

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRR-379-2020 (O &M)
Reserved on: 23.05.2022
Pronounced on: 02.06.2022

SURINDER SINGHPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. L.S.Mann, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The convict-petitioner through a verdict drawn, on 28.04.2014, upon police challan No. 842 of 2013, became convicted, by the learned Judicial Magistrate, Fatehgarh Sahib, with respect to a charge drawn against him, for offences punishable under Sections 279, 304-A, and, under Section 338 of the Indian Penal Code, 1860. In consequence therewith, he became sentenced in the hereinafter extracted manner.

Offence	Substantive Sentence	Fine	Default Sentence
Section 279 IPC	----	Rs.1000/-	Rigorous imprisonment for one month

Section 304-A IPC	Rigorous imprisonment for two years	Rs. 1000/-	Rigorous imprisonment for one month
Section 338 IPC	-----	Rs. 1000/-	Rigorous imprisonment for one month.

2. The convict-petitioner against the verdict of conviction, and, consequent therewith sentences (supra), as became imposed upon him, preferred criminal appeal bearing No. 17 of 24.05.2014, before the learned Sessions Judge, Fatehgarh Sahib. Upon the above criminal appeal, the learned Sessions Judge, Fatehgarh Sahib after dismissing the above appeal, obviously, affirmed the verdict of conviction, and, consequent therewith sentences (supra), as became imposed, upon, the convict, by the learned trial Magistrate concerned.

3. The convict-petitioner becomes aggrieved from the afore concurrently drawn verdicts of conviction, and, also from the consequent therewith sentences of imprisonment (supra), as became imposed upon him, therefore is led to constitute thereagainst, the instant criminal revision petition, before this Court.

4. The fateful accident occurred on 09.05.2009, at the crime site reflected in Exhibit PW9/A. The offending vehicle Tata Sumo car alleged to be driven at the relevant time, by the accused-convict, is alleged to be on the inappropriate side of the road, and, is also, alleged to be driven in a rash, and, negligent manner, and, at the crime site it is alleged to strike an Indica Car. Both the above offending vehicles i.e. Tata Sumo vehicle bearing No.PB-32A-1767, and, Indica Car bearing

No. PB-31E-6722 were taken into possession by the investigating

officer concerned, through memo(s) respectively carried in Exhibit PW9/A, and, in Exhibit PW9/B.

5. Some of the occupants of the Indica Car sustained injuries on their respective persons, whereas, others succumbed to them.

6. PW-2 Dr. D.S.Bhullar made an autopsy on the body of Ramandeep Kaur, an occupant of the Indica Car. In the post mortem report drawn by him qua her, and, to which Exhibit PW2/A is assigned, he has narrated therein, the hereinafter extracted ante mortem injuries, as became carried on the person of the above.

1. Contusion 3 x 2 cm on front middle of chin.
2. Lacerated wound 4 x 2 cm on back of right elbow.
3. Lacerated wound 4 x 3 cm on middle part back of right thigh.
4. Abnormal swelling with abnormal mobility at lower third of right thigh. Femur bone underneath was fractured.
5. Lacerated wound 4 x 4 cm on front middle part of right leg.
6. Lacerated wound 8 x 4 cm on medial side lower part of right leg.
7. Crush injury of right foot.
8. Lacerated wound 14 x 8 cm on medial side of left knee.
9. Abrasions on the back and back of right arm.

7. PW-2, Dr. D.S.Bhullar on the same day at 3.15 p.m., also conducted postmortem examination on the body of Mehtab Singh, another occupant of the Indica Car. His report is carried in Exhibit PW2/B, and, narrates therein, that the hereinafter extracted ante mortem injuries became carried on the person of Mehtab Singh.

1. Abraded contusion 5 x 4 cm on right side of head in the parietal region. Skull bone underneath was fractured with extradural subdural and intracerebral haemorrhage and lacerations of brain underneath.
2. Wide abrasions were present on right side of face and right pinna i.e. ear.

