X-5872. At about 10.00 AM when they reached Bus Stand of Village Bagrian, then from the opposite side, a Bolero (Jeep) vehicle bearing No.PB-65L-1680 came at a very high speed in a rash and negligent manner although his brother tried to save themselves by going towards kacha (unmettled) passage, hit the car resulting in injuries to its passengers. The first informant after parking his car saw that his sister-in-law Smt.Manjit Kaur has received head injury and died at the spot. On seeing the occurrence, many people gathered and the police also reached at the spot. They got admitted his brother Jaspal Singh and children in Columbia Hospital. He

came to know about the name of driver of Bolero vehicle as Gurinder Singh (petitioner herein). The occurrence took place due to rash and negligent driving of the petitioner, who was driving the offending vehicle i.e. Bolero vehicle bearing No. PB-65L-1680.

On the basis of statement of the first informant, the case was registered. Photographs of the vehicles involved in the accident as well as corpse were got clicked. Both the vehicles involved in the accident were taken into police custody by separate memos. Post-mortem of the corpse was got conducted from the Civil Hospital, Fatehgarh Sahib. Mechanical reports of the vehicles involved in the accident were obtained and the petitioner was arrested on 24.01.2013.

On completion of the investigation, police report as required under Section 173 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') was presented, copies whereof were supplied free of cost to the accused-petitioner.

After finding that prima facie a case is made out, the petitioner was charge-sheeted on 16.05.2013 to which he pleaded not guilty and claimed trial.

Prosecution in order to prove its case examined following witnesses:-

Pardeep Kumar	PW1
Anmol Singh	PW2
Dr. Rittu Banga	PW3
Prabhleen Kaur	PW4
Manmohan Singh	PW5
complainant	
Dr. Harish Tulli	PW6
HC Rajinder Kumar	PW7
Nirmal Singh	PW8
Neelam Mittal	PW9
Ramesh Lal	PW10
ASI Jaspal Singh	PW11

Navdeep Singh PW12

Prosecution also proved on file following documents:-

Description of Document	Sr. No. of Exhibits
Photographs	Ex. P1 to Ex.P11
Recovery memo of photographs	Ex. PW1/A
Post mortem report	Ex. PW3/A
Pictorial diagramme	Ex. PW3/B
Statement of complainant	Ex. PW5/A
Recovery memos of vehicles involved in the accident	Ex. PW5/B and Ex. PW5/C
Statement	Ex. PW5/D
Receipt	Ex. PW5/E
Injuries of Prabhleen Kaur	Ex. PW6/A to Ex. PW6/C
Mechanical reports of vehicles	Ex. PW7/A and Ex. PW7/B
FIR	Ex. PW8/A
Endorsement	Ex. PW8/B
Arrest memo	Ex. PW8/C
Personal search memo	Ex. PW8/D
Recovery memo of Bolero	Ex. PW8/E
Applications	Ex. PW8/F and Ex. PW8/G
R.C of Bolero	Ex. PW9/A
Computerized copy of Bolero	Ex. PW9/B
Driving license of accused	Ex. PW10/A
Ruqa	Ex. PW11/A
Inquest report	Ex. PW11/B
Application regarding fitness	Ex. P1 to Ex. P3
Site pan	Ex. PW11/C
Treatment record of Jaspal Singh, Anmol and Prabhleen Kaur,	Ex. PW12/A to Ex. PW12/C

Statement of petitioner-accused under Section 313 of the Code was recorded, wherein the incriminating material produced and proved by the prosecution was put to him, but he pleaded false implication and expressed intention to lead evidence in defence. He examined Davinder

Singh as DW-1.

Learned Judicial Magistrate, after appreciating the evidence, dismissed the case of the prosecution after holding that the evidence led by the prosecution is neither sufficient nor trustworthy. It is not enough to convict the petitioner. Thus, petitioner was given “benefit of doubt”.

Jaspal Singh-injured filed an appeal against the judgment of acquittal. The learned Court of Sessions has reversed the judgment passed by the learned Judicial Magistrate 1st Class and convicted the petitioner.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below along with the record.

On the one hand, learned counsel for the petitioner, while referring to the statement of the various prosecution witnesses, has submitted that learned Court of Sessions has committed an error while reversing the judgment of acquittal without finding any perversity or substantive error in the judgment under appeal, whereas on the other hand, learned counsel for the State supported by the learned counsel appearing for the injured Jaspal Singh has defended the judgment passed by learned Court of Sessions and contended that while exercising jurisdiction of revision, this Court cannot re-appreciate the evidence. Hence, he submitted that the judgment passed by the learned Court of Session should be upheld.

