

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

CRM-A-2205-MA-2017 (O&M)

Date of Decision: 06.03.2020

Jasbir Singh

...Applicant/Appellant

Versus

Inderjit Singh and another

...Respondents

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

Present: Mr. Navkiran Singh, Advocate
for the applicant/appellant.

Mr. P.S. Ahluwalia, Advocate for respondent No.1.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution story are that FIR No.253 dated 16.11.2013 for offences under Sections 304-A, 279 and 427 IPC was recorded with Police Station Sadar, Tarn Taran on the basis of statement (Ex.PA) of complainant Major Singh son of Mohinder Singh, resident of Village Pandhori Gola on 16.11.2013, wherein he stated that his younger brother Pritam Singh was serving as JE in Punjab State Corporation Ltd., at Kapurthala. On that date, while the complainant was returning home after taking station leave and he along with Jasbir Singh son of Pritam Singh had gone to Goindwal Sahib in connection with some personal work,

where he came across his brother Pritam Singh, from there Pritam Singh left on his moped TVS FLESASS No.PB10-CR-872, whereas complainant and Jasbir Singh were on their motorcycle make Platina bearing No.PB46-E-9119. They started for their return journey to their Village Pandhori Gola. At about 5.30 PM, when they were about 3 killas away from bus stand of Village Rashiaa, Pritam Singh was going ahead by about 20 karams on his moped, then one Indica car of silver colour being driven by its driver in a rash and negligent manner without blowing horn came from behind and hit moped of Pritam Singh. Resultantly, he fell down on the road, whereas moped had gone towards the fields. Pritam Singh suffered grievous injuries due to his fell on the road and he died at the spot. His moped was also badly damaged. The car bearing No.PB02-AV0-5252 was damaged too and it stopped about one killa ahead of the place of occurrence. The driver of the car ran away from the spot after leaving it there. After registration of the formal FIR, the investigation in the case started. The Investigating Officer (for short 'IO') accompanied by the complainant went to the place of incident. The IO prepared the rough site plan of the place of accident. He recorded statements of witnesses. He got prepared the inquest report with regard to unnatural death of Pritam Singh. He got post mortem examination conducted on the dead body. Accused was accordingly arrested. Several documents were taken into possession.

After completion of investigation and other formalities, the challan against accused was prepared and filed in the Court of Illaqa Magistrate at Tarn Taran, who supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Consideration on the point of framing of charge was made. Finding a prima facie charge for offences under Sections 304-A, 279 and 427 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined as many as 08 witnesses as per details below:-

PW1 Major Singh-complainant provided the eye witness account of the accident

PW2-Jasbir Singh also gave ocular version of the accident.

PW3 HC Swinder Singh had proved statement of complainant as Ex.PA, recovery memo vide which ill fated and offending vehicle had been taken into possession as Ex.PW3/A, the application addressed to the doctor for conducting post mortem examination on the dead body of the deceased as Ex.PW3/B.

PW4 Atma Singh, motor mechanic had mechanically tested the car and moped involved in the accident and he proved his report Ex.PW4/A and Ex.PW4/B respectively.

PW5 Hira Singh had identified dead body of the deceased. He proved on record inquest report Ex.PW5/A and statement got recorded by him as Ex.PW5/B.

PW6 ASI Harwinderpal Singh, who had carried out the investigation in this case deposed regarding the same, proving various documents.

PW7 HC Kulwinder Pal deposed regarding deposit of case property with him by the IO.

PW8 Dr. Samriti Ahuja, Medical Officer who had conducted the post mortem examination on the dead body of deceased Pritam Singh on 17.11.2013 deposed that she had observed the following injuries on his person:-

1. Lacerated wound over the back of the skull. Underlying bones fractured and brain matter protruding out.
2. Sharp injury present over the right lower leg. Underlying muscles torn, vessels ruptured and bones fractured.

She proved the copy of post mortem of deceased as Ex.PW8/A. She opined that cause of death in this case was due to damage to the vital organ i.e. brain, which was sufficient to cause death in ordinary course of nature.

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 the accused were put to him but he denied the same, contending that he was innocent and had been falsely involved in this case.