8. PW-2, has thereupon opined, that Ramandeep Kaur, and, Mehtab Singh suffered demise on account of the ante mortem injuries, and, that the time which elapsed interse the injuries, and, death was within six hours, and, that within death, and, postmortem was twelve hours. Consequently, the ante mortem injuries detailed in Exhibit PW2/A, and, in Exhibit PW2/B, exhibits whereof became proven by PW-2 during the course, of his stepping into the witness box, become related to the ill fated accident.

9. Likewise, Dr. Sukhwinder Kaur stepped into the witness box as PW-8, and, proved the post mortem report Exhibit PW-8/A, and, post mortem report PW-8/B, as, became drawn by her respectively qua one Jagir Kaur, and, qua Gurmail Kaur, both occupants of the ill fated Indica Car, and, also during the course of her examination in chief, she mentioned the hereinafter extracted ante mortem injuries rather to be occurring on the body of Jagir Kaur, and, of Gurmail Kaur.

Injuries on the body of Jagir Kaur

1. Fracture of Skull bone with crush injury.
2. Fracture of right arm bone was present.
3. Lacerated wound right side of the face about 10 cm x 2 cm x 2 cm.
4. Small abrasion on the right leg.

Injuries on the body of Gurmail Kaur

1. Fracture of right hand was present.
2. Fracture of left arm was present.
3. Lacerated wound about 5 cm x 1 cm x 1 cm on the left of the face.
4. Fracture of Skull bone left side of the frontal region was present.
5. Abrasion present on the right knee joint.
6. Fracture right leg above knee joint and fracture left leg below knee joint was present.

10. She has also in her examination testified, that the above

extracted ante mortem injuries were sufficient to cause death. Moreover, she has also made a disclosure therein, that the time which elapsed interse injuries, and, death is immediate, and, that between death and postmortem was about six to twelve hours. Therefore, the entailment of ante mortem injuries upon deceased Jagir kaur, and, upon Gurmail Kaur, become related to the collision, which occurred inter se Indica car, and, wherein, both were occupants, and, the offending vehicle driven at the relevant time, by the convict-accused.

11. The ocular witnesses to the occurrence namely Harjinder Singh, Gurjant Singh, and, Roop Singh, stepped into the witness box, and, each made testifications on oath, as comprised in their respective examinations in chief, wherein, they attributed to the present petitioner, the incriminatory role, of his begetting the collision inter se the offending vehicle, and, the Indica car, wherein the above deceased, and, the injured persons became carried. The above testified with inter se consistency, that the Indica car was being driven on the appropriate side of the road, whereas, the offending vehicle became driven on the inappropriate side of the road. The above made depositions, rather with the completest interse harmony, and, without any blemish of any interse contradictions, besides without any gross embellishments or improvements being respectively made by each of the above, from their previously made statements, before the investigating officer concerned, do foster a conclusion, that the present accused through driving the vehicle, on the inappropriate side of the road, rather had, obviously, deviated from the standards of due care and caution. The resultant effect thereof, is that he was negligently driving it, and, that he caused

the collision interse the offending vehicle, and, the Indica Car, whereins, the above deceased, and, the other injured occupants rather were aboard at the relevant time.

12. In consequence, and, importantly with the above spoken facts by each of hence them with the completest interse, and, interse corroboration, when rather remained unstripped their veracity, through any apposite suggestion being meted to each of them, hence result in a conclusion that the convicts were aptly convicted for the above drawn charges, through concurrently made verdicts by both the learned courts below.

13. Be that as it may, corroboration to the depositions, of the the above witnesses, becomes also received from the investigating officer concerned, who while stepping into the witness box as PW-9, has in his examination in chief, testified that, upon his visiting the crime site, his preparing the site plan, to which Exhibit PW9/L is assigned. Since all the scribings carried therein, did not come to be suggested, during his cross examination, rather to be fictitiously prepared. Therefore, PW9/L metes corroboration to the unblemished statements, made by the ocular witnesses to the occurrence, and, makes this court, to with the firmest confidence, derive a conclusion, that the convict became unflinchingly proven to commit the charged offences.

