

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

Sr. No.312

**CRR-1586-2007**

**Date of decision : 11.05.2023**

Kashmir Singh

..... Petitioner

versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. PS Hundal, Advocate for the petitioner

Mr. HS Sullar, Senior Deputy Advocate General, Punjab

**AMAN CHAUDHARY, J.**

1. The challenge in the present revision petition is to the judgment dated 13.07.2007, passed by the learned Additional Sessions Judge (Adhoc)/Fast Track Court, Amritsar, as well as the judgment of conviction and order of sentence dated 08.02.2006 passed by the trial Court.

2. Briefly put, the prosecution case is that on 25.06.1999, Balkar Singh along with his wife was going to village Chagowan on his scooter bearing No.PB-02D-0841. When they reached Ghas Mandi Chowk, they stopped due to traffic lights. He put his scooter in motion on the signal turning green, however, in the meantime, allegedly a truck coming from behind hit the scooter, due to which, they fell down and his wife sustained injuries, who succumbed to the same at the hospital. FIR No.93 of 1999, under Sections 279/304A/427 IPC was registered at Police Station 'A' Division, Amritsar against the petitioner.

3. After completion of investigation, final report under Section

173 Cr.P.C. was presented in the Court against the accused-petitioner. Charges under Sections 279/304A/427 IPC were framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to bring home the guilt of the accused examined seven witnesses. On closure of the prosecution evidence, statement of the accused-petitioner was recorded under Section 313 Cr.P.C. wherein he denied all the incriminating circumstances that appeared against him in the prosecution case while pleading innocence. He, however, did not examine any witness in his defence.

5. The trial Court convicted and sentenced the accused-petitioner as under:

| Offence<br>u/s | Imprisonment    | Fine      | In default of<br>payment of fine |
|----------------|-----------------|-----------|----------------------------------|
| 279 IPC        | RI for 6 months | Rs.500/-  | RI for 15 days                   |
| 304A IPC       | RI for 2 year   | Rs.2000/- | RI for 1 month                   |

All the sentences were ordered to run concurrently.

6. Against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge (Adhoc)/Fast Track Court, Amritsar, which was dismissed upholding the conviction vide judgment dated 13.07.2007, however, the sentence was reduced from two years rigorous imprisonment awarded under Section 304-A IPC to 1½ years.

7. Aggrieved petitioner, preferred the present revision petition.

8. Learned counsel would submit that the identity of the accused-petitioner was highly doubtful, as no test identification parade was conducted by the police. It was not plausible that the offending truck could

be at high speed, especially when, as per the case set up by the complainant himself, the vehicles had just begun to be in motion after the traffic signal having turned green and there being many scooters, trucks and cars behind the complainant, but it hitting only his scooter. The alleged spot of accident was said to be a busy area however, no independent witness was joined. There is no evidence that the petitioner was the driver of the truck. Even the owner of the truck was not examined. Both PW1 and PW2 did not possess a licence to drive the scooter. There is also inconsistency in the statements of both the witnesses, regarding the vehicle on which the injured was taken to the hospital. Despite the large crowd and police, it is not believable that the petitioner could have run away from the spot. He was falsely implicated for taking a claim from the insurance company. He at the time of the incident was 38 years old, when the FIR was registered in the year 1999 and is now aged 58 years. He is facing the protracted trial for the last more than two decades and has an old mother as also three children of marriageable age. He is the sole breadwinner of the family and has committed no other offence till date. He has undergone about 2 months out of the sentence awarded.

9.           Opposing this, the learned counsel for the State submits that the learned Courts below after appreciating all aspects of the matter have rightly convicted and sentenced the petitioner, therefore, he prays for the dismissal of the present petition. As per the custody certificate dated 07.05.2023, issued by Additional Superintendent, Central Jail, Amritsar, filed by the learned counsel for the State, the petitioner has undergone a sentence of 01 month and 27 days.

10.           Heard the learned counsel for the parties and perused the

record.

11. Notably, as per the depositions of PW1 and PW2, they were going to the village of their niece first time on the scooters, which is at a distance of 40/45 kms from their village and they had to cross Amritsar City. PW-2 was riding on his scooter behind PW1, and in his cross-examination, he admitted that they both did not possess the driving licence. Large number of scooters, cars and trucks had stopped behind them at the '*lal batti chauraha*', they alongwith others started to move ahead at slow speed when the truck is stated to have hit PW1 from behind. The truck driver was stated to have come and stood next to them but the police personnel, who were present there, were not informed that the petitioner was driving the truck. PW1 has stated that they had taken the injured to the hospital on a rickshaw, while PW2 in his cross-examination stated that a lorry was arranged by the police to take the injured.

