

CRR No. 3994 of 2016
Reserved on: 30.11.2023
Pronounced on : 20.12.2023

Gagandeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Gurmeet Singh Saini, Advocate, for the petitioner
Mr. P.S.Grewal, DAG, Punjab

KULDEEP TIWARI,J.

1. Through the instant criminal revision, challenge has been thrown to the judgment of conviction dated 3.9.2015, and order of sentence of even date, passed by the learned trial court concerned and the judgment dated 6.8.2016, whereby the statutory appeal preferred by the petitioner was also dismissed by the learned Sessions Judge, Tarn Taran. The petitioner was accused in FIR No. 195 dated 10.9.2011, under Sections 304-A, 427, 338 IPC, registered at Police Station City, Tarn Taran and was convicted under Sections 279, 304-A IPC and sentenced, vide order dated 3.9.2015, as under:-

<i>Under Sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default</i>
<i>279 IPC</i>	<i>RI for one year</i>	----	----

<i>Under Sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default</i>
<i>304-A IPC</i>	<i>RI for 2 years</i>	<i>Rs 2000/-</i>	<i>RI for two months</i>

BRIEF FACTS

2. The prosecution agency was set into motion on a complaint made by Balwinder Singh, son of Joginder Singh, alleging therein, that they are three brothers, and on dated 9.9.2011, his elder brother, namely, Mangal Singh, and one Harbinder Singh son of Gulzar Singh, went to Tarn Taran City on a motorcycle bearing No. PB-38B-2266. The complainant was waiting for them at Simran Dhaba, situated at village Muradpura, Tarn Taran. At about 6.15 PM, his brother Mangal Singh was driving the motorcycle and Harbinder Singh was on pillion seat, and when they reached near Simran Dhaba, a Trolly bearing No. RJ-14-GB-8927, being driven by an unknown person, came at a very high speed without blowing any horn or without giving any other indication, the said Trolly collided with the motorcycle of his brother Mangal Singh, as a result of which his brother died at the spot, whereas, Harbinder Singh, who was sitting on pillion seat, sustained injuries. Thereafter on the complaint (supra), the present FIR was registered under Sections 304-A, 427, 338 IPC, against the unknown persons. The investigation was carried out, and the present petitioner was arrested and was finally put to trial by the prosecution agency.
3. In order to substantiate its case, a total five witnesses were examined by the prosecution, apart from the documentary

evidence. The learned trial court concerned, after considering the prosecution evidence found that the prosecution has fully proved its case against the petitioner beyond any reasonable doubt, and recorded the verdict of conviction on dated 3.9.2015. The statutory appeal preferred by the present petition also met the same fate, and, was dismissed vide order dated 6.8.2016.

***CONTENTIONS OF THE LEARNED COUNSEL FOR
THE PETITIONER***

4. The first contention raised by the learned counsel for the petitioner is that, ASI Amarjit Singh, who was the Investigating Officer, was not examined by the prosecution. He has further submitted that initially the FIR was registered against unknown person, and later on the name of the present petitioner was nominated in the present case. He has further submitted that there is nothing on record to show that, how the name of the present petitioner was added in this case. He has further submitted that because of the non-examination of the Investigating Officer, *ruqa* (first information), site plan and other necessary documents have not been proved. While referring to the statement of the complainant-Balwinder Singh PW5, the occurrence took place on dated 9.9.2011, at about 6.15 PM, whereas the FIR was registered on dated 10.9.2011, at 6.40 PM, therefore, there is a delay of more than 24 hours in registration of the FIR, and the delay has not been explained. It is transpired from the statements of Balwinder Singh and Rupinder Singh injured, that they were not known to the present

petitioner prior to the registration of the FIR (supra), therefore, the test identification parade of the present petitioner was very essential which was not conducted. He further submits that the owner of the Trolley, was not examined in the present case, who could have established that the petitioner was the driver of the Trolley on the fateful day. Apart from that the counsel of petitioner has pointed out some major contradictions in the statements of the eye witnesses, PW5-Balwinder Singh, and injured PW3 Rupinder Singh.