During his defence evidence, he got his own statement recorded as DW1. For ready reference, his statement is reproduced as under:-

“Stated that I am the resident of above said address and I am posted in C.R.P.F. as constable. My identity proof is Mark-A. That on 16.11.2013 I was posted in Jalandhar and on that day I was coming from Jalandhar towards Tarn Taran for going to my village Sabra Tehsil Patti as there is a Bhog Ceremony (Akhand Path) at our house. I was going by my Indica Car bearing No. PB-02-AU-5252 when at about 11 AM I reached near village Rashiana then one tractor trolley .without number and without blowing horn tried ed to over take my indica car from my left side and thereby scratched of my indica car due to which mobilize of the engine of my car got leaked and my car was struck off there on the road. Since I go to my village to attend the Bhog ceremony there I requested the Ramesh Singh son of Ajib Singh who has the residence just above the place where my car was parked and requested him to take care of my car in my absence. On next day i.e. on 17.11.2013 at about 2 PM when I returned to above said place alongwith one Mechanic of the car, I did not found my car on the spot. When I inquired from Ramesh Singh son of Ajaib Singh he replied that in the evening 16.11.2013 at about 5:00 PM he found a

person lying in front of his house with his broken scotti and he informed police but inspite his request police has taken my car along to the police station with the presumption that the accident might have taken place with my car. I alongwith Ramesh Singh went to the police station but the SHO concerned assured me justice and ask me to come after 2/3 days. I again went to the police station but I then told that my car was booked as an offender vehicle in FIR No. 253/13. in police station Sadar Tarn Taran for the accident of the scotti. I posted various applications to the SSP Tarn Taran and these are Mark-B and Mark-C. but no action taken by the Higher Officer and since I joined my duty. Therefore, I could not follow up properly of my case.

He further examined Ramesh Singh as DW2, whose statement is also being reproduced for ready reference:-

“Stated that on 16.1.2013 at about 11 AM he was standing in front of my house and I saw a tractor trolley red colour without number coming from the Gobindwal Sahib and without blowing horn and in a rash and negligent manner tried to over take on indica car of silver colour which was also coming from the side of Govindwal Sahib and damage the left side of the car and the tractor trolley fled away from the spot. I immediately went near the car and saw the driver of the car in perplexed condition and I consoled him and served him glass of water by brining it from my house, later own I came to know the name of the driver of the car as Inderjit Singh who is constable in the CRPF the mobile oil of the car was got leakage and the left side of the car was badly damaged. He parked his car on

one side of the road and requested took care of his car as he has to go to his house urgently attend bhog ceremony at his house in Patti. That on the same evening at about 5:00 PM I saw one scotti lying in the field and one person found lying on the kacha road, on the opposite side of the road and it seems that some body struck him with road behind his skull as there was no other injury on his body except one small wound on the right side of the leg. I informed Sarpanch Subegh Singh who called the police on the spot and inquired from me and my family but since we had not seen any body nor be heard any voice of accident in the evening. We told the police that it seems dead body and scotti on thrown later own and we have did not heard any voice any accident in the evening on 16.11.2013. That on the next day that on 17.11.2013 owner of the Indica car came along one mechanic at about 2 PM and inquired about his car and I told him that police has taken in his car to police station alongwith scotti. I told him further that I tried to pursue the police officer not to take the indica car along to the police station, but on their assurance of not doing any in-justice, I allowed them to take the car. Then alongwith owner of the car went to the police station on 17.11.2013 but the police officer told us to come after 2/3 days. Later own I came to know that by showing the indica car as offending vehicle and police has registered one FIR bearing No. 253/13. I ask Inderjit Singh to approach the higher officers and assured him and I will stand by his side where and whenever my evidence is required qua the above said facts. Inderjit Singh is innocent and he has never cause any accident with the scotti of the deceased. At the instance of complainant party a false FIR has been registered against Inderjit Singh by showing his car as offending vehicle and proof of my identity

which is Adhar car and which is mark D.”

With that the defence evidence of accused got concluded.

After hearing arguments, learned Addl. Chief Judicial Magistrate, Tarn Taran concluded that it is established on record that on 16.11.2013 at about 5.30 PM in the area of Adda Rashiana, the accused had caused the death of Pritam Singh by driving the offending vehicle in a rash and negligent manner not amounting to culpable homicide. Whereas, on the other side, the accused has miserably failed to prove that he was innocent and had not caused the accident. Accordingly, the accused was held guilty of the offence under Sections 279, 304-A and 427 IPC and he was convicted accordingly and was taken into custody, vide judgment dated 19.01.2016. After hearing the accused on the point of quantum of sentence, vide order of even date, he was sentenced as follows:-

Sr. No.	Under Section	Period of Imprisonment
1.	279 IPC	Sentenced to undergo RI for 06 months
2.	304-A IPC	Sentenced to undergo RI for 02 years and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo RI for a period of 15 days.
3.	427 IPC	Sentenced to undergo RI for 06 months and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo RI for a period of 15 days.

The sentences were ordered to run concurrently.

