

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRR-2398-2008

Date of Decision: *February 21, 2023*

Ajay Kumar

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. C.L. Verma, Advocate,
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

Vivek Puri, J.

The petitioner has assailed the judgments of the Courts below vide which he has been convicted and sentenced for having committed the offence punishable under Section 304-A of the Indian Penal Code (for short 'IPC').

The petitioner has been sent up to face trial for having committed the offence punishable under Sections 279, 427, 304-A IPC by the officer incharge, Police Station Balachaur.

The facts as put-forth by the prosecution are to the effect that Santokh Ram, complainant, was working as Security Guard in Montary Factory, Taunsa. His brother-in-law Ram Parkash, deceased, was working as a Labourer in

Ranbaxy Factory, Taunsa. On 07.07.2003, after completion of the duty hours, they were returning back to their village on the respective bicycles. Sohan Singh met them on the way, who was also proceeding to his village and working in Ranbaxy Factory. Ram Parkash, deceased was proceeding on his bicycle. Santokh Ram, complainant and Sohan Singh were following him on their bicycles. When they reached at Adda in the area of the village Taunsa, a car came from the Ropar side and it was being driven at a high speed. The driver of the car struck with the bicycle of Ram Parkash, who was proceeding on his correct side of the road. Ram Parkash sustained injuries and became unconscious. The registration number of the car was PB-02-AF-0198 and the driver of the car slipped away after leaving the car at the spot. Later on, the name of the driver revealed as "Ajay Kumar". After making arrangement for a vehicle, the complainant and Sohan Singh shifted Ram Parkash to Civil Hospital, Ropar and on account of serious injuries, he was referred to P.G.I., Chandigarh. The FIR has been registered under Sections 279/337/338/427 IPC on the basis of the statement (Ex.P1) of Santokh Ram, PW1, recorded on 08.07.2003. Subsequently, the deceased succumbed to the injuries in P.G.I., Chandigarh on 14.07.2003 and accordingly, the offence under Section 304-A IPC was added.

On completion of the investigation, the challan was presented against the petitioner. A prima facie case under Sections 279, 304-A and 427 IPC was made out against the petitioner. The contents of the charges were read over and explained to him to which he pleaded not guilty and claimed trial.

To substantiate its case, the prosecution has examined Santokh Ram, PW-1, who is the complainant in the instant case, Sohan Singh, PW-2 is an eye witness to the occurrence, ASI Rajiv Kumar, PW-3 has effected the arrest of the petitioner on 19.07.2003, Kuldeep Singh, PW-4 is working as Mechanic and he has mechanically tested the car involved in the occurrence and submitted the test report (Ex.PW4/A). HC Darbara Singh, PW-5 is a witness to the recovery of the car and its registration certificate and also the driving licence of the petitioner (Ex.PW5/A and Ex.PW5/B respectively), ASI Gurmail Singh, PW-6 had conducted the part investigation of the case. He had recorded the statement (Ex.P1) of the complainant and on the basis thereof, FIR (Ex.PW6/B) has been registered. He has also prepared a site plan (Ex.PW6/C) depicting the place of occurrence. Dr. Sreenivas, PW7, had conducted the post-mortem examination on the dead body of the deceased and the following injuries were found on his person:-

- “1. Stitched lacerated wound 2 x .5 cm bone deep was present on the left eye-brow.*
- 2. Abrasion 2 x 1 cm present on the left pinna.*
- 3. Multiple abrasions 4 x 2 cm on the back of right fore-arm.*
- 4. Abrasion 7 x 5 cm on the front of left eye lower 1/3rd.*
- 5. Multiple abrasions in an area 15 x 12 cm present on the back of left hip.*
- 6. Abrasions 12 x 6 cm on the back of left side chest, 10 cm from the mid line and 2 cm below angle of scapula.*
- 7. Surgical tracheostomy on the front of neck.*
- 8. Surgical thoracostomy present on the left side of chest.”*

As per the opinion, the cause of death has been stated to cerebral damage consequent to blunt force trauma to the head. All the injuries have been stated to be ante-mortem in nature and caused by blunt force impact possible in vehicular accident. Karnail Chand, PW-8 is working as Clerk in S.D.M. office and has testified with regard to the issuance of Driving Licence in favour of the petitioner.

In his statement under Section 313 of the Code of Criminal Procedure (for short `Cr.P.C.`), the petitioner has denied the correctness of the incriminating evidence against him. He has denied the fact of being driver of the vehicle in question. However, no defence evidence has been led by the petitioner.

In terms of the judgment dated 23.11.2006, the learned trial Court had convicted the petitioner under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs. 2,000/- and in default whereof, he further undergo rigorous imprisonment for a period of one month. The appeal preferred by the petitioner was dismissed by the Court of learned Additional Sessions Judge, in terms of the judgment dated 01.11.2008.