12. Even if the versions of PW1 and PW2 regarding the truck coming from behind at high speed in a rash and negligent manner are taken to be a gospel truth, the possibility of it hitting only the scooter of PW1 and not even that of PW2, who was admittedly following just behind him and/or any other vehicle among the large number of scooters, cars and trucks stated to be behind them, that had stopped owing to the red light, is highly improbable.

13. Furthermore, the petitioner was not arrested from the spot. His being at the place of the alleged accident and having fled the place of accident, remained uncorroborated by version of any independent witness.

The complainant did not know the petitioner. No statement of the owner of

the vehicle was recorded to substantiate that the petitioner was in his employment and assigned the duty of driving the truck in question, makes the prosecution case shrouded with elements of doubt. In such circumstances, the necessity of holding a test identification parade was of utmost significance. The mere identification of the petitioner by the witnesses in Court after a long lapse of time turns out to be a weak piece of evidence, which unless sufficiently and satisfactorily corroborated cannot be relied upon, the benefit of which enures to the accused. There is no reliable evidence to prove that the petitioner was present at the spot. In such a situation, Hon'ble The Supreme Court had held that non-conducting of a test identification parade is fatal to the case and conviction based solely on identification of accused by the complainant for the first time in Court was not sustainable and set aside. [See **Amrik Singh vs. State of Punjab**, (2022) 9 SCC 402].

14. A profitable reference can be made to the judgment rendered by Hon'ble The Supreme Court in the case of **Suleman Rahiman Mulani and another vs. State of Maharashtra**, 1968 AIR (SC) 829 wherein it was held that the direct nexus between the death of a person and rash and negligent act of the accused has to be essential to hold a person guilty under Section 304-A IPC.

15. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the fact and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused

until the contrary is proved. Merely because the truck was being driven at a “high speed” does not bespeak of either “negligence” or “rashness” by itself. Considering the factum of the alleged accident having taken place in the manner shown, there is a conspicuous absence of evidence even remotely establishing that the vehicle at that relevant time was being driven in a rash and negligent manner, that too at high speed. None of the witnesses examined by the prosecution could give any indication, even approximately as to what they meant by “high speed”, which though is a relative term.

16. In **Braham Dass vs. State of Himachal Pradesh**, (2009) 7 SCC 353, Hon’ble The Supreme Court observed that, “Section 279 deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under Section 279 IPC is not negligence. Similarly in Section 304 A the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Sections 279 or 304 -A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved.”

17. An act, in order to impose criminal liability under Section 304-A IPC must be the proximate and efficient cause without the intervention of the negligence of the other. In the present case, it is palpably clear that both the brothers were for the first time driving a scooter to a distant place, one of them even with a pillion rider, on a public road having heavy traffic and

there is no evidence to show whether they both were complying with the requirements of the Motor Vehicles Act and wearing the safety helmets, the fatal injury being on the head.

18. In the case of **Anil Kumar vs. The State**, 2012 SCC OnLine Del 3552, wherein there were contradictions in the testimonies of the alleged eye witnesses, owner was not examined, accused-driver was not apprehended at the spot and arrested subsequently, no TIP had been conducted and identification of accused was first time in the Court, it was held to cast a doubt on the prosecution case and the impugned judgment was set aside convicting the petitioner under Sections 279/304A IPC, on the ground that the prosecution had failed to prove beyond the reasonable doubt that he was driving the offending vehicle in a rash or negligent manner, causing the death of deceased Rajan.

19. It is the golden principle of Criminal Jurisprudence that it is for the prosecution to establish its case beyond the shadow of reasonable doubt. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*". Onus in this regard is heavy upon the prosecution. It is under obligation to prove the same by leading credible evidence. In the instant case, there is not even an iota of evidence to point out a finger of accusation directly and only against the petitioner, that the injuries sustained by the deceased were due to the accident caused on account of his rash and negligent driving. Allegations alone are not sufficient to hold a person guilty of an offence punishable under Sections 279 and 304-A IPC.

20. Upon analysing the evidence and considering the arguments

advanced in light of the judicial pronouncements, this Court is of the firm view that the guilt of the petitioner has not been proved to the hilt as obligated in law.

21. For the foregoing discussion, the present revision petition is allowed. The judgment of conviction and the order of sentence dated 08.02.2006, passed by the trial Court and affirmed by the lower appellate Court vide judgment dated 13.07.2007, are hereby set aside. The bail bonds of the petitioner shall stand discharged.

11.05.2023  
gsv

(AMAN CHAUDHARY)  
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No