

105

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.599 of 2020 (O&M)
Date of Decision: 20.03.2020

Hira Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vinod Kumar Kaushal, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

The petitioner was convicted of the offences under Sections 279 and 338 of the Indian Penal Code by the Court of Ld. Additional Chief Judicial Magistrate, Fazilka and was awarded punishment by way of Rigorous Imprisonment for 03 months and 01 year, respectively for those offences, apart from the payment of fine of Rs.1000 for the offence under Section 338 of the Indian Penal Code. His appeal against conviction was dismissed by the Ld. Sessions Judge, Fazilka, vide judgment dated 15.01.2020.

2. He was found to have been rashly and negligently driving the Punjab Roadways Bus No.PB 05-M-9883 (herein referred to as 'the offending bus'), on 20.10.2016, and in the process caused an accident by

colliding his bus with one Maruti Ertiga Car bearing registration No.PB22-H-0700, which was being driven by the complainant, namely, Vivek Kumar, who was at that time going towards Fazilka to meet his relatives.

3. In the collision, which occurred in the area of Village Jhugge Gulab Singh, the offending bus driven by the petitioner struck against the Car, on account of which, the car was badly damaged and all the three occupants therein including the complainant, who was on the driver's seat, and his father, namely, Pawan Kumar, sitting besides him and mother, namely, Poonam Rani, were seriously injured.

4. That the collusion took place on the particular date, time and its place, as mentioned in the FIR, is not in dispute.

5. Contention raised on behalf of the petitioner, however, is that the charges of rash and negligent driving imputed to him are not made out.

6. To support this, attention of the Court has been drawn to the fact that no Site Map of the place of occurrence has been led into evidence, on account of which, the actual position concerning the direction of the two vehicles involved in the accident, can not be ascertained.

7. It is seen from the statement made by the Investigating Officer, namely, ASI Harkesh Kumar that he had prepared the Site Map of the Place of alleged accident. In such circumstances, not leading such Site Map, which was admittedly drawn up, into evidence is certainly an inexplicable omission which becomes even significant considering that PW-4, namely, Iqbal Singh, who was examined as a Prosecution Witness in the case, by virtue of his having been Conductor of the offending bus, clearly stated in

his cross-examination, “*The car driver rammed into the bus which was standing, in which the fault was of the car driver*”. Thereafter, PW-4 went on to voluntarily add that “*the car driver had hit the standing bus on the wrong side of the road*”. But even after such damaging statements against the prosecution side came on record, the State never chose to re-examine this witness by resorting to the relevant provision under Section 137 of the Indian Evidence Act, nor sought to declare him hostile. As such, the submission raised on behalf of the petitioner certainly has merit.

10. It may be further observed that among the private witnesses examined, the actual eye-witnesses are only the complainant himself (PW-1) and his father-Pawan Kumar (PW-2) as well as the Bus Conductor-Iqbal Singh (PW-4). The other non official witnesses are only two, namely, Deepak Kumar (PW-3) and Gagandeep Singh (PW-6). Both of them had admitted in their statements that they did not see the actual accident taking place but saw the site, after it had already occurred .

11. Needless to add, the complainant or his father, who have deposed against the petitioner are undoubtedly interested witnesses, and it is eminently possible that if photographs of the encounter site showing the two vehicles after collusion, as well as Site Map of the locale had been led into evidence, it could have transpired that the complainant's car was actually on the wrong side of the road to which effect, a specific suggestion was also put to the complainant in his cross-examination, and in any case, the prosecution's own witness (PW-4), namely, Iqbal Singh in his statement has categorically and voluntarily stated that the car driver had hit the standing

bus on the wrong side of the road.

12. Even otherwise, it has also transpired that conduct of the petitioner immediately after the accident took place was itself prompt and responsible, since the complainant's father, namely, Pawan Kumar (PW-2) admitted in his cross-examination that the bus driver, i.e., the petitioner had come to their car and removed the injured from the same, which fact is also corroborated by PW-4.

13. In such circumstances, this Court is of the view that both the Ld. Courts below have acted with material irregularity in appreciating the evidence in a situation where even the Site Map of the locale was inexplicably withheld and one of the regular Prosecution Witnesses altogether demolished the prosecution case by his statement in cross-examination.

14. This Court is, therefore, of the view that both the Ld. Courts below have acted with material irregularity and taken a selectively perverse view of the evidence led from the prosecution side in ultimately finding the petitioner to be guilty of the offences under Sections 279 and 3338 of the Indian Penal Code, particularly in a situation where actual negligence has been imputed to the complainant himself by PW-4, who was neither declared hostile nor re-examined after he made the damaging statements, for any clarification from the prosecution side. The decisions of both the Ld. Courts below, therefore, are clearly untenable.

15. Consequently, the present revision petition is allowed after setting aside the judgments of both the Ld. Courts below. The petitioner is

acquitted of the offences for which he was charged and directed to be released from custody forthwith.

20.03.2020
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(SUDIP AHLUWALIA)
JUDGE

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