

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

**CRA-S-595-SB-2006(O&M)
Date of decision:-18.2.2020**

Surinder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Vijay Pal, Advocate
for the appellant.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

Accused Surinder Singh faced trial by learned Sessions Judge, Bathinda, who vide judgment dated 2.3.2006 convicted him for the offences under Sections 304-A and 279 IPC and vide order of the even date he was sentenced as under:

Under Section	Sentence Awarded
304-A IPC	Rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of making payment of fine, to further undergo rigorous imprisonment for three months.
279 IPC	Rigorous imprisonment for six months.

Both the sentences were ordered to run concurrently.

The accused-convict – Surinder Singh, who is appellant

before this Court, prays that the appeal be accepted, the impugned judgment of conviction and order of sentence passed against him be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case are that on 6.12.2004, Sub-Inspector Roop Singh, Incharge Police Post, Bulluana (hereinafter referred to as the Investigating Officer/I.O.) had received a QST from Police Station, Gidderbaha with regard to admission of Surat Singh injured in Civil Hospital, Sardargarh; Surat Singh had been referred to Civil Hospital, Bathinda; on 7.12.2004, the Investigating Officer again received a QST from Police Post, Civil Lines, Bathinda to the effect that said Surat Singh had succumbed to the injuries, therefore he along with other police officials went to Civil Hospital, Bathinda, where he came across complainant Gurbaj Singh son of Jaggar Singh, resident of village Sardargarh, District Bathinda working as Manager with Brar Bus Service, who in his statement made to the police stated that on 6.12.2004, he along with his brother Surat Singh and cousin Bhupinder Singh had gone to Gidderbaha town in connection with some domestic work; thereafter they came to village Karamgarh Chhatran by bus and were waiting at bus stop of village Karamgarh Chhatran for getting a conveyance for going to their village; the complainant was talking with Bhupinder Singh, whereas Surat Singh was standing at some distance from them; at about 6:30 p.m., a car bearing registration No.PIK-1900 being driven by Surinder Singh son of Balwinder Singh, known to the complainant earlier, as he belonged to nearby village came from Bathinda side and despite knowing the fact that Surat Singh could die as a result of being struck by his car, Surinder Singh accused struck his car

against Surat Singh, resultantly Surat Singh fell on the bonnet of the car and thereafter fell on the road, in the process, he received multiple injuries on his person including on his left arm, right ankle, left eye-brow etc.; after the mishap Surinder Singh sped away the car; the complainant and Bhupinder Singh arranged a conveyance and removed Surat Singh injured to Civil Hospital, Gidderbaha from where keeping in view his serious condition, he was referred to Civil Hospital, Bathinda, however, Surat Singh succumbed to the injuries suffered by him in the incident at Civil Hospital, Bathinda.

The complainant in his statement got it mentioned that Surinder Singh intentionally caused the death of Surat Singh by striking his car against him. Complainant Gurbaj Singh had signed his statement Ex.PA. The Investigating Officer appended his endorsement Ex.PA/1 below such statement and sent ruqa to the Police Station Sadar, Bathinda through Constable Kuldeep Singh, on the basis of which formal FIR was recorded by MHC Fauja Singh for the offences under Sections 304 and 279 IPC.

The Investigating Officer carried out inquest proceedings with regard to unnatural death of Surat Singh preparing a report in that regard. He submitted a written request to SMO, Civil Hospital, Bathinda through C-II Avtar Singh for getting postmortem examination conducted on the dead body of Surat Singh and got the needful done. After postmortem examination, C-II Avtar Singh handed over copy of postmortem report and clothes of deceased to the Investigating Officer, who took the same into police possession. The Investigating Officer carried out spot inspection and prepared rough site plan of the place of

incident Ex.PJ. He lifted the pieces of glass from the spot, converted those into a sealed parcel and took that into possession vide a seizure memo. On reaching the police station, the Investigating Officer deposited the case property with MHC.

Accused Surinder Singh was produced before the Investigating Officer by Kartar Singh on 9.12.2004 and he was formally arrested in this case after furnishing grounds of arrest to him. A memo in that regard was prepared, which was signed by accused and attested by the witnesses. The accused had produced his Maruti car along with its registration certificate and his driving licence before the Investigating Officer, which were taken into possession vide separate recovery memos. During the course of investigation, the Investigating Officer recorded statements of witnesses, took into possession various documents and on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Bathinda.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Bathinda, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 304 IPC is exclusively triable by Court of Sessions, learned Additional Chief Judicial Magistrate, Bathinda committed the case to the Court of learned Sessions Judge, Bathinda.

On receipt of case in the Court, learned Sessions Judge, Bathinda observing that prima facie charge for offences under Sections 304 Part-II, 304-A and 279 IPC was disclosed against accused, he was

charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined in as many as seven witnesses as per details below:

PW1 Bhupinder Singh provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW2 Gurbaj Singh complainant also provided the ocular version of the incident supporting the prosecution story on material aspects.

PW3 Dr.L.R. Jain, who had performed the postmortem examination on the dead body of Surat Singh at Civil Hospital Bathinda on 7.12.2004 deposed in that regard proving copy of postmortem report as Ex.PC, pictorial diagram showing the seats of injuries as Ex.PC/1 and Ex.PC/2. He stated that after conducting the postmortem examination, he had handed over duly stitched dead body, sealed bag containing belongings of the deceased and police papers duly signed by him containing pages 1 to 20 to the police officials. He further stated that the cause of death according him was due to haemorrhage and shock due to multiple injuries, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He gave the probable time that elapsed between injuries and death as per hospital record and between death and postmortem within 24 hours.