In the considered view of this Court, following issues arise for determination:-

- (i) Whether the Court of Sessions while hearing an appeal against the judgment of acquittal is entitled to interfere without finding that the judgment under appeal suffers from any

perversity or substantive error

(ii) While exercising revisional jurisdiction, whether this Court is debarred from reappreciating the evidence particularly when there are errors apparent on the face of the judgment.

Before this Court proceeds to answer the issues, it would be apt to discuss the evidence available on the file.

Most important witness is the first informant, examined as PW-5-Manmohan Singh (brother of the deceased). He was posted at that time as Senior Manager of the bank at Amritsar. The accident took place at Fatehgarh Sahib, which is at a distance of approximately 200 km from the place of his posting. As per the case of prosecution, the alleged accident took place at 10.00 AM. It is also the case of prosecution that first informant-complainant had come to meet his brother at Patiala a day before and thereafter when his brother along with his family members were going towards Ludhiana, the petitioner was coming from behind while following his brother in a separate vehicle. It is the case of the first informant that police officials posted on highway duty reached at the place of accident within no time. The statement of the first informant was recorded at 03:08 PM i.e. after a period of five hours at Hospital. It has come in evidence that first informant had not got sanctioned any leave on 18.01.2013. It is also admitted case of the prosecution that deceased and injured were taken out of ill-fated vehicle by certain people who had gathered at the place of accident and not by the first informant. It is also admitted case of the first informant that injured and the deceased were moved/brought to the Hospital by someone else. As per the Hospital record, the injured were brought by Narinder Singh and not by first informant. Although, first informant, claims

that he had taken oral leave on 18.01.2013 but when further questioned, he admitted that no oral leave is granted in the bank where he is employed.

As discussed above, presence of the first informant at the time of accident is doubtful. First Informant is working as a Manager in a Nationalised Bank posted approximately 200 km away from the place of accident. In such circumstances and particularly in view of the facts which have been noticed about, presence of first informant at the place of accident appears to be improbable. The conduct of the first informant, after the accident, also does not appear to be natural. The first informant being brother of the injured Jaspal Singh would have immediately taken the injured namely his brother and children of his brother to the hospital in his own vehicle. He would have also made effort to take out the injured from the mangled vehicle.

Now let us examine the evidence of PW-4 Prableen Kaur-injured. She admits that her father could not control the vehicle and struck against the tree. She further says that she became unconscious when the accident took place. She has been informed about the name of the petitioner (alleged driver of the Bolero-offending vehicle) by her uncle i.e. first informant Manmohan Singh whose own presence at the time of accident is doubtful. She goes on to admit that after the accident, both the vehicles were standing at a distance in one side of the road.

Next eye-witness is PW-2 Anmol Singh, the injured. On careful reading of the cross-examination, he tried to conceal more than what he revealed before the Court. He stated that he cannot tell who had pulled his mother out of the damaged car. He also could not tell how many persons pulled him, his sister and his father from the damaged car. He had not seen

any police at the spot. On persistent cross-examination, he admitted that the Bolero Jeep, the offending vehicle, was standing on the side of village Jatvali at a distance of 50 yards from the damaged car in which he alongwith his family members were travelling. The first informant, Manmohan Singh, had disclosed him the name of the driver of the offending vehicle i.e. petitioner herein between 20.01.2013 to 27.01.2013.

The evidence of the Investigating Officer has already been adversely commented upon not only by the Magistrate but also by the First Appellate Court.

Now the stage is set for examining the documents available on the file.

The photographs produced of the place where the alleged accident took place and the vehicles are Exhibits P-1 to P-11. Exhibit P-1 shows that front side of santro car in which deceased along with her family were travelling stands badly damaged from front side. Both the headlights, windscreen, bumper and bonnet of the Santro car are damaged. Ex.P2 to Ex.P4-photographs are of deceased Late Smt.Manjit Kaur lying on the mother earth. Ex.P5-photograph is clicked from the backside of the car which shows that back portion of the car is intact. On careful examination of photograph, Ex.P5, proves that the car is standing near the tree. On the other hand Ex.P6 shows that left side of the Jeep i.e. PB-65L-1680 has been damaged. It is further apparent from a bare look at Ex.P7 and Ex.P8, both the vehicles are standing at some distance on one side of the road. Exhibit P9 also shows that Bolero Jeep allegedly being driven by the petitioner had suffered damage on left side. Its front fender has suffered damage, although both the head lights are intact. This position is further clear from Ex.P11.

