

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2456-SBA-2006

Date of Decision:11.01.2023

State of Punjab

...Appellant

vs.

Gurdev Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. M.S. Bajwa, Deputy Advocate General, Punjab.

Mr. G.C. Dhuriwala, Advocate
for the respondent.

N.S.Shekhawat J.

The State of Punjab has filed the instant appeal before this Court, challenging the judgment dated 16.12.2005, passed by Additional Chief Judicial Magistrate, Sangrur, whereby, the respondent was acquitted of the charges under Section 337, 338, 427 and 304-A of the Indian Penal Code (for short 'IPC'). The learned trial Court held that the prosecution had failed to prove its case against the accused beyond the shadow of reasonable doubt and by extending the benefit of doubt, the respondent was ordered to be acquitted.

The facts of the case in brief are that on 09.08.2002, ASI Surinder Pal received a ruqa from PHC, Bhawanigarh regarding the admission of two injured, namely, Binder Singh and Ramesh Kumar S/o Tej Ram and on getting the information, ASI Surinder Pal along with other police officials reached PHC, Bhawanigarh. He sought an opinion regarding the fitness of the injured to make the statement and it was found that both the injured had been referred to

Rajindra Hospital, Patiala for treatment, keeping in view their critical condition. ASI Surinder Pal visited Rajindra Hospital, Patiala and sought an opinion with regard to fitness of the injured. Injured Ramesh Kumar was declared fit to make a statement and accordingly, his statement was recorded. Ramesh Kumar, injured/complainant stated that on 09.08.2002, he along with Binder Singh and Ruldu Singh, all residents of Mansa were returning after paying obeisance at Naina Devi Temple, on their respective bicycles. When they reached near octroi Post, Sunam Road, Bhwanigarh at about 8.00 am on 09.08.2002, a Swaraj Mazda Canter bearing registration No. HR-38A-7886 came, which was being driven by its driver in a rash and negligent manner and without blowing any horn, it had run over Binder Singh and his bicycle. Due to said accident, Binder Singh received multiple injuries on his person and his bicycle was entangled in Swaraj Mazda. Even the complainant received injuries on his right shoulder, right elbow, right hand and he also fell down from his bicycle. His bicycle and the bicycle of Binder Singh were extensively damaged. He also stated that Ruldu Singh did not suffer any injury in the accident and had witnessed the occurrence. Even the driver of Swaraj Mazda fled away from the spot after leaving the vehicle. Ruldu Singh got the complainant admitted in Civil Hospital, Bhawanigarh however, he was referred to Rajindra Hospital, Patiala for treatment. His companion Binder Singh died, while he was being shifted to hospital and the said accident had taken place due to rash and negligent driving by the driver of Swaraj Mazda bearing registration No. HR-38A-7886.

After necessary investigation, the challan under Sections 304-A, 337, 338, 427 of IPC was presented in the Court against the accused. After

finding sufficient evidence to frame charge, the accused was ordered to be charge-sheeted for the offences punishable under Section 304-A, 337, 338, 427 of IPC and he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined eight witnesses. The prosecution examined Ramesh Kumar as PW-1, who had witnessed the occurrence. He supported the case of the prosecution as mentioned in the FIR. Ruldu Singh, PW-2 was the eyewitness of the occurrence and even he had supported the case of the prosecution. He stated that the accident had taken place due to rash and negligent driving by the accused. He further stated that the vehicle had hit Ramesh Kumar, who fell down and suffered the injuries. Binder Singh also received injuries on his head, elbow and right shoulder and succumbed to the injuries finally. He further stated that the said Swaraj Mazda i.e. the offending vehicle was being driven by the accused, who was present in the Court. The accident had taken place due to rash and negligent driving by the accused. The prosecution examined PW-4 HC Avtar Singh, who was the mechanic and had conducted the mechanical examination of the vehicle. The prosecution examined Dr. Kesar Singh, who had medico legally examined Binder Singh as well as Ramesh Kumar and proved on record their MLRs. PW-5 HC Shiv Kumar was part of the investigating team. He deposed that on 17.08.2002, he along with other police officials was present at Balad Kanchian in connection with the investigation of the case. Rajwant Singh S/o Gurbachan Singh was present with them at that time and ASI Surinder Pal arrested the accused, who was present in the Court on that day and the name of the accused was already mentioned by the complainant in his statement. The prosecution also examined PW-7 SI Surinder Pal, who had proved on record the various

steps taken during the course of investigation. He stated that the accused was arrested in the presence of Rajwant Singh, witness and was arrested on the identification of Ruldu Singh. On completion of the investigation, the challan against the accused was prepared by SI/SHO Sukhwinder Singh. PW-8 Dr. Harjinder Singh was examined, who had conducted the post-mortem examination on the dead body of Binder Singh. He clearly opined that the head injury was the cause of death in this case, which was *ante mortem* in nature.

