

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

CRR-1482-2012 (O&M)
Date of decision: 24.03.2022

IMAMUDDIN

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Nand Lal Sammi, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The convict-revisionist herein became charged for commission of an offence constituted under Sections 279 IPC, and, 304-A of IPC. After conclusion of trial, upon Criminal Case No.495 of 2005, the learned Judicial Magistrate Ist Class, Gurgaon, through a verdict made thereons, on 24.10.2011 made a verdict of conviction, qua the afore drawn charges, hence upon the convict. Through a separate sentencing order recorded, on 25.10.2011, the Convicting Court, sentenced the accused to undergo simple imprisonment, for a term extending 6 months, and, also sentenced him to pay a fine of Rs.500/- qua the charge drawn against him under Section 279 IPC. Furthermore, upon the convict making default in depositing the above imposed fine amount, thereupon, the learned Convicting Court sentenced him, to undergo further simple imprisonment, for a term extending upto one month. Moreover, qua a charge drawn under Section 304-A IPC, the learned trial Judge concerned, imposed upon him, sentence of simple imprisonment extending upto a term of 2 years, and, also imposed upon him sentence of fine comprised in a sum of Rs.2,000/-,

and, in default of payment of fine amount, the learned trial Judge sentenced the convict to undergo simple imprisonment for a period extending upto three months. All the sentences were ordered to run concurrently.

2. The convict-petitioner herein preferred an appeal against the afore made verdict before the learned Sessions Judge, Gurgaon. The learned Sessions Judge, Gurgaon through a verdict made on 02.05.2012, upon Criminal Appeal No.60 of 18.11.2011, declined relief to the aggrieved-convict, and, rather proceeded to affirm the verdict of conviction imposed upon him, by the learned trial Judge concerned, and, also affirmed the consequent therewith sentence(s) (supra), as became imposed, upon the convict-petitioner, by the learned trial Judge.

3. The aggrieved-convict has instituted the instant Criminal Revision Petition bearing No.1482-2012, before this Court hence against the concurrent verdicts of conviction, and, consequent therewith sentences (supra), as become imposed upon him by both the learned Courts below.

4. The brief facts of the case are that on 19.11.2005 at around 9.40 am, the complainant Vijay Kumar was coming from Sohna to Gurgaon in a vehicle of the make Qualis bearing registration No.DL-ICH-3200 and he was accompanied by Sh. Mahender Partap and Vidya Sagar. The said vehicle was being driven by Vidhya Sagar and the complainant Vijay Kumar was sitting on the front seat of the said vehicle. In front of their vehicle, Amit Kumar, son of Vasdev Arora, resident of Sohna, was also coming from Sohna to Gurgaon on his motor cycle bearing registration No. DL-3SA-H2176. When they reached near the crossing of village Alipur, a Dumper bearing registration No. HR-55D-6130 came from the side of Sohna at a very fast speed and hit into the Motor Cycle of Amit Kumar and went ahead after passing over the motorcycle and the

right wheel of the said dumper passed over Amit Kumar due to which he died on the spot. It has been alleged that the driver of the offending vehicle fled away from the spot immediately after the accident. On the basis of the complaint, FIR was registered and during investigation statements of witnesses were recorded. Accused was arrested. After completion of investigation, challan under Sections 279 and 304A, IPC, was filed. Copy of challan was duly furnished to the accused as per Section 207, Cr.P.C. Accused was charged under Sections 279 and 304A of IPC vide the order dated 11.09.2006 passed by the then Ld. Judicial Magistrate Ist Class, Gurgaon, to which he pleaded not guilty and claimed trial.

5. Upon completion of the recording of the depositions' of the prosecution witnesses concerned, in the proceedings drawn under Section 313 Cr.P.C., the convict pleaded false implication, and, claimed innocence, inasmuch as, he pleaded that though he had applied brakes to minimize the speed of offending vehicle driven by him, yet the motorcycle driven at the relevant time by the deceased rather was driven at an excessive pace, and, it struck the rear tyre of the offending vehicle. After the statement of the accused becoming recorded in the proceedings drawn under Section 313 Cr.P.C., the accused chose to adduce defence evidence. However, despite various opportunities becoming granted to him for the afore purpose, he did not choose to adduce the defence evidence.

6. The learned counsel appearing for the aggrieved-convict herein, has contended, that the impugned verdict of conviction, and, consequent therewith sentence(s), as became concurrently drawn against him, by both the learned Courts below, do require interference being made by this Court, as it is based, upon gross mis-appreciation, and, non-appreciation of the evidence adduced by the prosecution.

7. On the other hand, the learned State counsel argues with much vigor, that the verdicts impugned before this Court, do not warrant any interference, as they are based, upon an objective appreciation, by both the learned Courts below, hence of the evidence germane to the charge.

