

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

CRR No.1033 of 2014

Date of Decision: April 17, 2023

Gurmail Singh

...Petitioner

Versus

Amarjeet Singh and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. J.S. Cooner, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This revision is directed against concurrent findings of acquittal recorded by the Courts below.

2. Respondent- accused faced trial in a case arising out of FIR No.174 dated 26.07.2002 registered at Police Station Mahesh Nagar (Ambala) under Sections 279/338/304-A IPC and was acquitted by learned Judicial Magistrate Ist Class, Ambala vide judgment dated 16.09.2011. In the appeal filed by the complainant, acquittal has been upheld by learned Sessions Judge, Ambala vide judgment dated 03.01.2014. Complainant has now approached this Court.

3. As per prosecution allegations, FIR was lodged on the statement of Gurmail Singh (petitioner herein), Sarpanch of Village Rattanheri, as per which on 26.07.2002, his co-villagers Kulwant Singh alias Jeet Singh and Jasbir Singh, while going on their motor-cycle No.HR-01-K-5197 were hit from behind by some unknown vehicle, resulting in injuries to both of them and subsequently, Jasbir Singh was declared brought dead. Initially, no clue was found about the offending vehicle and so, untraced report was filed by

the Police. However, on 14.01.2003, an application was moved before the Superintendent of Police, Ambala by one Jai Pal, father of the deceased Jasbir, raising suspicion about the involvement of truck No.HYX-750, upon which re-investigation was carried out and accident was found to have been caused by the afore-said truck. The driver of the said truck, i.e., accused Amarjeet Singh (respondent) was arrested and after completion of investigation, challan was filed against him to face trial.

4. Prosecution examined ten witnesses including two alleged eye witnesses, namely, Anil Kumar Gupta PW8 and Sushma PW9. However, trial Court disbelieved their version and held that prosecution had failed to prove the charges and so, recorded the finding of acquittal, which finding has been upheld by the Appellate Court as noticed above.

5. It is contended by learned counsel for the petitioner that the Courts below have wrongly laid emphasis on the award passed by the Motor Accident Claims Tribunal, vide which the claim petition regarding death of Jasbir Singh has been dismissed, by ignoring the legal position that findings of MACT are not binding on the Criminal Court. The Court below did not properly appreciate the oral and documentary evidence and disbelieved the eye witness account given by PW8 Anil Kumar and PW9 Sushma only due to some minor contradictions. Untrustworthy evidence produced in defence has been wrongly relied upon. With these submissions, prayer is made for setting aside the acquittal; and to convict the respondent- accused.

6. Notice of motion was not issued to respondent No.1. However, learned State Counsel made appearance so as to assist the Court.

7. Having considered the submissions of learned counsel for the petitioner, I find no merit in the revision.

8. Before proceeding further, it is to be kept in mind that in this

case, there is triple presumptions of innocence in favour of the respondent-accused. First presumption is on account of basic canon of law as per which an accused is presumed to be innocent, till proven guilty. Secondly, this presumption is reinforced by the finding of acquittal recorded by learned Judicial Magistrate Ist Class, Ambala. Thirdly, presumption stands further fortified by finding of the Appellate Court, which has affirmed the acquittal.

9. It is undisputed that accident took place on 26.07.2002. As per the testimony of PW1 Gurmail Singh, i.e., petitioner- complainant, when he arrived at the spot at about 2:30 PM., he was told by people assembled there that the accident had taken place around 2.00/2.30 PM and that none of those persons had witnessed the accident. He had lodged the FIR against unknown vehicle.

10. It is more than five months later that Jai Pal, father of the deceased moved an application Ex. DA on 14.01.2003 before the Superintendent of Police raising suspicion that accident was caused by truck No.HYX-750 on 26.07.2002. Incidentally, said Jai Pal, the father of deceased Jasbir has not been examined by the prosecution in order to reveal as to from what source, he came to know about the involvement of afore-said truck. Though, the prosecution examined two witnesses, namely, Anil and Sushma so as to prove the involvement of truck and the rash and negligent driving of the respondent- accused but the Courts below have rightly discarded their statements.

11. As per cross-examination of PW8 Anil Kumar, when he arrived at the spot, accident had already taken place and the truck was standing but driver had fled away and that he had not seen the truck driver. Police never recorded his statement. He also disclosed that he is known to the deceased and had given information at his house about the death of Jasbir with the

afore-said truck number. It is surprising that though PW8 Anil Kumar was known to the family of the deceased as per him and had given information to the family on the same day about the involvement of the truck but father of deceased approached the police after more than five months. Admittedly, statement of PW8 Anil Kumar was never recorded by the Police nor he disclosed the factum of accident to anyone.

12. Similarly, PW9 Sushma stated that her statement was recorded by the Police for the first time on 24.01.2003 i.e., approximately six months after the accident. Though she says that Police had arrived at the spot but she did not disclose anything to the Police making contradictory stand to that of PW8, as she says that truck was not present at the spot. She could not even disclose the number of scooty, which she was riding on the date of accident.

13. In the above circumstances, there can be no hitch in concluding that statements of none of the above witnesses inspire confidence and so those testimonies have been rightly discarded.

14. Apart from above, accident took place in the jurisdiction of Police Station Mahesh Nagar, Ambala at about 2:00/2:30 PM. Accused led evidence in his defence proving that at the alleged time of accident, truck No.HYX-750, could not be in Ambala. Receipts Ex.DA and Ex.DB have been proved by DW2 Sultan Singh, whereby the alleged offending truck was weighed in Karnal on 26.07.2002 at 9:09 A.M., and then at 01:57 PM. As per testimony of DW3 Rakesh Kumar, who proved bill Mark DC, whereby the driver of the truck- respondent – Amarjit had unloaded articles from the truck in Karnal at about 1:30/2:00 P.M on 26.07.2002. Considering the distance between Karnal and Ambala and that truck was weighed at about 01:57 PM in Karnal, it was just not possible that accused with truck could be

present in jurisdiction of the Mahesh Nagar, Ambala at 02:00/02:30 PM.

15. In addition to above, learned MACT, dismissed the claim petition regarding the death of deceased Jasbir although the proceedings thereat are summary in nature and burden of proof is not heavy. Those findings of dismissal of the claim petition have been dismissed by this High Court as has been observed by the Appellate Court.

16. For all the reasons as discussed above, it is held that there is no illegality or irregularity in the impugned judgments passed by the Courts below. Therefore, the present revision is dismissed.

April 17, 2023

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(DEEPAK GUPTA)
JUDGE

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