

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1549-2019
Reserved on: 17.08.2023
Pronounced on: 23.08.2023

Jaskaran Singh

.... Petitioner

Vs.

State of UT Chandigarh and another

.... Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. M.S. Saini, Advocate, for the petitioner.

Mr. Sumit Jain, Addl. P.P., UT, Chandigarh.

DEEPAK GUPTA, J.

In a criminal trial arising out of FIR No.85 dated 07.02.2008 registered at Police Station Sector 39, Chandigarh, petitioner Jaskaran Singh was convicted under Sections 279 and 304A IPC by the Court of Id. JMJC, Chandigarh in case bearing Police Challan Registration No.8878/2013 (CNR No.CHCH03-001467-2008) vide judgment dated 24.08.2017. Vide separate order of even date, petitioner was sentenced to undergo rigorous imprisonment for a period of 2 months under Section 279 IPC. He was further sentenced to undergo rigorous imprisonment for a period of 1 year besides payment of fine of ₹1000/- with default sentence under Section 304A IPC. Both the sentences were directed to run concurrently. Criminal Appeal No.574/2017 filed by the petitioner against the afore-said judgment of conviction & order of sentence was dismissed on 04.06.2019 by Id. Sessions Judge, Chandigarh, maintaining the conviction as well as sentence.

2. It is against the aforesaid concurrent conviction and sentence that petitioner has approached this Court by filing present revision petition.

3. (i) As per prosecution allegations, on 07.02.2008, information was received at Police Station Sector 39 Chandigarh regarding a road traffic accident at small chowk of Sector 39-40. SI Dalip Rattan reached the spot and was informed that two injured had been taken in police vehicle to the hospital. Head Constable Sukhchain produced the bus driver Jaskaran Singh (petitioner). The two vehicles involved in the accident i.e. Bus No.CH-01-G-5206 of CTU and motorcycle No.DL-3S-BA-0601 were taken into possession. Photographs of the spot were taken. After collecting necessary information, police reached the hospital, where both the injured namely Ankush son of Raj Kumar and Neetu d/o Gopi Chand were found to be unfit for making statement.

(ii) However, Constable Randeep Singh Rana approached SI Dalip Rattan and got recorded his statement, as per which on that day he was on duty in beat of Sector 40. He was proceeding towards rehri market Sector 40 and at about 10:40 AM, he was 20 yards behind the chowk, when a motorcycle on which a girl was a pillion, crossed him and was moving towards the chowk, when CTU bus coming from side of Shahpur chowk (road dividing Sector 39 and 40) being driven in rash and negligent manner, came and hit the motorcycle. Both the persons riding on the motorcycle fell down and sustained injuries and they were taken to the hospital in police vehicle. FIR was registered.

(iii) Injured Neetu succumbed to the injuries on 12.02.2008. Statements of witnesses were recorded. Necessary investigation was conducted and challan was presented in the Court.

(iv) The accused-petitioner (Jaskaran Singh) was charge-sheeted under Sections 279, 338 and 304A IPC by the Court, who pleaded not guilty to the charges and claimed trial. Prosecution led its evidence. Accused in his statement under Section 313 Cr.P.C. controverted the incriminating material appearing in the evidence against him and pleaded false implication. However, no defence was adduced by him. After hearing both the sides, conviction was recorded by the trial Court and the petitioner was sentenced, as per the details given earlier and his appeal was dismissed.

4 (i) It is contended by ld. counsel appearing for the petitioner that he does not dispute the factum of accident or the fact that accident was caused between CTU bus No.CH-01-G-5206 and motorcycle No.DL-3S-BA-0601; that the bus was being driven by the petitioner at the relevant time and that the accident resulted into the death of pillion rider of the motorcycle namely Neetu and injuries to Ankush.

(ii) However, the contention of ld. counsel is mis-appreciation of the evidence on record and the recording of the conviction of the petitioner simply on the basis of statement of PW1 Constable Randeep Singh Rana, the complainant of the case. Ld. counsel with the help of rough site plan Ex.P2/C and the photographs of the spot Exs.PW5/A and PW5/B contends that the manner of accident as stated by PW1 Constable Randeep Singh Rana is not possible. It is contended that as per the testimony of PW1, the motorcycle had already crossed him, when it was hit by the bus being driven by the petitioner, but the rough site plan Ex.PW2/C would reveal that the motorcycle was coming just from the opposite direction and not from the direction, where PW1 was present. Said fact is also fortified from the photographs, as it is the left front side of the bus which hit the

motorcycle. Ld. counsel contends that if the accident had taken place in the manner as stated by PW1, it is either the front of the bus or its right side, which would have hit the motorcycle and that hitting of the motorcycle from left front side of the bus was not at all possible.