14. The learned Counsel appearing for the petitioner, has argued with much vigor before this court, that since the investigating officer concerned, in his cross examination, has accepted a suggestion made to him, that none of the witnesses had revealed to him the name, and, identity of the accused. Thereupon, when the ocular witnesses, to

the occurrence were obviously unfamiliar with his name, and, identity therefore, unless prior to the theirs identifying the convict in court, a valid test identification parade, rather became conducted by the investigating officer concerned, wherein, the ocular witnesses concerned, proceeded to identify the accused. Consequently the identification of the accused, in court does not carry an evidentiary worth, in as much as, no credibility can be assigned to it, for want of the above misstep of the investigating officer, to, during the course of his making investigations, his not holding a valid test identification parade, wherein, the witnesses concerned, rather identified the accused.

15. Consequently, he argues that the prosecution, has failed to establish, that the offending vehicle was driven at the relevant time, by the convict.

16. Though, the above made argument, would appeal to the judicial conscience of this Court, as the mere identification, only in court by the ocular witnesses, of the accused, to be the offender, would loose evidentiary tenacity, unless, prior thereto, a valid test identification parade, was conducted by the investigating officer concerned, wherein, the ocular witnesses concerned, given their earlier, describing his key characteristic physical attributes, hence taking to, in tandem therewith, rather identify the accused to be the offender concerned. However, yet when PW-9, in his examination in chief, has deposed, that he has seized through memo Exhibit PW9/Q, the photocopy of the convicts' registration certificate, driving license, and, the insurance cover concerned, thereupon unless the above photocopies, were proven to be fictitious, and, or proven to be illegally

taken into possession by the investigating officer concerned, thereupon the revelations therein appertaining to the identity/nexus of the accused, with the offending vehicle rather would not loose credibility. However, the accused did not make an attempt, to falsify the photocopies of his driving licence, registration certificate of the offending vehicle, and, the insurance cover appertaining thereto, nor he even proceeded to take any tenable plea, that not him, but the driver engaged on the offending vehicle, was at the steering wheel, of the offending vehicle, at the time, when it collided with the Indica Car. In the absence of the above evidence becoming adduced, this court draws an firm conclusion, that the prosecution has satisfactorily discharged, the onus of proving the identity of the accused, and, or it has completely discharged the onus of its proving, that at the relevant time, the accused was at the steering wheel, of the offending vehicle.

17. Though, the accused could take a valid defence, that the apposite colliding of the offending vehicle which became driven at the relevant time by him, rather happened on account of some latent mechanical defect carried therein. The above plea could have been well rested, only upon, the report of the mechanical expert, who, after examining the offending vehicle, and the collided with vehicle, had voiced, that both the offending vehicle, and, the collided with vehicle, were/was suffering from a inherent or latent defect(s) qua, the braking or steering wheel system thereof's'.

18. However, the report of the mechanical expert which become(s) respectively carried in Exhibit PW7/A, and, in PW7/B, does not carry, any opinion, that either the offending vehicle or the collided

with vehicle suffering from any latent systematic failures.

19. In sequel, when even the above permissible canvassable exculpatory pleas are not amenable for the assignments of any evidentiary vigor.

20. In aftermath, the appraisal of evidence as made by both the learned Court below, is an objective appraisal of the adduced evidence, and, it does suffer from gross infirmity either of any misappraisal of evidence, or of non appraisal thereof.

21. In consequence, there is no merit in the petition, and, it is dismissed. The impugned verdicts, and, consequent therewith sentence(s) (supra) are affirmed and maintained.

22. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal, records be sent back to the trial court concerned.

23. Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.

02.06.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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