

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:131794
CRR No.2270 of 2008 (O&M)
Reserved on: October 04, 2023
Date of Decision: October 10, 2023

Vijender ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. G.S. Sandhu, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

In Criminal case No.242 of 2000, arising out of FIR No.182 dated 21.09.2000 registered at Police Station Sadar Narwana, under Sections 279/304-A IPC, accused Vijender (now petitioner) was convicted by the Court of learned Sub Divisional Judicial Magistrate, Narwana under Sections 279 and 304-A IPC, vide judgment dated 16.01.2008. Vide a separate order of even date, he was sentenced as under: -

Sr. No.	Offence U/s	Imprisonment	Fine	Default imprisonment
1.	279 IPC	01 year	₹500/-	---
2.	304-A IPC	R.I. 02 years	₹2,000/-	01 month

Both the sentences were directed to run concurrently.

2. Against the aforesaid judgment of conviction and order of sentence, petitioner filed appeal before the Court of Sessions. That Criminal appeal No.17 of 2008 was disposed of by the then learned

Sessions Judge, Jind, vide judgment dated 18.10.2008, whereby the conviction of the petitioner under Section 279 and 304-A IPC was maintained. However, the period of sentence was reduced. The modified sentence after its reduction by learned Sessions Judge, Jind is as under: -

Sr. No.	Offence U/s	Imprisonment	Fine	Default imprisonment
1.	279 IPC	R.I. for 06 months	₹500/-	---
2.	304-A IPC	R.I. for 01 year	₹2,000/-	---

3. Against the aforesaid judgment dated 18.10.2008, whereby the conviction of the petitioner has been maintained, this revision is filed.

4. The prosecution case is that complainant Ram Niwas (PW1) along with Bharat Singh (PW3), Karambir and Naresh (deceased) used to do labour work in village Bighana and after completion of the work they used to get back to their village Badanpur. On 21.09.2000, they were returning towards village Bighana on their bicycles. As they reached ahead of *Peer Ki Samadhi* between villages Hatho and Dakal, Naresh was ahead of them, followed by Karambir; whereas Bharat Singh and Ram Niwas were behind them. It is at that time that a truck bearing registration No.PAR-7628 being driven at high speed in rash and negligent manner, came from the opposite side and hit the bicycle of Naresh, causing multiple injuries to him. He was being rushed to the hospital, but he succumbed to the injuries. Truck driver fled away from the spot. On the statement of Ram Niwas, FIR was registered. He as well as other eye witnesses undertook to identify the truck driver, if produced before them. Investigation was carried out, during which the offending truck was taken into possession on 21.09.2000. Accused Vijender (petitioner) was arrested on 16.10.2000. Necessary formalities of investigation was completed and the challan was presented in the Court.

5. The accused was charge-sheeted under Sections 279 and 304-A IPC, to which he pleaded not guilty and claimed trial. The prosecution examined 11 witnesses to substantiate the charges. The incriminating material appearing in the evidence produced by the prosecution was confronted to the accused in his statement recorded under Section 313 Cr.P.C., but he controverted the same and pleaded false implication. However, the accused did not produce any evidence in defence. After hearing both the sides, learned Trial Court recorded conviction and pronounced the sentence as mentioned earlier and the appeal filed by the accused-petitioner met the fate of dismissal against conviction, though with reduction of sentence.

6. Assailing the finding of conviction by way of present revision petition, it is contended by learned counsel for the petitioner that the Courts below failed to consider the fact that offending truck had not stopped at the spot, as immediately after causing the accident, the truck driver had fled away, so neither the complainant nor the other witnesses had the opportunity to see the face of the driver of the offending truck and in the circumstances, holding of the test identification parade was necessary and since in the present case, no TIP was conducted, so the conviction could not be recorded, as identity of the petitioner as truck driver is not established. It is further contended that the Investigating Officer of the case ASI Ajmer Singh did not step into the witness box, so as to prove the recovery of the offending truck or the site plan etc. and thus, prosecution case is full of doubts. It is also contended that witnesses as examined by the prosecution are not reliable and so, the conviction deserves to be set aside.

7. In the alternative, learned counsel for the petitioner has also submitted that the accident occurred way back in the year 2000; that the petitioner has faced agony of proceedings for the last more than 22 years; that he has already undergone custody period of 01 month and 22 days and so, he may be sentenced to the imprisonment for the period already undergone by him.

8. Learned State counsel has opposed both the prayers. He contends that conviction has rightly been recorded by the Courts below by properly appreciating the evidence on record and that considering the fact that an innocent life was taken by the petitioner by driving the truck in rash and negligent manner, he does not deserve any leniency. Attention is further drawn towards the fact that during the entire period of trial and thereafter, the petitioner has been on bail except for the brief period of 01 month of 22 days and therefore, he cannot be allowed to plead the long period of agony.

