

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

CRR-316-2013

Date of decision: 24.03.2022

SALEEM

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sukhpreet Singh, Advocate for
Mr. Vipin Yadav, Advocate for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The convict-revisionist herein became charged for the commission of an offence constituted under Sections 279 IPC, and, 304-A of IPC. After conclusion of trial, upon Criminal Case No.365 of 2010, the learned Judicial Magistrate Ist Class, Bhiwani, through a verdict made thereons, on 25.03.2011 made a verdict of conviction, qua the afore drawn charges, hence upon the convict. Through a separate sentencing order recorded, on 25.03.2011, 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.300/- 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 15 days. 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 1½ years, and, also imposed upon him sentence of fine comprised in a sum of Rs.700/-, and, in default of payment of fine amount, the learned trial Judge sentenced the convict

to undergo simple imprisonment for a period extending upto one month. All the sentences were ordered to run concurrently.

2. The convict-petitioner herein preferred an appeal against the afore made verdict before the learned Additional Sessions Judge, Bhiwani. The learned Additional Sessions Judge, Bhiwani through a verdict made on 04.01.2013, upon Criminal Appeal No.CRA/0300119/2011 of 25.04.2011, 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 (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.316-2013, 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 the present case was registered on the statement Ex. PW1/A made by Mukesh Kumar son of Sh. Kishan Singh, Rajput, resident of Dinod Gate, Bhiwani making allegations therein that he is residing at the above mentioned address and is working for Motor binding at BTM Mill. On 01.10.2007 he alongwith Bal Kishan son of Sh. Madan Lal, caste Punjabi, resident of Krishna Colony Bhiwani had gone to Lohani by a Motor Cycle for their personal work. When they were coming back to Bhiwani then Bahadur Singh son of Sh. Prithvi Singh, who deals in Milk was going by his motorcycle bearing No. HR16-B/5382 ahead of their motorcycle with the drums of milk. They were going on the left side of the road. When they reached in the area of Devsar from Jui Canal towards Bhiwani at about 9:30 AM, then a Tata-909 bearing No.RJ10GA-0614 being driven by its driver with fast speed, rashly

and negligently came from the side of Bhiwani and hit Bahadur Singh. They took their motorcycle on the Katcha portion and saved themselves. Bahadur Singh and his motorcycle was dragged for a distance of 200 yards and the drum of the milk were scattered. The driver of the offending vehicle stopped the vehicle and ran away. He further stated that he can recognize him if he appears before him. It was further alleged that Bahadur died due to injuries. When he was going to lodge the report to police, it met on the way, where he made statement to police which bears his signature. After reducing the police proceedings Ex. PW5/A same was sent to police station for registration of case, upon which formal FIR Ex. PW5/B was registered and endorsement Ex. PW5/C was made. Further investigation was carried out. Proceedings under Section 174 Cr.P.C Ex. PW5/D were conducted. An application was made to the S.M.O. General Hospital, Bhiwani for conducting post mortem examination of deceased Bahadur. The port mortem report was collected. The accidental vehicles and milk drums were taken into police possession vide memo Ex. PW5/F. The accidental vehicles were got mechanically examined, mechanical reports Ex. PW6/A and Ex. PW6/B also collected. The driving licence of the accused and Registration certificates of the offending vehicle were also taken into police possession vide memo Ex. PW5/Z. The driver licence of Bijender son of Sh. Bahadur and registration certificate of the motorcycle involved in the accident were also taken into possession vide memo Ex. PW3/A. The photographs of the place of occurrence were also got clicked and their negatives were also taken into police possession. Statements of witnesses under Section 161 Cr.P.C were recorded.

5. Copy of the challan was provided to the accused free of cost as provided under Section 207 of Cr.P.C. Accused was charge sheeted under

Section 279/304-A IPC. All the contents of the same were read over and explained to him to which he pleaded not guilty and claimed trial.

6. 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, and, he chose not to adduce any defence evidence.

7. 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.

8. 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.

9. The genesis of the prosecution case, as carried in the FIR, and, to which Ex. PW-5/B becomes assigned, is rested upon the testifications of two eye-witnesses to the occurrence. Both the eye witnesses to the occurrence stepped into the witness box respectively, as PW-1 and, as PW-2. Though, both in their respective examination-in-chief, state with the completest *intra-se* corroboration, that the collision which had occurred at the crime site *inter-se* vehicles concerned, was a sequel to the convict negligently driving the offending vehicles. Both during the ordeal of being put to a rigorous cross-examination negated suggestions, that they were not ocular witnesses to the occurrence, and, also negated suggestions, that the convict was neither rash nor

negligent in driving the offending vehicle. Therefore, and, also when their respective testifications are not ridden with any vices of theirs therein making gross or blatant improvements, from their respectively recorded previous statements recorded in writing, and, nor when their testifications, as, carried in their respective cross-examinations, do not contradict, the version qua the genesis of the prosecution case, as spelt by each in their respective examinations-in-chief. Consequently, credence is to be meted to the testifications of both PW-1, and, PW-2. Moreover, though in the FIR it is mentioned that the offending vehicle was being driven at the relevant time by the accused rather on the inappropriate side of the road but the afore fact remained unspoken by PW-1 when he stepped into the witness box. Though, the learned APP concerned, hence could yet obtain an affirmative order on his request for getting him declared hostile, and, thereafter, could conduct cross-examination upon him, yet the learned APP concerned, did not make the afore endeavour. Therefore, the afore omission does work against the prosecution, and, leads to a conclusion that the afore narration in the FIR, was both false, and, contrived.

10. Be that as it may, though both PW-1, and, PW-2 assign the relevant incriminatory role to the convict. However, both were also required to candidly speak in their respective testifications, that the convict at the relevant time of his driving the offending vehicle, had maneuvered it to the inappropriate side of the road, and, that thereupon, he had breached the standards of due care and caution, and, consequently, committed the charged offences. However, a reading of their respective testifications, does not reveal, that both of them, had made the afore communications in their respective depositions. The effect of the afore omissions by both of them, is that, the above best incriminatory evidence, for

sustaining the charge, remained unspoken by the ocular witnesses, to the occurrence, and, the further effect thereof is that the benefit of doubt thereof is to be given to the convict.

11. Even the investigating officer while stepping into the witness box as PW-5, despite his making a communication qua his drawing the site plan carried in Ex.PW5/E, rather not in his examination-in-chief, speaking with candor, about the afore factum of the offending vehicle being driven on the inappropriate side of the road, and, nor in the site plan, there are candid underlinings, with respect to the afore, though the emergence of the afore best incriminatory evidence, was a dire necessity, for sustaining the charge, obviously whereas, it did not emerge. Therefore, the effect of the suppression of the afore evidence by the investigating officer concerned, is that, the benefit of doubt, is to be given to the convict.

12. 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.

13. Though, the post mortem report embodied in Ex.PW-4/A, proven by PW-4 makes an opinion that the cause of demise of the deceased, was owing to shock, and, hemorrhage arising from a fatal injury. Moreover, when PW-4 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 1 to 6 hours, and, hence relates the above opinion to the time of occurrence happening at the crime site. However, the effect of the afore becomes completely weaned in view of the afore exculpatory conclusions, as, made by this Court.

14. 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 not required, be destroyed after the expiry of period of limitation.

24.03.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>