(iii) Ld. counsel further contends that Ankush, the driver of the motorcycle was the best person, who could have deposed about the manner of accident, but said Ankush has neither been cited as prosecution witness nor examined by the prosecution, which fortifies the stand of the petitioner that it is due to the rash and negligent driving of the driver of the motorcycle that the accident occurred and it is in order to avoid the facing of the cross-examination that said Ankush was not produced in the witness box. Not only this, even no passenger of the bus was joined in the investigation. No other eye witness of the spot was joined though the accident occurred in the broad day light at a busy chowk. Ld. counsel submits that in all these circumstances, the sole testimony of PW1 Constable Randeep Singh Rana, which is even otherwise inherently self contradictory when compared with the other evidence on record, cannot be relied so as to sustain the conviction.

(iv) With afore-said submissions, prayer is made to accept the revision and to set aside the conviction and sentence.

5. Ld. State counsel, in reply, has defended the impugned judgments and submits that there is no flaw in the concurrent findings of the Courts below in recording conviction of the petitioner. However, it is conceded by ld. State counsel that injured of the case Ankush has neither been cited as prosecution witness nor examined. Prayer is made for dismissal of the petition.

6. I have considered submissions of both the sides and have appraised the record.

7. As per the testimony of PW1 Constable Randeep Singh Rana, he was about 20 yards away from the small chowk of Sector 39-40, when the motorcycle crossed him on which a girl was seating on the pillion seat and that said motorcycle was proceeding towards the chowk, when the bus came from the side of Shahpur chowk being driven in rash and negligent manner and hit the motorcycle at the round-about, resulting in causing injuries to Ankush, driver of the motorcycle as well as the girl Neetu. He proved his statement Ex.P1 in this regard. PW1 Constable Randeep Singh Rana also proved rough site plan Ex.P2/C prepared by the IO at his instance and that photographs of the spot were also taken.

8. However, when the aforesaid statement of PW1 Constable Randeep Singh Rana is analyzed in the light of rough site plan Ex.P2/C and photographs PW5/A and PW5/B, it would be found that the manner of accident as stated by PW1 Constable Randeep Singh Rana does not appear to be possible. Site plan Ex.P2/C reveals PW1 Constable Randeep Singh Rana to be standing at point 'B' on the Western side of the chowk. The accident occurred at point 'A' i.e. Eastern-Southern corner of the chowk. The offending bus is stated to have come from the side of Shahpur i.e. the Northern direction. In case before being hit, the motorcycle had crossed PW1 Constable Randeep Singh Rana, who was standing at point 'B' and then said motorcycle was hit at point 'A' by the bus coming from the Northern direction, obviously, either the front of the bus or its front right side would have hit the motorcycle. Hitting on the left front side of the bus to the motorcycle was not possible, as is shown in the photographs. Even

the rough site plan Ex.P2/C shows that motorcycle was coming from the Eastern side; and not from the Western side as is stated by PW1 Constable Randeep Singh Rana. It is because of this reason that left front side of the bus hit the motorcycle, at point 'A'. It is, thus, clear that statement of PW1 Constable Randeep Singh Rana to the effect that the motorcycle had crossed him and then it was hit by the bus, is falsified from the other circumstantial evidence placed on record i.e. rough site plan and photographs proved on record.

9. In the above circumstances, it is absolutely not safe to sustain the conviction simply on the basis of sole testimony of PW1 Constable Randeep Singh Rana, who has been found to be false in his testimony regarding the manner of accident.

10. Apart from above, Ankush, the driver of the motorcycle was the best person, who could have deposed about the manner of accident, as it is his motorcycle which was hit by the bus. However, surprisingly, said Ankush has not even been cited as the prosecution witnesses in the list of witnesses, what to examine him during trial. PW2 Inspector Dalip Rattan, the Investigating Officer of the case, admitted in his cross-examination that he did not record the statement of any person at the spot nor joined any independent witness nor verified the facts regarding the accident from the people who had gathered at the spot. His testimony does not reveal that he recorded the statement of Ankush at any point of time. He candidly admitted that it is visible from the photographs that motorcycle was trying to cross the bus from the left side and that it is correct that as per traffic rules, it is wrong to cross/pass/overtake from the left side.

11. In *Mahadeo Hari Lokre Vs. State of Maharashtra, 1972 (4) SCC 758*, a pedestrian was suddenly crossing the road without taking note of approaching bus. It was held by Hon'ble Supreme Court that there was every possibility of his dashing against the bus, without driver becoming aware of it and that bus driver cannot save the accident, however slowly, he may be driving and so he cannot be said to have negligent.

12. In the present case also, as it appears that Ankush, the driver of the motorcycle, coming from the eastern side was trying to cross the bus from the left side, so it is obvious that it was not possible for the petitioner, the driver of the bus, to have seen the approaching motorcycle from the Northern side. As has been discussed above, the testimony of PW1 Constable Randeep Singh Rana is not reliable at all. Ankush, driver of the motorcycle, has not been examined.

13. Considering all the aforesaid discussion, the conviction and the sentence as recorded by the Courts below cannot be sustained. As such, impugned judgments of conviction and sentence are hereby set aside. Present petition is hereby allowed. Petitioner is acquitted of all the charges. He is also discharged from his bonds.

(DEEPAK GUPTA)
JUDGE

23.08.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No