8. The genesis of the prosecution case is embodied in a statement made by the complainant to the police. The statement as made by the complainant one Vijay Kumar, to the police becomes comprised in Ex. PW-1. The afore made statement by the complainant to the police, resulted in the registration of an FIR appertaining to the penal occurrence, and, to which Ex. PW7/A is assigned. Therefore, the complainant one Vijay Kumar becomes the star prosecution witness. Though, during the course of his examination-in-chief, he completely supported the genesis of the prosecution case as becomes comprised in Ex. PW-7/A, yet he was thereafter subjected to the ordeal of a rigorous cross-examination by the learned defence counsel. The learned defence counsel strived to elicit from him answers favourable to the defence, rather to his suggestion(s), that he was not an eye witness to the occurrence, and/or, that the deceased while atop his motorcycle was driving the same in a rash and negligent manner, and, it striking the rear tyre of the offending vehicle driven at the relevant time by the convict. However, PW-8 did not to the afore suggestions hence mete any answers rather favourable to the defence, therefore, the afore propagated defence by the convict, rather becomes belied. Moreover, since there are no blatant rife or gross embellishments, occurring in the testification of PW-8, from his previous statement recorded in writing, and, nor when he during his cross-examination hence contradicts the genesis of the prosecution case, as is articulated, by him, during the course of his rendering his examination-in-chief, thereupon, *prima-facie* credence is to be meted to his testification.

9. Moreover, another eye witness to the occurrence, one Mahender Partap (PW-9), upon his stepping into the witness box, though, also meted the completest *inter-se* corroboration to the testification earlier thereto rendered by PW-8. However, during the course of his examination-in-chief, though he denied suggestions put to him, by the learned defence counsel, that the deceased, who was atop the motorcycle concerned, as its driver, rather was not negligent in driving the same. Nonetheless, during the course of his cross-examination, he has stated, that he alongwith PW-8 the complainant, had arrived at the crime site, after five minutes of its happening hence at the relevant site, though, he also has denied the further suggestion, that he, and, one PW-8 were not ocular witnesses to the occurrence. However, for the reasons to be assigned hereinafter, the afore made statement by PW-9, during the course of cross-examination, being made upon him, by the learned defence counsel, does rather hold a valid exculpatory effect.

10. The afore duration of five minutes in the arrival, at the crime site, by both the PW-8, and, PW-9, boosts an inference, that the distance *inter-se* the vehicle whereons both were occupants, with the offending vehicle, was rather immense, and, also both could not with the optimum acuity of vision, make clear sightings thereof, nor could both make any precise echoings with respect to the exact manner of happening of the occurrence at the crime site. The further inference which spurs therefrom, is that both, also becoming disabled to with exactitude hence make any candid echoings, that whether the deceased, who was atop his motorcycle, as its rider was negligent, and/or, had breached the standards of due care and caution, inasmuch as his deviating his vehicle from the appropriate portions of the road, whereons, it became enjoined to rather become plied, and/or, that the relevant deviation was made by the convict in the

latter driving the offending vehicle. The further sequel of the afore made inference(s), is that, unless candid evidence became adduced with respect to either of the two vehicles occupying the inappropriate portions of the road, and, more specifically, when candid evidence of solemn evidentiary vigor rather surged forth, with unequivocal echoings, that the accused convict, was rather driving the offending vehicle, on the inappropriate side of the road, thereupon, the mere factum of the speed of the offending vehicle, rather was completely irrelevant. However, neither PW-8, nor PW-9 make the afore communications, in their respective testifications, and, rather except theirs making testifications with the completest *inter-se* corroboration(s), with respect to the speed, and, purported rashness of the convict driver, in his driving the offending vehicle, both do not make the afore relevant incriminatory echoings against the convict, whereas, the making of afore echoings was most imperative. Therefore, it appears that with PW-9, being related to the deceased hence became an interested witness. Even through, the factum of his interestedness was not a sufficient ground to side track his testification, yet when the afore imperative incriminatory echoings remained unspoken, by both PW-8, and, by PW-9, and, also when PW-9 concedes in his cross-examination, that he, and, PW-8 arrived at the crime site after five minutes since its happening. Consequently, the purported taint of interestedness imbuing the testification of PW-9, though *prima-facie* was not a relevant factor for discounting his testification, yet, given the afore admission, this Court strikes a conclusion that the afore admission, has the requisite exculpatory effect, and, also this Court, makes a conclusion that his testification, is blemished with a stain of interestedness. Consequently, the interestedness of PW-9, makes this Court to disbelieve his testification, and, also the testification of PW-8, the complainant.

