

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1338 of 2017
Date of Decision:24.07.2023

AzadPetitioner

Vs.

State of HaryanaRespondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Karan Pathak, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

In a criminal trial arising out of FIR No.288 dated 12.07.2017 registered at Police Station Punhana, accused – Azad (now petitioner) has been convicted by the Court of learned Judicial Magistrate Ist Class, Ferozepur, Jhirka under Sections 279 and 304-A IPC vide judgment dated 05.08.2016. Vide a separate order dated 08.08.2016, petitioner was sentenced to undergo rigorous imprisonment for a period of one year for committing offence under Section 304-A IPC and three months for committing offence under Section 279 IPC. Both the sentences were directed to run concurrently. Criminal Appeal No.1337 of 2016 filed by the petitioner against the aforesaid judgment of conviction and order of sentence, has been dismissed by learned Additional Sessions Judge, Mewat, vide judgment dated 20.03.2017, maintaining the conviction as well as sentence.

2. It is against the afore-said concurrent findings of conviction and the sentence recorded by the Courts below that this revision has been

preferred.

3. It is contended by learned counsel for the petitioner that material contradictions in the statement of complainant and other witnesses and the Investigating Officer have been ignored by the Courts below. It is further submitted that FIR was lodged against an unknown person and no identification parade was conducted and this aspect has also been lost sight of. Undue weightage has been given to the prosecution witnesses and that the prosecution was unable to prove the rash and negligent driving on the part of the petitioner. It is contended further that in fact the motor-cycle on which the deceased and complainant were travelling was overloaded and deceased lost control of his motor-cycle. Besides, there was a speed breaker near the place of accident, due to which the motor-cycle of the deceased had skidded.

4. Apart from above, learned counsel for the petitioner has made an alternative prayer to sentence the petitioner for the period already undergone by him, as petitioner has already undergone sentence of more than four months.

5. Learned State Counsel has defended the impugned judgments and prayed for dismissal of the petition.

6. Having considered submissions of both the sides, this Court finds no merit as far as conviction recorded by the Courts below is concerned. The complainant and the deceased were sitting on the same motor-cycle. Accident took place in broad day light at about 01:30 PM and so, complainant was very much in the position to see the face of the driver of offending motor-cycle, which was being driven by the petitioner – accused and, therefore, identification of the accused in the Court for the first time, is quite trust-worthy. Simply because test identification parade was not

conducted by the Investigating Officer, is no ground to disbelieve the testimony of complainant. Conducting of the test identification parade is mere a step of investigation, though not mandatory. It depends on facts and circumstances of each case as to whether the test identification parade should be conducted or not. As in this case, complainant was riding the same motor-cycle, which was being driven by the deceased and the accident took place in broad day light, so, there was not lacunae on the part of the Investigating Officer for not having conducted the test identification parade.

7. Contention of learned counsel for the petitioner to the effect that there was speed breaker at the spot due to which motor-cycle of the deceased had skidded was very much considered by the Courts below and it was noted that no such suggestion was given to any of the prosecution witnesses nor any such speed breaker is shown in the site plan. No material contradiction in the statement of the prosecution witnesses could be pointed out so as to disbelieve them.

8. After perusing impugned judgments, I find no illegality therein. The conviction has been recorded on due appreciation of the evidence on record. As such, conviction of the petitioner under Section 279 IPC and 304-A IPC is hereby maintained.

9. As far as quantum of sentence is concerned, as per the custody certificate placed on record by learned State Counsel, petitioner has already remained in custody in this case for a period of 04 months and 01 day, till his sentence was suspended by this Court vide order dated 11.07.2017. The accident had taken place on 12.07.2014 i.e., more than nine years back. Both the vehicles involved in the accident were motor-cycles.

10. Having regard to all the afore-said facts and circumstances, it will be prudent in the fitness of things to sentence the petitioner- accused for

the period already undergone by him, instead of sending him behind bars, after such a long time. As such, the impugned order of sentence passed by the Court below is hereby modified. The petitioner is sentenced to the imprisonment for the period already undergone by him.

Disposed of.

July 24, 2023
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(DEEPAK GUPTA)
JUDGE

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