

2023:PHHC:071849

CRR-1617-2018 (O & M)

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

**CRR-1617-2018 (O&M)
Date of Decision: 16.05.2023**

Yash Pal Batra

... Petitioner

Versus

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Monit Pal Singh, Advocate,
for Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 17.01.2018 passed by the Additional Sessions Judge, Gurugram whereby the appeal filed against the judgment of acquittal dated 27.05.2016 passed by the Judicial Magistrate Ist Class, Gurugram has been upheld.

2. The gist of the prosecution case is that on 25.9.2012, telephonic information was received at P.S. Manesar from Control Room Gurgaon regarding an accident at IMT, Manesar. On this information, the police party reached Plot No.253, Sector 6, IMT, Manesar where the eye-witness Manoj

Kumar presented a complaint alleging therein that at the time of accident, he had seen that the deceased had parked his Maruti Car No.HR-51-L-2407 in front of Plot No.253, Sector 6, IMT, Manesar and he was taking out something from the back side of the car. At around 12.45 PM, one Dumper came from the side of PCI Company, Sector 6, IMT Manesar in a rash and negligent manner, which hit the deceased who died at the spot. The Dumper driver fled away from the spot with the dumper, whose registration No. was HR-55-K-4365. The name and address of the dumper driver are not known.

3. On this complaint, the FIR was registered under Section 279 and 304A of IPC against the accused and investigation was conducted. During investigation, the accused was arrested and his disclosure statement was recorded. The statements of witnesses were recorded and after completion of investigation, a challan for offenses under Sections 279 and 304A of IPC was prepared against the accused and forwarded to the Court.

4. Copies of challan and other documents were supplied to the accused free of cost, as envisaged under Section 207 Cr.P.C.

5. Thereafter, finding a prima-facie case, the accused was charge sheeted under Sections 279, 304-A IPC to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined eleven prosecution witnesses and relied upon the following documents:

Sr. No.	Details of documents
Ex. PW1/A	Complaint
Ex. PW2/A	PMR
Ex. PW3/A	Form 25

Ex. PW3/B	Statement of PW3 u/s 175
Ex. PW5/A.	Cr,P.C.
Ex. PW5/B.	Recovery memo
Ex. PW6/A.	Documents of alleged
Ex. PW6/B.	Vehicle
Ex. PW7/A.	Tehrir
Ex.PW7/B:	Site Plan
Ex. PW8/A.	Notice u/s 133 MV Act
Ex. PW8/B.	Superdari release order
Ex. PW9/A	FIR
	Endorsement
Ex. PWIO/A	Mechanical Inspection Report of offending vehicle Arrest Memo

7. Thereafter the evidence of the prosecution was closed by order.
8. The accused was examined under Section 313 Cr.P.C. but he denied all the allegations leveled against him and pleaded innocence. In his defence, no evidence was led by the accused.
9. Based on the evidence led, the accused came to be acquitted vide judgment dated 27.05.2016 passed by the Judicial Magistrate Ist Class, Gurgaon.
10. An appeal was preferred against the aforementioned judgment of acquittal and the same came to be dismissed vide judgment dated 17.01.2018 passed by the Additional Sessions Judge, Gurugram.

11. The aforementioned judgments are impugned in the present petition.

12. The learned counsel for the petitioner contends that the evidence of PW-1/Manoj Kumar and PW-4/Charanjit Sharma have not been considered in their proper perspective. They had categorically identified the accused and had stated that he was driving the vehicle in question in a rash and negligent manner. Minor discrepancies in the prosecution case had been given undue weightage and the judgments of the Trial Court and the Lower Appellate Court were based on conjectures and surmises. He, therefore, contends that the respondent-accused was liable to be convicted for having committed the offence in question.

13. I have heard the learned counsel for the petitioner at length and examined the record.

14. PW-1/Manoj Kumar who is stated to be the complainant has stated that he did not know the number of the offending dumper/vehicle and had not seen the driver. PW-3/Rohit Batra stated that he had reached the spot later and had identified the dead-body of the deceased. In his cross-examination, he stated that the eye-witness has informed him about the accident. PW-4/Charanjit Sharma, who is the eye-witness of the occurrence, on the other hand, has not been able to establish his presence at the spot as his statement under Section 161 Cr.P.C. was not recorded. PW-7/Nityanand, the owner of the offending dumper also did not know as to who was driving the said vehicle on the day of the occurrence.

A perusal of the aforementioned depositions of the witnesses would show that no witness has identified the accused as having committed the offence in question. In fact, so far as PW-3/Rohit Batra is concerned, his deposition would amount to *hear say* evidence which is inadmissible. Therefore, in view of the fact that the presence of the accused-respondent has not been established at the place of the occurrence beyond reasonable doubt, no fault can be found with the judgments of the Trial Court as well as the Appellate Court.

15. In view of the above, I find no reason to interfere with the well-reasoned judgments of the Trial Court dated 27.05.2016 and the Appellate Court dated 17.01.2018. Therefore, the present revision petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 16, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No