

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.103

Case No. : CRR-140-2020 (O&M)

Date of Decision : March 21, 2023

Daler Singh

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Ms. Neha Jain, Advocate
Legal Aid Counsel for the petitioner.

Ms. Himani Arora, AAG, Punjab.

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GURBIR SINGH, J. :

1. This revision is filed against the judgment dated 08.11.2019 passed by learned Additional Sessions Judge, Fatehgarh Sahib, dismissing the appeal against the judgment and order of sentence dated 25.08.2015 passed by learned JMIC, Amloh, District Fatehgarh Sahib in case bearing FIR No.48 dated 22.06.2012 under Sections 279, 304-A of IPC, PS Amloh.

2. The case in question was registered on the statement of Hari Nand son of Bechu Lal that on 21.06.2012, he along with his nephew Rinku, was coming to Amloh from Mandi Gobindgarh on his motorcycle. His another nephew Mohit Kumar was coming from Amloh on his own motorcycle bearing No.PB-48-C-0987. At about 10.30 pm, when Mohit Kumar reached near Dhanoa Dhaba, a speeding jeep came from the side of Amloh and directly hit against the motorcycle of Mohit Kumar. The driver of the jeep stopped it. While the complainant and his nephew were attending

the injured, the driver of the jeep disclosed his name to be Daler Singh son of Sarain Singh, resident of village Munshiwal Khurd, Police Station Bhawanigarh, District Sangrur. In the meantime, people gathered at the spot. The injured, who was critical, was moved to hospital. In the process, driver of the offending jeep slipped from the spot along with the vehicle. Injured was referred by Civil Hospital, Mandi Gobindgarh to PGI, Chandigarh. On arrival there, injured succumbed to the injuries and was declared dead. After completion of investigation and necessary formalities, challan against the accused was presented in the Court.

3. A prima-facie case under Section 279, 304-A of IPC was found against the accused-petitioner and charge was framed, to which he pleaded not guilty and claimed trial.

4. In support of the case, prosecution examined Anil Kumar PW1, Hari Nand PW2, HC Rajinder Singh PW3, Sarabjeet Singh PW4, Dr. Brahm Dutt PW5, ASI Jaswinder Singh PW6, Sukhjit Singh PW7.

5. After closure of the evidence of the prosecution, statement of accused under Section 313 Cr.P.C. was recorded. He denied the evidence put to him and pleaded his false implication and innocence. He did not produce any defence evidence.

6. Learned trial Court, after hearing, convicted the accused-petitioner under Sections 279 and 304-A of IPC. He was ordered to undergo RI for a period of six months and to pay a fine of Rs.500/- and in default, to further undergo RI for one month under Section 279 of IPC. He was also ordered to undergo RI for one year under Section 304-A of IPC. Both the sentences were ordered to run concurrently.

7. Petitioner filed the appeal which was partly allowed to the extent that conviction and order of sentence under Section 279 of IPC was set aside and the appeal to the extent of conviction under Section 304-A of IPC was dismissed, against which this revision is filed.

8. Counsel for the petitioner has argued that the learned Courts below failed to appreciate the evidence brought on the file. The identity of the accused was not established. The presence of the petitioner at the spot is doubtful. There are many contradictions in the statements of the witnesses but the same were ignored. The post-mortem report of victim was not proved, which was exhibited merely on the statement of Record Keeper, so the same could not be read into evidence. There is no evidence if petitioner was driving the offending vehicle or whether he was driving the same in a rash and negligent manner. The victim Mohit Kumar, at the time of death, was admittedly 16 years of age. He was minor. He could not have any driving licence. He could not drive the vehicle. Accident, if any had taken place, it was on account of sole negligence of Mohit Kumar (since deceased).

9. Learned State counsel has submitted that the statements of PW2 Hari Nand, who is the complainant and PW1 Anil Kumar, who is the eye-witness, are worthy of credit. They have duly proved that accident was result of rash and negligent driving of jeep by the petitioner himself. The identity of the petitioner during the trial is fully established. The death of Mohit Kumar in the accident is not in dispute, so tendering of post-mortem report by the Record Keeper does not have any adverse affect on the case of prosecution. Well reasoned judgments have been passed by the learned

Courts below. There is no illegality in the judgments of learned Courts below. So, this revision petition deserves to be dismissed.

10. I have heard the submissions of learned counsel for the petitioner and learned State counsel.

11. Hari Nand PW2 is the author of the FIR. He has duly proved his statement Ex.PA made before the police. He stood the test of cross-examination and fully supported the version of the prosecution. Anil Kumar PW1 is the eye-witness of the occurrence. He has fully corroborated the version of Hari Nand PW2. Although they are related to deceased but mere relation with the deceased is no ground that their testimonies cannot be believed. The learned counsel for the petitioner pointed out certain discrepancies in their statements but discrepancies always occur in the statements of witnesses due to passage of time and difference of power of observation of each and every individual. A witness is not expected to possess photographic memory and to re-call the minute details of the incident. A witness is not expected to re-call accurately the sequence of events which took place before him in a short time span. What is gathered by the witness is not video recording in the mind that can be re-played as and when required. The discrepancies pointed out by learned counsel for the petitioner have rightly been ignored by learned Courts below. It is specific case of the prosecution that driver of the offending jeep stopped for some time, disclosed his name and parentage and thereafter, he slipped away when people had gathered there. So, witnesses had sufficient time to recognize him and they had identified him in the Court. The identity of the accused-petitioner in the Court is a good identification and it is not necessary to hold

test identification parade, otherwise identity of the accused cannot be established. I draw support from a judgment passed by Hon’ble Supreme Court in Malkhansingh & Ors. vs. State of Madhya Pradesh reported as 2003(3) R.C.R.(Criminal) 550. The victim was driving the motorcycle. The prosecution has fully established that petitioner-accused was driving the jeep in a rash and negligent manner. It is proved that deceased Mohit Kumar was going on his correct side and driving the motorcycle in a proper manner. So, in the absence of any evidence regarding the licence, it cannot be said that Mohit Kumar was himself negligent. On the other hand, the negligence of the accused-petitioner is duly proved.

12. Revisional Court considers the orders only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order. Scope of criminal revision is very limited. This Court in revision cannot substitute its own view unless there is misreading of the record.

13. In the light of above discussion, it is held that judgments passed by the learned Courts below are in accordance with the law. There is no illegality and there is no ground to interfere in the same. Revision petition is without merit and same is dismissed.

14. Pending applications, if any, shall stand disposed of along with this judgment.

March 21, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.