After evidence was closed on behalf of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. The accused opted not to lead any evidence to prove his defence version.

I have heard learned counsel for the parties and with their able assistance, I have carefully gone through the record of the learned trial Court.

Learned State counsel has vehemently argued that the learned trial Court failed to appreciate the evidence of PW-2 Ruldu Singh, who was the eyewitness of the occurrence and he stated that the accused was known to him prior to the occurrence and he had seen him fleeing from the spot after causing the accident. He further stated that the accused was named in the statement of PW-2, Ruldu Singh recorded by the I.O. and purpose of holding test identification parade was meaningless. He further submitted that even during the course of investigation, complicity of the respondent stood proved beyond any doubt and sufficient incriminating evidence had been collected against him.

Learned counsel for the respondent submitted that the statement of Ruldu Singh witness, which was recorded under Section 161 Cr.P.C. was not proved in accordance with law. Still further, admittedly the respondent was not

known to Ruldu Singh prior to the occurrence and even he stated in his initial statement that later on, he came to know about the name of the driver of the offending vehicle as Gurdev Singh and thus, test identification parade was necessary. Still further, it was contended that the learned trial Court had recorded well-reasoned findings and the same are liable to be upheld.

I find no force in the argument raised by learned counsel for the appellant-State.

It is not in dispute that the respondent was not known to any of the prosecution witnesses. Even Ruldu Singh stated in his statement that he came to know about the name of the driver later on as Gurdev Singh; however, he has not disclosed as to on what basis he came to know about the name of the driver on the date of the accident itself. Even no witness has been produced to prove the source of knowledge of Ruldu Singh regarding the name of the driver of the offending vehicle. Once the accused was not known to any witness, they had seen him fleeing from the place of occurrence, it was necessary to hold test identification parade. In fact, as a general rule, the evidence of identification of the accused person at a trial for the first time is inherently of a weak character. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is a safe rule of prudence to generally look for corroboration of the sworn testimony of witness in the Court as to the identity of the accused, who are strangers to them, in the form of earlier identification proceedings. In the instant case, the learned trial Court has rightly held that no test identification parade of the accused was got conducted from the complainant and witnesses of the case and this was fatal to the case of the prosecution.

The learned trial Court has correctly recorded that at the time, when the accused was arrested, there was no incriminating evidence against him.

PW-2 Ruldu Singh has stated that they had seen the accused at Mansa Canter Union 5-6 months ago, but the interesting point is that in the FIR, the name of the respondent was not mentioned. Still further, the prosecution failed to convince as to how and on what basis, the accused had been arrested. Apart from that, as per PW-5 H.C. Shiv Kumar, he along with ASI Surinder Pal apprehended the accused present in the Court and interrogated him. Still further, he stated that the accused was arrested as the name of the accused was mentioned by complainant Ramesh Kumar in his statement, which is factually incorrect. In fact, complainant Ramesh Kumar never stated that he knew the name of the accused. Apart from that, as per ASI Surinder Pal, it was apparent that Ruldu Singh never came at the spot to identify the accused. Apart from that, the occurrence had taken place on a busy road and the prosecution completely failed to produce any independent evidence to corroborate the prosecution version. Even learned counsel for the appellant failed to convince the Court with regard to any infirmity in the judgment passed by the learned trial Court. The findings recorded by learned trial Court are well-reasoned and are liable to be upheld by this Court.

Still further, the parameters have been laid down by this Court and the Hon'ble Supreme Court in entertaining the appeal against the order of acquittal in catena of judgments. It has been held in the matter of ***“Mahadeo Laxaman Sarane and another Vs. State of Maharashtra”, 2007 (3) RCR (Criminal) 2010***, by the Hon'ble Supreme Court that in an appeal against

acquittal, the High Court ought not to interfere in the order of acquittal if on the basis of same evidence two views are reasonably possible – one in favour of the accused and other against him. In such a case, if the trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal.

Even otherwise, I have gone through the judgment passed by the learned trial Court and I find that valid reasons have been recorded by the learned trial Court while recording the judgment of acquittal. Consequently, the appeal is meritless and is liable to be dismissed by this Court. The impugned judgment dated 16.12.2005, passed by learned Additional Chief Judicial Magistrate, Sangrur is affirmed and the appeal is dismissed.

Pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back.

11.01.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No