

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1739 of 2009
Date of Decision: 10.05.2023

Ginder SinghAppellant
Vs.
State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. B.P.S. Virk, Advocate for the petitioner.

Mr. Gurpreet Singh Shergill, AAG, Punjab.

DEEPAK GUPTA, J.

This revision is against the concurrent finding of conviction.

2. In a criminal case arising out of FIR No.345 dated 09.07.2003 registered at Police Station Sadar Patiala, accused Ginder Singh (now petitioner) has been convicted by the Court of learned Additional Chief Judicial Magistrate, Patiala under Sections 304-A IPC vide judgment dated 04.11.2006. Vide a separate order of the even date, he was sentenced to undergo rigorous imprisonment for a period of one year and six months for committing the said offence besides fine of ₹1,000/- with default sentence of two months (RI). Appeal filed by the petitioner against the said judgment of conviction and order of sentence has been dismissed by learned Additional Sessions Judge, Patiala on 07.07.2009. Hence this revision.

3. According to prosecution case, on 09.07.2003, Charanjit Kumar (PW1) & Ram Chand (PW2) were traveling on scooter No.PB-11V-2282; whereas their parents Rattan Kumar (deceased) and Kamlesh Kaur (deceased) were traveling on separate scooter No.PB-13D-2611, being

driven by Rattan Kumar, on which Kamlesh Kaur was the pillion rider. Scooter of the deceased was ahead of scooter of Charanjit Kumar and Ram Chand. They were going towards Village Rajgarh. At about 03:30 PM, Rattan Kumar stopped the scooter near the turn of Village Rajgarh, when a PRTC bus of Barnala Depot bearing registration No.PB-11F-9763 came at a high speed from Patiala side and its driver dashed the bus against the scooter of Rattan Kumar. After collision, the bus dragged the scooter of father of complainant towards bushes standing on the right side of the road. Both Rattan Kumar as well as Kamlesh died at the spot and their scooter was damaged completely. Bus driver fled away from the spot. On the statement Ex.PA made by Charanjit Kumar, FIR was registered. Investigation was carried out. Rough site plan Ex.PE was prepared. Bodies were sent for post mortem examination. Accused was arrested and put to trial.

4. Accused was charge-sheeted under Sections 279 and 304-A IPC, to which he pleaded not guilty and claimed trial. Prosecution examined six witnesses including PW1 Charanjit Kumar and PW2 Ram Chand, eye witnesses of the occurrence, who supported the prosecution case. In his statement recorded under Section 313 Cr.P.C., accused controverted the incriminating circumstances appearing against him. According to the defence pleaded by him, the accused while driving bus No.PB-11F-9763, was coming from Patiala. As he reached near the turn of link road of Village Rajgarh, deceased Rattan Kumar suddenly turned the scooter towards link road of Rajgarh from the main road without any signal and without caring as to any vehicle was coming from behind. Accused tried his best to avoid the collision but could not immediately stop the bus by applying brakes abruptly and so bus hit the scooter. To support his defence, accused

examined DW1 Gurmeet Singh and DW2 Munshi Ram, who were traveling in the bus. After hearing both the sides, trial court recorded conviction, which has been upheld by the Sessions Court, as mentioned earlier.

5. It is contended by learned counsel for the petitioner that both the Courts below have misread the evidence and have taken erroneous view of convicting the accused on the basis of statements of witnesses and by not considering the defence of the accused, which was duly corroborated by the independent witnesses. Learned counsel for the petitioner has drawn attention of this Court towards site plan Ex.PE to show the location of the spot, where the scooter and the dead bodies fell after the collision along with the bus and the location where the complainant and his brother was standing. It is urged that as the bus was coming from the side of Patiala, so, in case it had hit the scooter of the deceased in the manner as stated by PW1 and PW2, the bus and scooter of the deceased could not have gone to the extreme right side in the bushes.

6. Learned State Counsel, on the other hand, has defended the judgments passed by the Courts below and argued that conviction has been rightly recorded.