9. I have considered submissions of both sides and have perused the record carefully.

10. PW1 Ram Niwas is the complainant of the case, who reiterated the version of the complaint, which is the basis of FIR. He also identified the accused facing trial before the Court to be the driver of the offending truck. His testimony finds corroboration from PW3 Bharat Singh, another eye witness, who was accompanying the deceased & complainant - PW1 at the time of accident. No doubt it is true that as per the prosecution version, after causing the accident, truck driver had fled away from the spot but in the FIR itself, it is clearly disclosed by the complainant that he and other eye witnesses could identify the truck driver, if produced before them. Still, the identification of the petitioner

as the driver of offending truck is required to be established beyond doubt in the circumstances.

11. It is important to notice that registration number of the truck is duly mentioned in the initial version of the complainant, which further finds reflected in the FIR. It is the truck bearing registration number PAR-7628, which caused the accident as per FIR and the same was taken into possession by the police on the date of accident itself, i.e., 21.09.2000. Once, the identity of the offending vehicle is established, it was not difficult for the Investigating Officer to reach to its original owner and to know as to who was behind the steering wheel of the truck at the relevant time.

12. In this regard, prosecution has examined Pawan Kumar, PW10, the registered owner of the truck. Registration certificate (Ex.P-2) proves the fact that he is the registered owner. The testimony of PW10 Pawan Kumar is quite categoric to the effect that on 21.09.2000, his truck was involved in causing the accident and at that time, it was the accused Vijender, who was driving the truck. The cross-examination of this witness on the part of the defence counsel did not help the accused in any manner. PW10 Pawan Kumar remained withstood on his statement that except the present accident, accused had not caused any other accident with the truck and that even after the accident, the accused remained driver with him for 5-6 years. Thus, testimony of PW10 Pawan Kumar, the registered owner of the vehicle, is not impeached in any manner. There was no reason for PW10 to depose falsely against his own driver i.e., accused, who remained in his employment for 5-6 year even after the accident.

13. Thus, the statement of PW1 Ram Niwas and that of PW3 Bharat Singh fully corroborated by the statement of PW10 Pawan Kumar, registered owner of the offending vehicle, establishes it beyond doubt that it was the accused, who was behind the steering wheel of the truck, when the accident was caused.

14. In the aforesaid circumstances, the test identification parade was not required. TIP cannot be considered to be sine quo non to establish the identity of an accused in every case. It depends upon the facts and circumstances of each case as to whether the Investigating Officer should take the step for conducting the TIP or not.

15. It has been categorically deposed by both PW1 and PW3 that the offending truck came from opposite side being driven in rash and negligent manner and hit the bicycle of Naresh, resulting in his death. The medical evidence in this regard is duly proved including the post-mortem report Ex.PW7/B. Identification of the deceased is not in dispute.

16. Learned counsel for the petitioner has referred to *“State of Punjab v. Iqbal Singh”, 2011 (1) R.C.R.(Criminal) 732*, wherein vital flaws in the prosecution story were found creating serious doubts and accused had been acquitted, which was challenged before the High Court. This Court observed that in acquittal cases, there is strong presumption in favour of the accused as his innocence is reinforced, reaffirmed and strengthened by judgment of acquittal.

The above cited authority does not help the petitioner in any manner. In the present case, conviction of the petitioner has been recorded by the Trial Court, which has been affirmed by the Appellate Court and therefore, the initial presumption of innocence goes.

17. In *“Gurjant Singh v. State of Punjab”*, 2023(1) Law Herald 633, relied by counsel for the petitioner, victim was himself found to be negligent, as he had tried to alight from a moving bus and fell down and in these circumstances, accused was acquitted. Again, the authority is clearly distinguishable upon the facts.

18. In *“Kuber Mali and another v. State of Bhiar”*, 2012(26) R.C.R.(Criminal) 886, non-examination of the Investigating Officer in a murder case under Section 302 IPC was held to be fatal in the facts and circumstances of the case. Said authority cannot be applied in the facts of the present case.

19. After carefully going through the impugned judgment of conviction as recorded by the Trial Court and as affirmed by the Appellate Court and having regard to the discussions as above, I find no illegality in the said judgments. As such, conviction recorded by the Trial Court and affirmed by the Appellate Court, is hereby maintained.

20. As far as the order of sentence is concerned, learned Appellate Court has already taken a lenient view by reducing the sentence of the petitioner to one-year rigorous imprisonment under Section 304-A IPC. Having regard to the fact that due to the rash and negligent driving of the petitioner, an innocent life has been snatched away, who was bread earner of his family, the Court is not in favour of reducing the sentence further. The plea of long agony of trial is not available because just after 01 month and 22 days of his incarceration, the remaining sentence of the petitioner had been suspended by this Court.

21. Consequently, this petition is hereby dismissed. Since the petitioner is on bail, therefore, he is directed to appear before learned

Chief Judicial Magistrate, Jind within a period of 15 days from today.

Learned Chief Judicial Magistrate shall prepare the necessary jail warrants for carrying out of the remaining sentence by the petitioner. Copy of this judgment be sent to learned Chief Judicial Magistrate, Jind for necessary compliance.

October 10, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No