PW4 Mahesh Kumar, Clerk, DTO Office, Moga deposed that driving licence bearing No.132460 was issued in the name of Surinder Singh son of Balwinder Singh, resident of village Lalbai, Tehsil Muktsar, District Faridkot by ADTO, Faridkot and it was valid

for driving of scooter/car from 22.12.1994 up to 21.7.2003. He proved copy of driving licence as Ex.PF.

PW5 C Sandip Kumar stated that on 23.12.2004, he had mechanically tested Maruti car bearing registration No.PIK-1900 at Police Station Sadar, Bathinda and found that steering, brake, clutch, horn and lights were in working condition, however there was dent on the bonnet and middle of roof of the car and its front mirror was broken. He proved his report as Ex.PG.

PW6 Jagtar Singh, Clerk, DTO Office, Bathinda deposed that as per their record car bearing registration No.PIK-1900 stood transferred in favour of Sohan Singh son of Darshan Singh, resident V.Nandgarh, District Bathinda.

PW7 SI Roop Singh, who had carried out the investigation in this case deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case at the instance of Sohan Singh and Gurbaj Singh. He further stated that he was not driving the car in question and on 6.12.2004 he remained present at his workshop in his village where Sarpanch Tarsem Singh and Paramjit Singh, Ex Panch were also present in connection with repair of tractor of Paramjit Singh.

During his defence evidence, the accused examined two witnesses.

DW1 Ajay Kumar stated that he was posted as Pharmacist at Civil Hospital, Gidderbaha and as per record, the patient Surat Singh son of Jagar Singh, resident of village Sardargarh was brought in the hospital by Jaswinder Singh son of Gurbax Singh, resident of village Sardargarh. He identified signatures of Dr. Resham Singh on ruqa.

DW2 Tarsem Singh, Sarpanch of village Lalbai stated that accused is running workshop of Dynamo self repair; on 6.12.2004, he went to see Paramjit Singh, who was not available at his house; said Paramjit Singh met him at workshop of accused Surinder Singh at about 6:00 p.m. The witness further stated that he remained at the workshop of accused Surinder Singh for about 20-25 minutes and that Surinder Singh had no car; the police apprehended the accused on the next day in his presence and in presence of Paramjit Singh and falsely involved him in this case.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused – convict, learned Deputy Advocate General for the State of Punjab besides going through the record.

Both the eye-witnesses i.e. PW1 Bhupinder Singh and PW2 Gurbaj Singh provided the ocular version of the incident supporting the prosecution story on material aspects. Although they were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. A few minor contradictions and variations in their statements do not go to the root of

matter since those are bound to occur due to difference in power of perception, observation and retention of events of various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance.

PW1 Bhupinder Singh and PW2 Gurbaj Singh having lost their near relative would have been the last persons to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

Though the accused had been tried for the offence under Section 304 IPC i.e. of culpable homicide but the trial Court on

conclusion of the trial drew an inference that it was a case of death of Surat Singh on account of rash and negligent driving and it was not a case of culpable homicide.

It comes out that the accused was driving the car on a public way in a dare devil manner throwing caution to the winds not caring for the lives of the other commuters on the road. He failed to exercise care and caution expected to him while driving the jeep on the public way and by his such wrongful driving caused the accident in which Surat Singh, an innocent person has lost his life.

Though learned counsel for the appellant has contended that the incident had taken place at 6:30 p.m. when there was darkness and it was not possible to see the driver of the vehicle, therefore identity of the accused is not fully established.

But then this contention is without any merit. In the FIR itself, the complainant has stated that accused was acquainted with him earlier since he belongs to a village nearby. Therefore, there could not be any doubt with regard to identity of the accused being driver of the offending car. The incident had taken place at bus-stop of village Karamgarh Chhattra. Such type of places are normally well lit and no inference can be drawn that it was darkness at that time. Since the accused is specifically named in the FIR and was acquainted with the complainant earlier, therefore there was no necessity of arranging any test identification parade so as to get the accused identified from the eye-witnesses.

Learned counsel for the appellant further contended that there has been a delay in reporting the matter to the police inasmuch the

incident had taken place on 6.12.2004, whereas FIR was lodged on the next day i.e. 7.12.2004 and the delay makes the prosecution story doubtful. This contention is without any merit. Delay alone is not sufficient to create any doubt in the mind with regard to truthfulness of the prosecution story unless it is accompanied by other circumstances like previous enmity between the parties or some motive for false implication. Nothing of that sort is either alleged or proved in this case. After the accident had taken place at evening time during winter season, obviously the first concern of complainant brother of the victim Surat Singh was to remove him to hospital so as to provide immediate medical aid to him to save his life rather than leaving him unattended and going to the police to lodge report regarding the incident. The conduct of the complainant has been quite natural and it was after hospitalization of Surat Singh, where he had succumbed to the injuries and the police had been informed when the police party came, complainant who was present at the hospital had got his statement recorded. Thus there is no unexplained delay in reporting the matter to the police.

The plea taken by the accused does not seem plausible and satisfactory. The evidence adduced in defence by the accused fails to cause any dent in the prosecution case.

The prosecution had successfully proved its charge for the offences under Sections 279 and 304-A IPC against the accused beyond the shadow of reasonable doubt. The trial Court was justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

The learned counsel for the appellant has prayed that

sentence of the accused – convict be reduced keeping in view the fact that he is a first offender, a poor man and sole bread winner of his family.

I on my part feel that the accused by rash and negligent driving of the car had caused death of a middle aged person. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road and such type of elements have to be dealt with sternly otherwise there would be more instances of casualties due to road side accidents. In this case, no leniency can be shown to the accused – convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgment passed by the trial Court, as regards the conviction and sentence part, those are upheld and the appeal is found to be without any merit and is dismissed accordingly.

Surinder Singh – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Bathinda is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

18.2.2020
Brij

(H.S.MADAAN)
JUDGE

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