The accused felt aggrieved by the judgment of his conviction and order of sentence and had preferred an appeal before the Court of Sessions, which was assigned to Addl. Sessions Judge (ASJ), Tarn Taran, who set aside the judgment of conviction and order of sentence passed against the accused by way of acceptance of appeal and acquitted the accused of the charge framed against him.

The complainant has challenged such judgment passed by ASJ, Tarn Taran by way of filing the present Leave to Appeal before this Court, which is being resisted by the respondent No.1/accused

I have heard learned counsel for the parties besides going through the record and I find that the impugned judgment passed by Addl. Sessions Judge, Tarn Taran is not sustainable and is bound to be set aside. The judgment passed by the Trial Magistrate is correct and does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law, whereas it is completely the opposite with regard to judgment passed by ASJ, Tarn Taran in appeal. It shows lack of ability to marshal the facts and interpret the law properly. By giving erroneous and faulty reasons, a detailed, legal and valid judgment had unnecessarily been set aside, in the process acquitting the accused, when guilt of the accused had successfully been proved by the prosecution by leading

enough cogent and convincing evidence. Both the eye witnesses, namely Major Singh and Jasbir Singh had fully supported the prosecution case with regard to manner of accident, categorically stating that the accident had taken place on account of rash and negligent driving of the offending car by the accused, inasmuch as it was being driven at a very high speed without blowing horn. Though, they were cross examined at length on behalf of the accused but they could not be shattered on any material point. As far as few minor variations and contradictions in their statements, those are with regard to inconsequential details of the accident and were bound to occur due to loss of memory, as a result of passage of time and difference in power of observation, perception and memorization of events of different individual. It needs to be taken into consideration that the accident had taken place on 16.11.2013, whereas statements of Major Singh and Jasbir Singh were recorded in the Court on 04.11.2014 i.e. after almost a year. It is very difficult to remember minute details after passage of such a long time. I find presence of both the witnesses to be natural and probable and account given by them to be worthy of reliance. It was PW1 Major Singh, who had set the criminal machinery into motion by reporting the matter to the police. The accident had taken place at about 5.30 PM; as deposed by PW1 Major Singh, they had remained at the spot for about 2/2 ½ hours and they tried to look after Pritam Singh in injured condition.

They had informed Ambulance No.108 which came to the spot, whereas the police had arrived there at about 8.15 PM. The conduct of Major Singh and Jasbir Singh was normal in making attempts to save life of Pritam Singh, rather than leaving him unattended there and going to the police station to report the matter regarding the accident. Even otherwise, if Major Singh and Jasbir Singh were not present at the spot, then they could not have possibly been imported to that spot within such a short time and they could not have possibly thought of fabricating a story with regard to manner of happening of the accident and giving details of the offending vehicle. Major Singh having lost his younger brother in the accident could be in a state of trauma and it could not be expected that he would think of cooking up a false story and involved the accused in this case wrongly. The very fact that in his statement recorded with the police, Major Singh had named Jasbir Singh to be the person who also seen the accident, goes to show that he was also present at the spot and had seen the accident. It needs to be mentioned here that it is always earnest endeavour of a person who has lost his near relative to ensure that the person responsible for death of his such relative is brought to book and punish suitably, rather than trying to screen the actual culprit and involve an innocent person in his place. Therefore, Major Singh could not be expected to shield the actual person and involve the accused in this case wrongly.

Learned Addl. Sessions Judge, has made much of the fact that accused is not named in the FIR and no test identification parade was arranged to get him identified from the eye witnesses, therefore, the identity is not established. But that reasoning given is totally misconceived. It needs to be mentioned here that accused Inderjit Singh had opted to get his statement recorded under Section 313 Cr.P.C., in which he has come up with a version, which is totally unconvincing and unbelievable. Learned Trial Court has dealt with his such deposition in a very appropriate and proper manner. It has been noticed that though Inderjit Singh in his cross examination had stated that he had gone to the police to inform about the accident but he failed to bring any concrete proof regarding his giving information about the accident with tractor trolley. Furthermore, he had stated during his cross examination that he had given an application to SSP but he failed to prove it in accordance with law. The Trial Magistrate has rightly noticed that the accused has stated in his defence that he was going in his Indica Car at about 11 AM and when he reached near Rashiana, then one tractor trolley without number and without blowing horn tried to overtake his Indica car from his left side thereby scratched his car. According to the Trial Magistrate, the admission is not plausible because it is not possible for a tractor trolley to overtake the car from the left side when the car in question was already going ahead of tractor trolley and was on a high

speed and if the car is going at a slow speed, then certainly the tractor trolley would overtake it from right side and not from the left side as alleged by the accused. The version set up by the accused does not appear to worthy of acceptance.

