

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

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CRR-3317-2009

Date of Decision : **September 20, 2022**

JOG RAJ

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vijay Lath, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

PANKAJ JAIN. J. (Oral)

Petitioner is in revision against the judgment of conviction passed by the Sub Divisional Judicial Magistrate, Anandpur Sahib dated 3.11.2008 and the order of sentence whereby the petitioner has been awarded sentence for offences punishable under Sections 279 and 304-A IPC in the following manner:-

U/S 279 IPC

To pay fine of Rs.5000/-, in default of payment of fine to undergo simple imprisonment for three months.

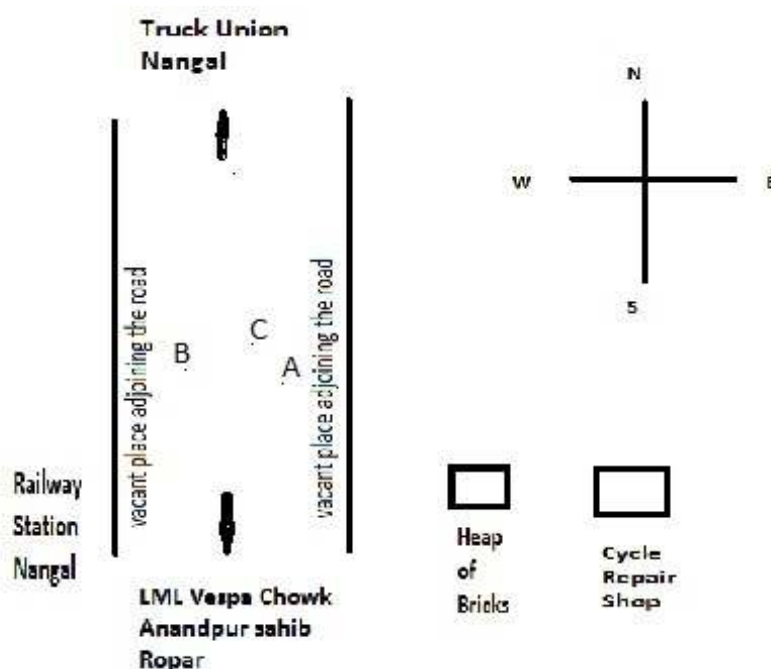
U/S 304A IPC

To undergo rigorous imprisonment for one year and to pay fine of Rs.5000/-, in default of payment of fine to further undergo simple imprisonment for three months.

The aforesaid judgment was taken in appeal preferred by the petitioner which was partly allowed vide judgment dated 8.12.2019 and the sentence awarded to the petitioner was reduced to 8 months.

As per the prosecution, on 18.7.2003 a ruqa was received regarding admission of one Avtar Singh son of Rattan Singh in an injured condition of BBMB Hospital, Nangal. The said fact was recorded by way of DDR dated 18 dated 19.7.2003. Injured being in serious condition was referred to PGI, Chandigarh. On the application made by the police authorities to record the statement of injured, he was opined to be medically unfit to make statement. One Kanti Dev got his statement recorded saying that injured-Avtar Singh was his brother-in-law who is working as a Contractor. On 18.7.2003 Jagtar Singh and Avtar Singh after finishing the work were going from Sangatpur to village Nangli via Railway Road, Nangal on their scooter. Avtar Singh who was travelling on a scooter bearing registration No.PBV-16-4070 was struck by another scooter. Due to the said impact, Avtar Singh received grievous injuries on his head and other parts of the body. He disclosed the registration number of the offending scooter to be PB-12-2379. It was alleged that the accident has taken place due to rash and negligent driving of the scooter bearing No.PB-12-2379 which was being driven by the present petitioner.

Counsel for the petitioner submits that from a bare perusal of the site-plan Ex.PW-2/E, it is evident that the petitioner cannot be held guilty for any rash and negligent driving which was a sine-quo-non to hold him guilty for the offences punishable under Sections 279 and 304-A IPC. He refers to the site-plan wherein there are three points mark A, B and C. The description of the site-plan reads as under:-



Note:- I mark A in the site map is the place where Scooter Marka Bajaj Chetak No.PB-16-4070- of the deceased Avtar Singh son of Rattan Singh resident of Nangali was laying down.

2. Mark B is the place where due to accident scooter Chetak Bajaj PB-12-2379 of the accused Jog Raj was laying down. Mark C is the place of accident and both the scooters fell down at Mark A and B after accident. Between both the scooters there is a distance of $1\frac{1}{2}$ gaj.