On careful examination of the photographs, it shall be safe to conclude that there was a head-on collision accident of the vehicles travelling on opposite directions.

A bare perusal of lay out plan prepared by the investigating agency shows that point marked as 'B' is the place where the car was found standing after the alleged accident, whereas point 'C' is the place where the alleged offending vehicle i.e. Bolero Jeep was found. There is an unmetalled passage towards left hand side of the vehicle where the Santro Car in which the deceased was travelling is found parked after the accident. As per the case of the prosecution, Jaspal Singh, respondent herein, after seeing the offending vehicle coming from opposite direction in a rash and negligent manner, had taken his Santro Car towards unmetalled passage. However, this fact is not established from the lay out plan Ex.PW11/C. Santro Car parked is on the metalled road itself not towards unmetalled passage.

The accident in question is stated to have occurred at about 10.00 AM on 18.01.2013. The FIR was registered at 5.00 PM. Therefore, there is delay of 7 hours in registration of the FIR which has not been explained.

Now let us discuss the findings of the learned court of Sessions.

The learned Court of Sessions has broadly recorded that no suggestion has been given to the prosecution witnesses that the injuries sustained by them or the deceased have not died due to accident. A death and injuries to the victims in a motor vehicular accident does not prove involvement of the petitioner. The prosecution is required to prove that the vehicle driven by the petitioner was not only involved in the accident while

he was driving the vehicle in a rash and negligent manner. As noticed above, once the vehicles were coming from opposite direction and collision had taken place head on, as is the case of the prosecution, front side of the jeep i.e. Bolero ought to have suffered damage, whereas both the head lights and bonnet of the jeep are intact. There is not even a scratch on the bonnet of the Jeep. What has been damaged is left fender and left side of the jeep.

Learned Court of Sessions has reversed the finding while recording that learned counsel appearing for the petitioner while cross-examining the first informant did not put appropriate suggestions to the first informant.

In the considered view of this Court, it is the duty of the prosecution to prove its case beyond shadow of reasonable doubt. Even in a criminal case arising from death on account of motor vehicular accident, it is the duty of the prosecution to prove that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner so as to attract conviction.

Learned Court of Sessions was much impressed by the fact that Manmohan Singh has signed various important documents prepared by the investigating agency. The signatures of Manmohan Singh do not itself prove his presence at the time of incident particularly when FIR itself is being registered after an unexplained delay of seven hours. At this stage, it may be noticed that both the courts have correctly found that statement of the investigating officer is tainted. It would be appropriate to extract relevant cross-examination of investigating officer:-

“The investigation of this case remained with me for two days i.e. 18.1.2013 and 19.1.2013. I have not inquired about this fact whether Manmohan Singh son Gurmukh Singh was

present on his duty or not. Manmohan Singh met me in the hospital at about 3 pm on the said date. I have not inquired from any person whether Prabhleen Kaur, Anmol Singh and Manjit Kaur and Jaspal Singh started from their house to Ludhiana in the early in the morning about 4 am on the said date. I have not shown in the site plan any tree standing there. I have not shown any car no.PB-02-AY-8070 standing on the spot. I can not tell at what time I reached on the spot of alleged accident. It is wrong to suggest that I never visited the place of alleged accident. I have not made any entry in the police file regarding any inquiry made by me regarding the alleged accident. I can not tell the name of any persons from whom I made inquiry regarding the above said facts. I did not make any inquiry from the hospital authorities when the injured at what time gain conscious. It is wrong to suggest that I am deposing falsely. It is wrong to suggest that I made a wrong investigation.

On perusal of the statement, it is apparent that the investigating officer failed in discharge of his duty. Investigating Officer is expected to investigate the case impartially.

Now let us examine what is the scope of the Court while dealing with revision petition.

The remedy of revision is a substantive remedy. The Court while hearing the revision is expected to examine the record, not as a court of appeal, but as a court of revision. However, in appropriate cases once the court prima facie finds that the courts have committed material error in appreciation of evidence or in the procedure followed, there is no bar on the jurisdiction of the revisional court from re-appreciating the evidence. The High Court has a supervisory jurisdiction in order to correct miscarriage of justice. The Revisional Court is empowered to exercise all the powers

conferred on the appellate court.

In view of the aforesaid discussion, this Court finds that the judgment passed by the learned judicial magistrate, granting the petitioner 'benefit of doubt', was correct and the court of sessions committed an error in setting aside the same. Hence, the revision petition is allowed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

19.11.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No