

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

**CRR No.992 of 2007 (O&M)
Date of Decision : 26.07.2023**

Amarjeet Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Avtar Singh, Advocate
for the petitioner.

Mr. Kunal Vinayak, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Accused is in revision against the judgment passed by Additional Sessions Judge (Adhoc) Ludhiana, dated 21st of April, 2007 affirming judgment of conviction dated 8th of May, 2006 passed by Judicial Magistrate 1st Class, Ludhiana in FIR No.6, dated 6th of January, 2001 registered for the offences punishable under Sections 279, 337, 338, 427 IPC and Section 181 of M.V. Act, at Police Station Koomkalan, Ludhiana.

2. FIR was registered regarding motor-vehicular accident after *ruqa* was received. Statement of injured Charanjit Singh was recorded who claimed to be doing labour work with the Forest Department. He stated that while coming back after doing his duty on 15th of November, 2001 along with Sohan Singh who was sitting on the mudguard carrying water-tanker behind the tractor they were struck by a truck being driven by the accused. It was claimed that the truck was being driven in rash and negligent

manner. Driver disclosed his name to be Amarjit Singh Talio and thereafter ran from the spot.

3. Counsel for the petitioner submits that both the Courts below erred in law in convicting the petitioner despite the fact that the identity of the petitioner could not be proved. He submits that three eye-witnesses have been examined which were all boarding the tractor involved in the accident. Charanjit Singh who was driving the tractor has disclosed the name of the petitioner claiming that he did not know the accused but accused disclosed his name to Sohan Singh. Likewise Gian Chand also submits that it is Sohan Singh who noted the name of the accused whereas Sohan Singh in his testimony nowhere states that it is he who disclosed the name of the accused to the complainant Charanjit Singh. It has been further claimed that Sohan Singh never appeared for cross-examination and thus his testimony cannot be relied upon. Likewise it is a case wherein IO has not stepped into the witness-box and the same is sufficient to cause dent in the case of the prosecution more so in view of the fact that it is a head-on collusion. It has been further submitted that even Charanjit Singh has not brought on record his Driving Licence to show that he was holding a valid driving licence to drive a tractor that too which was carrying a water-tanker. It has been thus contended that not only the identity of the petitioner remains unproved rather the evidence *qua* rashness and negligence on part of the truck alleged to be driven by the petitioner is also discrepant and thus, Courts below erred in recording the finding against the petitioner and

ought to have invoked the principle of *Res Ipsa Loquitur* to acquit the petitioner.

4. I have heard counsel for the parties and have carefully gone through records of the case.

5. This Court is conscious of the fact that this is a revision filed by the accused and the Court is exercising jurisdiction under Section 401 Cr.P.C. Trite it is that object of the revisional jurisdiction is to confer power on Superior Courts to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of the proper precaution and apparent harshness of treatment. This jurisdiction though restricted but must be exercised when irrelevant material has been taken into consideration which resulted in miscarriage of justice.

6. The findings recorded by the Courts below when seived from the afore-stated settled law, this Court finds it to be a case for exercise of revisional jurisdiction. The Appellate Court while affirming the finding w.r.t. identity of the petitioner has recorded that “PW Charanjit Singh and PW Gian Chand have proved the identity of the accused beyond all shadow of reasonable doubts and their testimony is reliable and trustworthy”. However, bare perusal of the testimony of the Gian Chand and Charanjit Singh reveals that they both rely upon Sohan Singh and claim that the accused disclosed his name to Sohan Singh. Surprisingly, Sohan Singh never stepped into witness-box for cross-examination and thus his examination-in-chief cannot be looked into. Likewise the findings of the

Trial Court w.r.t. the identity of the petitioner being driver of the vehicle are sketchy. Though the Trial Court has recorded that it is proved beyond any shadow of reasonable doubt that the truck was driven by the accused in negligent manner and the safety of people was endangered however the basis of such finding is totally missing from the judgment.

7. Resultantly, this Court finds that the findings recorded by the Courts below to reach to the conclusion that it is the petitioner who was driving the vehicle are unfounded. The evidence regarding identity of the petitioner is discrepant. Statement of Gian Chand and Charanjit Singh is based upon the information supplied to them by Sohan Singh. Sohan Singh's testimony cannot be looked into in the absence of cross-examination. It is matter of record that Sohan Singh appeared to get his Examination-in-Chief recorded. His cross-examination was deferred and thereafter he never appeared to offer himself for cross-examination. Now the question is '*whether statement of Gian Chand and Charanjit Singh can be relied upon to hold that the petitioner was a driver of the offending vehicle?*'

8. Part II of the Indian Evidence Act, 1872 is On Proof. Chapter IV contained therein deals with 'oral evidence'. Section 60 requires that the oral evidence must be direct. The same reads as under :

“60. Oral evidence must be direct. — Oral evidence must, in all cases whatever, be direct; that is to say —

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be

the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.”

9. In view of above this Court finds that the statement of Gian Chand and Charanjit Singh being based hear say cannot be relied upon having failed the mandate of Section 60. Thus, it being a case of no evidence to back the finding on the petitioner being driver of the offending vehicle, this Court finds that the present revision needs to be allowed.

10. This Court finds that the evidence on record is discrepant to return the finding w.r.t. the identity of the petitioner as a driver of the offending vehicle and also to hold that the vehicle alleged to be driven by the petitioner was the offending vehicle i.e. *qua* rashness and negligence on part of the driver of the truck. Resultantly, the present revision petition is

allowed. Judgments passed by both the Ld. Courts are hereby set aside.
The petitioner is ordered to be acquitted of the charges.

July 26, 2023	(PANKAJ JAIN)
Dpr	JUDGE
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No