ANALYSIS

5. This Court has thoroughly examined the records, the judgments passed by the courts below, and the submissions made by the learned counsel for the petitioner. This Court is very conscious of the fact that in the revision petition, the powers of the Court are limited, and the Court has to examine the legality of the verdicts passed by the courts below. The first issue which needs consideration is that the instant FIR, was admittedly registered after the delay of more than 24 hours and, that too, against unknown person. During investigation, the test identification parade was not conducted and the prosecution was unable to prove any document that how come the name of the present petitioner was cropped up during investigation, and what were the evidence collected by the Investigating Officer, which made the Investigating Officer to conclude that the petitioner was the driver of the offending vehicle on the fateful day. To prove the aforesaid issue, the examination of

the Investigating Officer was required to be conducted, which the prosecution has failed to do so. Though, merely because of non-examination of the Investigating Officer, the entire case of the prosecution cannot be brushed aside, however, in the facts and circumstances mentioned above, the examination of the Investigating Officer was essential. In case, the Investigating Officer was examined, during the trial, the accused would have got a chance to cross-examine him to belie his involvement in causing the accident in question. Therefore, the same has caused serious prejudice to the rights of the accused person. To strengthen the above observation, this Court has placed reliance upon a judgment rendered by the Hon'ble Supreme Court in **Munna Lal vs the State of Uttar Pradesh, 2023 AIR (SC) 634**, wherein the Hon'ble Supreme Court has held that non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal. Therefore, it was held that non-examination of Investigating Officer has caused prejudice and benefit of that was given to the accused concerned. The relevant extract is reproduced hereinafter:-

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law’. These are:

(a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue

importance.

38. First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.

42. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law. The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the appellants but on proper evaluation of

the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness. There is a fair degree of uncertainty in the prosecution story and the courts below appear to have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference.”

6. In this case also, there is a delay of more than 24 hours in reporting the matter to the police. The test identification parade was not conducted. Further-more, the prosecution could not establish by way of evidence, that how the name of the accused cropped up during the investigation, as most material documents were not proved because of want of examination of the Investigating Officer.

7. In the case of accident, the site plan is one of the essential document, which is essential to prove that the alleged act was a result of negligence or rashness on the part of the offending vehicle. Merely, on the statement of the complainant-eye witness, it is difficult for the Court to conclude that the act of the driver of the offending vehicle was rash or negligent. The act can either be of rash or negligent and it was obligatory upon the prosecution to prove the same by leading cogent and admissible legal evidence beyond reasonable doubt. The Court cannot presume the culpability of a driver of offending vehicle merely because he survives in the accident and his act was certainly either of negligent or rash. In the

instant case, there is no supporting document except the statement of the complainant-eye witness, that too, which was recorded after a delay of 24 hours, therefore, it cannot be concluded that the act of the driver of the offending vehicle was rash and negligent. The delay in lodging of FIR is fatal in the facts and circumstances of the present case, once it is the positive case of the prosecution that the complainant-eye witness was present on the spot of occurrence, nothing prevented him to get his statement recorded within a reasonable time.

8. The second submission, which was raised by the learned counsel for the petitioner, also have poundage i.e. the prosecution examined Rupinder Singh as PW3, who claimed himself to be a pillion rider on the motorcycle on the fateful day. However, perusal of the record reveals that it was not Rupinder Singh rather Harbinder Singh, son of Gulzar Singh, who was a pillion rider on the fateful day. There is nothing on record which could establish that PW3-Rupinder Singh, is also known as Harbinder Singh. To establish, that both the persons are one and the same, the examination of the Investigating Officer was necessary. Unfortunately, in this case the IO was not examined, therefore, again prejudice is caused to the accused-petitioner.

9. Finally, there is also strength in the argument of the learned counsel for the petitioner, that the owner of Trolley in question was a material witness, as he is the essential witness who could

have established that the petitioner was the driver of his offending vehicle on the fateful day. Though, the non conducting of test identification parade is not always fatal to the prosecution case, but in the facts and circumstances explained above, it certainly creates dent in the story of the prosecution case. The arrest memos as well as the site plan etc. could not be proved for want of examination of the Investigating Officer, to establish the identity of the accused, therefore, the identification for the first time into the witness box by the complainant, is a weak piece of evidence, and solely on the basis of this evidence, the petitioner-accused cannot be convicted.

10. In view of the above discussion, this Court finds that the prosecution has miserably failed to prove its case beyond reasonable doubt. Therefore, giving the benefit of doubt, the accused-petitioner, is acquitted of the charges framed against him. The present revision petition is, accordingly, **allowed**.

11. The bail bonds furnished by the petitioner are discharged.

12. The pending application(s), if any, stands disposed of.

13. Record of the case be sent down forthwith.

December 20, 2023

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**(KULDEEP TIWARI)
JUDGE**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No