3. Site map is prepared on the identification of Kanti Dev.”

Thus, referring to the site-plan, counsel for the petitioner says that it is an exhibited document which was prepared by the IO, namely, Sohan Singh who appeared as PW2. The contention is that the fact that the deceased was coming from north to south and the accused was going from south to north itself shows that if the accident has taken place at point C it was the deceased who could be said to be negligent.

He further submits that in view of the fact that the scooter of the petitioner fell at point B and that of deceased fell at point A shows the momentum and so far as the speed is concerned that can also be inferred that it was the deceased who was driving the scooter at a high speed. Counsel for the petitioner further submits that there is a delay of 2 days in lodging of the FIR. The accident took place on 18.7.2003 whereas the FIR was registered on 20.7.2003. Counsel for the petitioner has further tried to argue that the alleged offending vehicle i.e. Scooter Bajaj Chetak was in the name of the one Ranjit Singh and the said fact has come on record yet the owner of the alleged offending vehicle has not been examined to prove as to how the same came in the possession of the petitioner. He further submits that the petitioner has almost completed sentence awarded to him. Counsel asserts that the judgment passed by the Courts below is based merely on site plan and the same is not sustainable in the eyes of law. Reference is made to the law laid down by the Supreme Court in **Sunita and others vs. Rajasthan State Road Transport Corporation and another, 2020(13) SCC 486**. Counsel further refers to the judgment passed by the Appellate Court to assert that the Courts below have completely misread the evidence. It has come on record that the appellant had to pass speed-breakers before reaching the spot of the accident, he thus submits that once it has come on record it can be safely inferred that the petitioner was not at high speed. He further asserts that the said fact also get corroborative from the site-plan which shows that the scooter of the appellant after accident moved

backwards whereas the scooter of the deceased despite accident moved in forward direction as the same was at high momentum.

Mr. Cheema submits that site-plan alone cannot be basis to acquit the petitioner and that too after he has suffered concurrent finding from the Courts below. He further submits that the mechanical reports Ex.PW7/A and Ex.PW7/B on record would show that both the vehicles got damaged in the accident and, thus, so far as the accidental death of deceased is concerned, the same cannot be disputed.

I have heard learned counsel for both the parties and have gone through the records of the case.

So far as the plea raised by the counsel for the petitioner with respect to non-examination of the owner of the alleged offending vehicle i.e. Bajaj Chetak is concerned, the same is misconceived and misplaced. In case the petitioner wanted to controvert the incriminating evidence against him by showing that infact he was not driving the vehicle on the fateful day, he could have examined the owner of the vehicle. Once the *prima facie* evidence has come on record with respect to his involvement in the accident, onus shifted on him to prove it otherwise under Section 106 of the Evidence Act. Coming on the plea raised on the basis of site-plan, the argument raised by the counsel for the petitioner has merit. When site-plan is read in the light of findings recorded by the Appellate Court while affirming the finding recorded by the trial Court it is found that the learned Appellate Court completely misread the site-plan. The spots mentioned in the site-plan have been jumbled resulting in perverse

finding. The finding records by the Appellate Court reads as under:-

“This accident took place near railway station when deceased alongwith PW-1 and PW-4 were approaching towards Railway Station. If that be the position, then existence of scooter of deceased Avtar Singh at point 'A' in site plan Ex.PW-2/E enough to establish as if Avtar Singh was going on correct side of the road at the time of accident. However, point 'B' is shown in the site plan Ex.PW-2/E as the spot whereas the scooter driven by appellant was lying after the accident at point 'C' shown in Ex.PW-2/E. Depiction of these points 'A' 'B' in site plan Ex.PW-2/E enough to establish as if scooter driven by appellant came on wrong side for striking against the scooter of deceased, when the same was going on correct side of the road.”

The aforesaid finding when juxtaposed upon the description of the points as given in the site-plan, it is a clear case of misreading of vital piece of evidence. Not only this the Courts below also erred in ignoring the fact that before reaching the point of accident the petitioner had to surpass the speed-breakers and, thus, he cannot be said to be at high speed. The fact w.r.t. momentum of the vehicles as is evident from the site-plan also raises some doubt about the case being projected by the prosecution. The fact that scooter of deceased fell in forward direction and the scooter of the petitioner came backwards after accident does show that it was deceased's vehicle which was in higher momentum. Trite it is benefit has to be given in favour of the accused.

Consequently, the present revision petition is allowed. The

orders passed by both the Courts below convicting the petitioner are,
hereby, set-aside.

September 20, 2022

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(PANKAJ JAIN)
JUDGE

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