

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

**CRR No.1281 of 2019 (O&M)
Date of Decision: 08.02.2023**

Sukhbir Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

In criminal case No.58 of 2015 arising out of FIR No.145 dated 17.03.2014 registered at Police Station Assandh (Karnal), petitioner was convicted by the Court of Learned Judicial Magistrate 1st Class, Assandh vide judgment dated 29.11.2016 under Sections 279, 337, 338 and 304-A of the Indian Penal Code, 1860. Vide separate order dated 30.11.2016, he has been sentenced to undergo maximum sentence of one year for committing the offence under Section 304-A IPC besides fine of ₹7,500/- apart from default sentence. He has also been sentenced for committing the offences under Section 279, 337 & 338 of the Indian Penal Code, 1860. Against the said judgment of conviction of sentence, petitioner had filed appeal before Learned Sessions Judge, Karnal but said criminal appeal No.147 of 2018 (CNR No.HRKR01-010076-2016) has been dismissed vide judgment dated 17.05.2019.

2. Against the above-said judgments of conviction and dismissal of the appeal, this revision has been filed.

3.

Prosecution case, in brief, is that on 17.03.2014, on the day of

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Holi Festival, Azad (PW-9) and Sanjeev on one motorcycle; and Ashok (PW-8), Mohan and Raj Rani (PW-10) on separate motorcycle were going to Kalayat from Assandh side towards Rajaund side. The motorcycle going ahead was being driven by Azad; whereas motorcycle following them was being driven by Ashok. Mohan (since deceased) was pillion rider on the motorcycle being driven by Ashok along with Rajrani. As they reached near Dera Teja Singh Sohal on Assandh-Rajaund road, offending car came from the opposite side being driven in rash and negligent manner and hit the motorcycle of Ashok, who along with Mohan fell down in the nearby pit, whereas Raj Rani fell on the other side of the road. The car then hit a kikar tree. The said car was being driven by a young boy and its registration number was noted to be HR-99SHHQTTP-1532. After talking to Sanjeev for sometime, driver of the car fled away. Injured were taken to the hospital but Mohan succumbed to the injuries at Government Hospital Assandh. FIR was registered on the statement of Azad. Investigation was carried out and challan was presented. After trial, accused Sukhbir Singh was held to be guilty and conviction was recorded as per the details given earlier. His appeal against conviction was dismissed.

4. It is contended by learned counsel for the petitioner that both the Courts below fell in error in recording conviction on the basis of assumption and presumption. The infirmities in the testimony of witnesses have been ignored, as none of the eye-witnesses examined by the prosecution proved rash or negligent driving of the car driver. Identity of the petitioner as car driver is not established. No test identification parade was conducted. The location of the vehicles shown in the site plan does not

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support the prosecution version. Site plan does not depict any kicker tree to which the car struck after causing accident nor any pit is shown wherein the injured had fallen down. It is also urged that photographs of the offending car taken from the spot would clearly reflect the damage on the real portion and so, the accident could not have been caused in the manner as alleged by the prosecution. With these submissions prayer is made for setting aside the impugned judgments of conviction and order of sentence.

5. Refuting the aforesaid contentions, it is urged by Learned State counsel that there is no reason to interfere in the concurrent findings of the Courts below, which are based on evidence on record.

6. Having considered submissions of both the sides, I find merit in this revision.

7. PW-8 Ashok Kumar (injured), PW-9 Azad (author of the FIR) and PW-10 Raj Rani (injured) have been examined by the prosecution to prove the manner of accident. All of them are consistent in their testimony that when the two motorcycles were going towards Rajaund side, the offending car came from the opposite side and struck against the motorcycle of Ashok resulting in injury to him and Raj Rani and death of Mohan. However, all of them clearly stated that the car was being driven at high speed. None of them whispered even a single word as to how the car was being driven in rash or negligent manner. It was day of Holi festival. Roads were empty. Accident took place on a wide road as evident from the rough site plan and therefore, driving car on such road at high speed, in itself does not amount to rash or negligent driving.

8. Apart from above, identity of the petitioner as driver of the

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offending car is not established from the evidence on record. As per PW-8 Ashok, he did not have any acquaintance with the car driver. Police never got the accused identified from him. He came to know the name of the car driver 15 days later, when Azad told him in this regard. PW-9 Azad says during his cross-examination that accused was identified by him in the police station and at that time only he was present and none else. The name of the car driver was disclosed to him by the police. The identify was got conducted in Police Station Anaj Mandi and driver was alone at that time and thereafter, he has seen for the first time in the Court. PW-10 Raj Rani says that he has seen the accused for the first time in the Court.

9. It is, thus, apparent from the testimony of eye-witnesses projected by the prosecution i.e. PW-8, PW-9 and PW-10 that none of them saw the petitioner-accused driving the car at the spot. Test Identification got conducted in the police station is of no relevance, as only accused was shown to PW-9 as has come in his testimony. Identification of the accused for the first time in the Court, when the witnesses did not have the opportunity to see the face of the driver of the offending vehicle at the spot, is of no significance.

10. It is further important to notice that as per the FIR version, the car driver had fled from the spot after talking to Sanjeev, who was occupying one of the motorcycle. Surprisingly, prosecution gave up PW Sanjeev for reasons best known to it. Had Sanjeev been examined and established the identity of accused as car driver, then statement of other witnesses could have been believed that it is the accused, who was driving the car. As none of the witnesses examined by the prosecution i.e. PW-8,

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PW-9 & PW-10 saw the accused at the spot, therefore there can be no hesitation to conclude that prosecution failed to establish the identity of the accused.

11. It will not be out of place to mention that though the accused-petitioner is the registered owner of the offending car as per the certificate of registration available on file and since he got the car released on superdari as owner but this in itself cannot be a reason to draw conclusion that he was driving the offending car at the relevant time. It has come in the testimony of PW-9 Azad that car was occupied by two persons and he cannot say as to who was driving the car. Learned First Appellate Court fell in grave error by observing that as the accused was the owner of the car, so it was for him to explain under Section 106 of the Evidence Act as to who was driving his car. Onus was on the prosecution to prove that it is the accused-petitioner, who was driving the offending car at the relevant time, which the prosecution has failed to establish.

12. Apart from above, rough site plan Ex.P-4 does not support the prosecution version. Point 'A' is shown to be at the spot, where the accident occurred, point 'B' on its western side is shown to be the spot where motorcycle involved in the accident was found; whereas point 'C' is the spot on the Eastern side of point 'A', where the offending car was lying. In case car came from Rajaund side i.e. from Eastern side projected by the prosecution, then it is not possible that after causing the accident at Point 'A', the motorcycle will be on its Western side and rather, in that case it should have been on the Eastern side. Apart from this, as per prosecution after hitting the motorcycle, car hit the kicker tree and occupant of the motorcycle

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had fallen in a pit. In the rough site plan, neither any kicker tree is shown nor any pit.

13. For all the reasons as discussed above, it is held that Courts below fell in grave error in recording conviction of the petitioner. The impugned judgment of conviction and sentence are hereby set aside. Petitioner is acquitted to the all the charges.

Petition is allowed accordingly.

February 08, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

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