Through the present revision petition, the petitioner has assailed the aforesaid judgments vide which he has been convicted and sentenced with regard to commission of offence under Section 304-A IPC.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner, while assailing the judgments of the Courts below, has mainly contended that the identity of the petitioner as driver of the offending vehicle is not proved and established beyond the shadow of reasonable doubt. The case of the prosecution is based upon the deposition of the interested witnesses. Santokh Ram, PW1, is the brother-in-law of the deceased and Sohan Singh, PW2, was a co-employee with the deceased in Ranbaxy Factory. In the cross-examination of Santokh Ram, PW1, it is emerging that the police official had disclosed the name of

the petitioner to the complainant. The petitioner was not arrested at the spot. There is a lack of material on record to indicate as to in what manner, the complainant came to know about the name of the petitioner. Even the registered owner of the offending vehicle has not been joined during the course of investigation.

On the contrary, while supporting the judgments of the Courts below, the learned State counsel has contended that merely because Santokh Ram, PW1, is a relative and Sohan Singh, PW2, is a co-worker of the deceased cannot be termed to be a circumstance to discard their testimony. It is quite natural that Sohan Singh, PW2 and deceased had left the factory premises after the completion of the duty hours. Both the witnesses to the occurrence have identified the petitioner as driver of the offending vehicle. They have also imputed rashness and negligence on the part of the petitioner in driving the offending vehicle. The identity of the petitioner as driver of the offending vehicle has been proved and established and even no defence witness has been examined by the petitioner to dispute the fact that he was driver of the offending vehicle.

At the very outset, it may be mentioned here that it is for the prosecution to prove and establish the guilt of the accused beyond the shadow of reasonable doubt. In the

event, no defence evidence has been led by an accused during the course of trial, it cannot be termed to be a circumstance to draw any adverse inference against him, particularly because, the prosecution has to prove and establish the guilt of the accused and that too beyond the shadow of reasonable doubt.

It is significant to note that the first version of the case has been unfolded in the statement (Ex.P1) of Santokh Ram, PW1, which has been recorded on the following day of the occurrence. The registration number of the offending vehicle has been specified therein. Even the offending vehicle along with the registration certificate were taken into possession on 08.07.2003 vide recovery memo (Ex.PW5/A). In the statement (Ex.P1), it has been mentioned by the complainant that after the occurrence, the driver of the offending vehicle slipped away after leaving the vehicle at the spot and later on, his name revealed as "Ajay Kumar son of Parmod Kumar, resident of PWD Rest House, 58 Court Road, Amritsar". It is significant to note that there is nothing to suggest as to under what circumstances, Santokh Ram, PW1, came to know the name, parentage and residential address of the petitioner. Although, during the course of his examination-in-chief, Santokh Ram, PW1, has identified the petitioner, but during the course of his cross-examination, it is emerging that the accident took place at about 7.30 p.m.

and there was darkness at the place of occurrence. He further deposes to the effect that it was not possible to identify the person due to darkness. The complainant further specifically states that the police had disclosed the name and address of the driver to him. He further testifies to the effect that the police was present at the spot, but his statement was not recorded. As per the version recorded in statement (Ex.P1), the complainant along with Sohan Singh had taken the deceased to Civil Hospital, Ropar, but, in his cross-examination, the complainant has testified to the effect that the police took the injured to the Civil Hospital, Ropar and on the next day, the police had disclosed the name and address of the accused. In such circumstances, it appears that the identity of the driver of the car was not known to the complainant or the police officials on the day of accident. The material on record is silent to indicate as to in what manner the identity of the driver of the car became known to the complainant or the police officials.

It shall not be out of place to mention here that the registration certificate of the offending vehicle was recovered on the following day of the accident. As per the registration certificate, Keshav Aneja, resident of 42, Mohindra Colony, Amritsar is the registered owner thereof. There is nothing to indicate that the owner of the offending vehicle was joined in investigation of the case to verify with

regard to the driver of the offending vehicle at the time of the occurrence.

On evaluating the material on record, it emerges that in the statement (Ex.P1) on the basis whereof the FIR has been registered, it has been mentioned that the name, parentage and address of the driver of the offending vehicle became known to the complainant later on. There is nothing to suggest that as to in what manner the complainant came to know about the name and other particulars of the petitioner. In the cross-examination of the complainant, it is also emerging that the police official had disclosed the name and address of the driver to him and furthermore, there was darkness at the time of occurrence and it was not possible to identify the person due to darkness. The name of the petitioner was disclosed to the complainant on the following day of occurrence and then the statement was recorded on the basis whereof, FIR has been registered. Moreover, the registered owner of the offending vehicle has not been joined in the investigation of the case. His name has even not been reflected in the list of witnesses. Had the registered owner of the vehicle being joined during the course of investigation, it would have revealed the identity of the driver at the time of occurrence. In these set of circumstances, the identity of the petitioner as driver of the offending vehicle at the time of occurrence is neither proved nor established beyond the

shadow of reasonable doubt. Consequently, the petitioner is held entitled to the benefit of doubt.

For the aforesaid reasons, present revision petition is allowed, both the judgments of the Courts below are set aside and the petitioner is acquitted of the charges leveled against him. The fine, if deposited, be refunded to him.

February 21, 2023

vk

(Vivek Puri)
Judge

Whether speaking/reasoned: Yes
Whether reportable : Yes