11. Neither in the site plan to which Ex.P-3 is assigned, any communication occurs with respect to either of the vehicles, more specifically, the offending vehicle occupying hence at the relevant time, the inappropriate side of the road, and, thereupon, the convict while driving it, rather deviating from the standards of due care, and, caution, and, hence his becoming validly convicted through concurrently made verdicts, and, also valid consequent therewith sentence(s) becoming imposed upon him. The investigating officer who prepared the site plan, has also while stepping into the witness box as PW-7, though in his examination-in-chief, has echoed qua his drawing Ex.P-3, and, he also in his examination-in-chief supported the narrations made in FIR, embodied in Ex.PW-7/A. Moreover, even though, in his cross-examination, no suggestions to belie, the site plan become even meted to him by the learned defence counsel. Nonetheless it was incumbent upon the investigating officer concerned, to both in Ex.P-3, and, upon his stepping into the witness box make, vivid disclosures suggestive of the offending vehicle occupying the inappropriate side of the road. However, both the afore are not communicated by him in either. Therefore, the afore omissions also support the afore made conclusion by this Court, that the best incriminatory evidence for proving the charge against the accused, has been withheld, by the prosecution. The benefit of the afore has to be given to the accused.

12. The learned State counsel, though has submitted, that photographic evidence, captures the crime site, and, it supports the prosecution case. Therefore, he argues that since a bare glance of the photographic evidence, reveals that both vehicles concerned, were being driving in the same direction, and, if so, the depositions of ocular witnesses to the occurrence suggestive, that at the relevant crime site, though, the driver of the motorcycle inasmuch as,

deceased one Amit Kumar applied brakes to reduce the speed of the motorcycle, yet the convict did not do so, and, that the afore omission brings home an inference, that he deviated from the standards of due care and caution. However, though PW-7 in his examination-in-chief deposed, that he had personally clicked the photos of the crime site, hence purportedly making the afore revelations.

13. Be that as it may, PW-7 in his examination-in-chief, though deposed that he had personally clicked the photographs yet in his cross-examination, he belies himself, inasmuch as, yet his thereafter deposing, that he had engaged a photographer from Sohna, rather for the afore purpose, whose name he failed to disclose. Moreover, while stepping into the witness box as PW-7, he has omitted to depose, that the photographs (supra), as became impermissibly placed on record, hence display that the offending vehicle at the relevant time, was occupying the inappropriate side of the road, and, that the motorcycle, whereons the deceased was atop as its rider, was occupying the appropriate side of the road.

14. Furthermore, apparently since the learned trial Judge concerned, did not ensure the makings of exhibition marks on the photographs concerned, and, even on the negatives concerned. Therefore, the ill effect of non-making of exhibition marks, on the photographs concerned, and even on the negatives concerned, when becomes combined with the factum, that during his examination-in-chief, the investigating officer has deposed, that he had arrived at the crime site after more than 1¼ hours elapsing since the relevant occurrence happening, is that, the position of the vehicles concerned, as was available at the crime site, when the investigating officer concerned, made his arrival at the crime site, rather was not the one which was existing immediately subsequent to the

occurrence taking place. Therefore, the disturbed position, at the crime site, of the relevant vehicles, more especially, of the motorcycle, and, also when the afore factum becomes, combined with the testification of PW-8, and, PW-9, who are purported ocular witnesses, becoming not assigned any credence, brings home the inference that the prosecution has completely failed to bring forth unflinching evidence for sustaining the charge against the accused.

15. Though, the post mortem report embodied in Ex.PW-2/A, proven by PW-2 makes an opinion that the cause of demise of the deceased, was owing to shock, and, hemorrhage arising from a fatal injury, and, rupture of vital organs. Moreover, when PW-2 makes observations in Ex.PW-2/A, that the duration between injury, and, death was instantaneous, and, that between death, and, the post mortem was between 12 hours, and, hence relate the above opinion to the time of occurrence happening at the crime site. However, the effect of the afore becomes completely waned in view of the afore exculpatory conclusions, as, made by this Court.

16. This Court deprecates the slipshod, and, shoddy investigations carried into the FIR (supra). Consequently, the Registry of this Court, is directed to forthwith send a copy of this verdict to the Director General of Police, Haryana, for his proceeding to initiate appropriate action, in accordance with law, against the investigating officer concerned.

17. In consequence the impugned verdict of conviction, and, the consequent therewith sentence(s) (supra), as became imposed by both the learned Courts below, upon the convict-revisionist herein, are vitiated, as they suffer from a taint of gross mis-appreciation, and, non-appreciation of evidence germane to the charge. Therefore, the revision petition is allowed. The impugned verdicts, as, drawn by the both learned Court below, upon the convict, are

quashed, and, set aside. The personal, and, surety bonds of the convict-revisionist are directed to be forthwith cancelled, and, discharged. The convict-revisionist if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Records of the Courts below, be sent down forthwith. Case property, if any, and, if not required, be destroyed after the expiry of period of limitation.

18. Pending miscellaneous application(s), if any, also stand(s), disposed of.

24.03.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(SURESHWAR THAKUR)

JUDGE