7. I have considered submissions of both the sides and have carefully gone through the record.

8. The fact that bus No.PB-11F-9763 was being driven by accused-petitioner on the fateful day of 09.07.2003 is not in dispute. It is also not disputed that Rattan Kumar and Kamlesh Kaur died due to the hit given to their scooter from behind by the afore-said bus. The only question to be considered is as to whether the accident occurred due to rash or negligent driving of the petitioner, as

is the case of the prosecution; or whether the defence pleaded by the accused is probable.

9. When the statements of PW1 Charanjit Kumar and that of PW2 Ram Chand are analysed in the light of site plan Ex.PE, it will be seen that the accident in the manner as stated by PW1 and PW2 appears to be highly improbable. It is conceded case of the prosecution and as stated by PW1 and PW2 that the offending bus was coming from the side of Patiala and moving towards Sangrur. The turn to Village Rajgarh is on the right side of the said road, while coming from the side of Patiala. As per PW1 and PW2, deceased Rattan Kumar had stopped the scooter at point 'E' shown in the site plan, whereas they (Charanjit Kumar and Ram Chand) were standing at point 'F' at the distance of about 10-15 yards. In case the offending bus was coming from the side of Patiala as is stated by PW1 and PW2 and the deceased had stopped his scooter on the left side of the road at point 'E', in the first place, the bus would have firstly hit the scooter of Charanjit Kumar and Ram Chand, who were behind the scooter of their parents. In the second place, in case the bus had hit the scooter of the deceased allegedly standing on the left side of the road, the bus as well as the dead bodies of the deceased along with their scooter would have fallen on the left side. However, site plan clearly reflects that the damaged scooter of the deceased is lying at point 'C'. Both the dead bodies are lying at point 'A' and 'B' whereas bus is lying after the accident in ditches at point 'D'. All these points 'A' to 'D' are on the extreme right side of the road, while coming from the side of Patiala, in the bushes lying in between two roads leading to Village Rajgarh.

10. Considering the location of the vehicles involved in the accident and

dead bodies lying at the spot, the defence of the accused is highly probable to the effect that as he was coming from the side of Patiala driving his buses, when suddenly the scooter of the deceased turned towards the right side, i.e. towards Village Rajgarh without giving any signal or indicator, due to which accused was not in a position to abruptly apply the brakes. The said defence of the accused is duly supported by DW1 Gurmeet Singh and DW2 Munshi Ram. Both these witnesses were traveling in the bus and so, are independent witnesses, having no acquaintances either with the deceased and the complainant or with the accused. It is the consistent stand of both these defence witnesses that at about 03:30 PM, as the bus being driven by accused Ginder Singh reached at the link road of Village Wazidpur, suddenly a scooter driver, without giving any signal/ indicator and without caring for the traffic of both the sides, took turn towards the right side of the link road. It has also come in their testimony that bus driver tried to save the scooterist and in that process, took the bus to the right side in the ditches but in the process, the bus hit the scooter. Both these defence witnesses faced lengthy cross-examination but nothing could be elicited so as to disbelieve them.

11. It appears that both the Courts below have been swayed by the fact that two deaths have taken place in the accident. Instead of believing the defence of the accused, which is corroborated by the testimony of DW1 and DW2, the Courts below have relied upon the testimony of PW1 and PW2, sons of the deceased. A defence witness is as competent as the prosecution witness and testimony of both of them stand on the same pedestal. It is duty of the Court to analyse the statements of both the sides on equal parameters in order to judge their truthfulness.

12. In the facts and circumstances of the present case, the defence pleaded by the accused and supported by DW1 Gurmeet Singh and that of DW2 Munshi Ram is highly probable and, therefore accused deserve to be given the strong benefit of doubt.

13. In view of the afore-said discussion, the impugned judgments passed by both the Courts below, are hereby set aside. Petitioner- accused is acquitted of the charges. This petition is allowed accordingly.

May 10, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No