

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

110

CRR-1331-2018 (O&M)

Reserved on: 26.07.2023

Pronounced on :- 04.08.2023

MALARAM

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Varun Gupta, Advocate
for the petitioner.

HARNARESH SINGH GILL, J.

Challenge is to the judgment dated 20.04.2017 passed by the learned Judicial Magistrate, 1st Class, Narnaul, vide which respondent No.2, namely, Karamvir, was acquitted of the charges framed against him. Challenge is also to the judgment dated 24.11.2017 passed by the learned Sessions Judge, Narnaul, vide which the judgment dated 20.04.2017 passed by the trial Court, was upheld.

As per the prosecution version, on 27.04.2013, a telephonic information was received that an accident had occurred at Bhaidanti Mod, between one Hiwa (dumper) bearing No.RJ-14-GE-8077 and motorcycle bearing No.HR-35-G-7375. In the said accident, one Prithvi Raj and Moti Lal had expired. The complainant is stated to be the uncle of deceased, namely, Prithvi Raj. Respondent No.2, being the driver of the said Hiwa (dumper), was tried for the offences under Sections 279 and 304-A IPC, which ultimately resulted into his acquittal vide

impugned judgment dated 20.04.2017.

Aggrieved against the said judgment of acquittal, the petitioner preferred an appeal before the learned Sessions Court, which was dismissed on 24.11.2017. Still aggrieved, the present petition has been filed.

Learned counsel for the petitioner submits that the judgments passed by both the Courts below are based on conjectures and surmises; that it has wrongly been recorded by both the Courts below that there are discrepancies in the site plan (which was prepared at the spot) and number plates of the vehicles in question and that respondent No.2/driver of Hiwa (dumper) fled away from the spot. He further submits that, though the petitioner, while recording his testimony as PW-4 before the Court below, specifically stated that the place of occurrence was not a Khada turn (mod) and the offending dumper was seen coming from a distance of 60-70 feet at a rash and negligent speed, yet the said fact was not taken into consideration by the Courts below. Still further, it is submitted that in recovery memo dated 27.04.2013 (Annexure A-3), the number of the offending vehicle had specifically been mentioned as RJ-14-GE-8077, but the said fact has completely been brushed aside by the learned trial Court.

Learned counsel for the petitioner further submits that the presumption of innocence as drawn by the Courts below and benefit of doubt given in favour of respondent No.2, is beyond common understanding.

I have heard the learned counsel for the petitioner and have minutely gone through the judgments passed by both the Courts below.

It is not disputed that the petitioner while deposing before the trial Court as PW-4 had corroborated the prosecution version in his Examination-in-Chief. However, during cross-examination he stated that Mangal Ram (PW-2), who came at the spot after 1-2 minutes, had made telephonic calls to Police as also for ambulance and that the police and the ambulance reached the spot after about half an hour of the accident. He further deposed that he had seen Karamvir (respondent No.2) at the spot.

Further, the petitioner in his testimony stated that the place of occurrence was not a Khada turn (mod) and the offending Dumper was seen coming at a distance of 60-70 feet, being driven in a rash and negligent manner. However, the said fact is not in consonance with the site plan, which was prepared at the spot itself. The learned Courts below have specifically held that the photographs of offending Hiwa (dumper) and motorcycle were not proved on record and the said photographs do not show the number plate of offending Dumper and the mechanical examination regarding it was also not conducted. Neither the notice under Section 133 of the Motor Vehicle Act, 1988 was served nor the owner of the offending vehicle, namely Surender Kumar son of Chattar Singh, was examined by the prosecution.

In recovery memo (Annexure A-3) number of the offending vehicle has been mentioned as No.RJ-14-GE-8077 (however there is

cutting on the same), whereas at another place it has been mentioned as RJ-32-GE-8077. This also creates doubt on the prosecution story.

As noticed above, respondent No.2/accused is said to have fled away from place of accident. There is nothing on record to suggest as to how his name came to fore and he has been indicted in present case.

It is a settled law that in an appeal against acquittal, if two views are possible on appreciation of the evidence and circumstances of the case, one as taken by the trial Court for acquitting the accused, should not be interfered with as there are double presumption of innocence in favour of the accused persons, who were acquitted by the trial Court.

The appreciation of the evidence in the revisional jurisdiction is required only when there is misreading of any material evidence on record. Indisputably, both the Courts below have reached the conclusion on the basis of evidence on record. It could not be pointed out that the view taken by the Courts below was not a possible view in law. As noticed above, when there is no clinching evidence as regards the guilt of the accused, the benefit of doubt is extended to the accused. It is also trite in law that the prosecution is to prove its case beyond the shadow of reasonable doubt.

No other point has been urged.

In view of the above, I do not find any illegality and infirmities in the impugned judgments passed by both the Courts below.

Dismissed.

04.08.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No