As far as witness examined by him in defence, DW2 Ramesh Singh, he in his cross examination had stated that accident between the car and moped in which Pritam Singh had expired had not taken place in front of his house and rather at far away place. He was unable to tell the number of tractor trolley and the car.

Although in a criminal case onus is heavy on the prosecution to prove the guilt of accused beyond shadow of reasonable doubt but at the same time, the accused is expected to render a reasonable and plausible explanation regarding his alleged false implication in the case. Here the accused has failed to render any such explanation. Furthermore, if the accused had been roped in wrongly in this case, then he would not have kept quiet with the damoclean sword of conviction hanging over his head and he might have lost his job also, since as stated by him appearing as DW1, he is posted in CRPF as Constable but he is not shown to have agitated the matter with higher police authorities or with his superiors in his department that he had been wrongly framed in this case. His silence and inaction in the matter goes to show that he has nothing to say and his plea of false implication lacks merit.

The medical evidence in this case duly corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The IO had no reason to involve the accused in this case wrongly and then to challan him. The other evidenced adduced by the prosecution corroborates the prosecution story on material points. It needs to be mentioned here that while doubting the prosecution story with regard to identity of the accused, learned Addl. Sessions Judge has mentioned that no test identification parade had been got conducted. As already observed, there was no necessity for doing so. Though, in the FIR got recorded initially, the name of accused/driver is not there but then registration number of his car and other particulars are there. The accused by his own admission is owner of that car and he was driving it on the fateful day, though, he has come up with a story that after being hit up by some tractor trolley, he had left it there and then went away to fetch the mechanic but one thing is there, he himself was driving the car and even as per his own version, he had not hired any driver for that purpose and no other person was accompanying him who could drive the car. The car was severally damaged in the accident. It was for him to explain as to who was the other person driving the car, if not him, but he is silent in that regard.

In the supplementary statement got recorded by the complainant on the 3rd day of the accident the accused was named as

person who had caused the accident. Although, learned counsel appearing for respondent/accused argued that the complainant did not say anything with regard to supplementary statement but merely on account of such omission, the identity of the accused being driver of the offending vehicle at the relevant time does not get negated since as discussed above, he himself nowhere claims that it was being driven by some other person and not by him. Both the eye witnesses of the accident, namely Major Singh and Jasbir Singh had identified the accused to be person who was driving the offending car at the relevant time, stating that accused driving the car had overtaken their motorcycle and thereafter hit the moped of Pritam Singh, in the process causing the accident. Thereafter, accused had came down from the vehicle and he had identified him. Thus, no doubt is left in the mind about identity of the accused. Even though, learned counsel for the accused stated that eye witnesses had made improvements in their statements and those cannot be taken into consideration but I find that this is sort of natural explanation coming from the mouths of the witnesses whose presence at the spot has been found to be there. Even otherwise, when a person is seen by another for sufficient time except when it is a fleeting glance, the identity of the person gets etched in the mind of the other and he can be easily recognized if seen later on. As such, identity of the accused by the eye witnesses in the Court can certainly be not stated to be for

the first time.

Driving a motor vehicle on a public way at fast speed without blowing horn, without caring for safety of the other road users is worst type of rash and negligent driving. From the evidence adduced on file by the prosecution, it comes out that there was want of care and caution on the part of the accused and he by driving the car in a dare devil manner, throwing caution to winds had hit the moped of the deceased from behind, in the process deceased fell down and suffered injuries to which he succumbed.

Learned counsel for respondent No.1/accused tried to build up an argument that the moped is mainly damaged from front side which nullifies the contention of eye witnesses that it had been hit the offending car from behind. However, I am not impressed by this contention. The extent of damage to the moped on rear side depends on what portion of the car had hit it and what was the speed of the car and moped at that time. After being hit, the deceased and his moped had fallen down which might have resulted in major damage to the moped on front side and it does not go to show that car had hit moped on front side.

The impugned judgment passed by ASJ, Tarn Taran being outcome of adoption of non-judicious approach, inability to properly appreciate the evidence and interpret the law cannot be sustained, the same is set aside and the legal and valid judgment

passed by the Trial Magistrate is restored by way of acceptance of the present appeal. The accused is not entitled to any leniency on the point of sentence also, since he had caused death of an innocent person by his wrongful acts. Such type of persons deserve deterrent punishment, so that others may take lesson from there fate and do not indulge in rashness and negligence while driving their vehicles. With such observations, the present appeal is allowed.

A copy of the judgment be sent to Trial Magistrate with a direction to issue non-bailable warrants of arrest against accused Inderjit Singh so as to take him into custody and send him to jail to undergo the sentence.

06.03.2020
sumit.k

(H.S. MADAAN)
JUDGE

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