

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1339-SB-2004
Date of decision: 02.02.2024

Rajinder Singh ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Himanshu Arora, Amicus Curiae
for the appellant.

Mr. Jagdish Manchanda, Addl. A.G., Haryana.

AMAN CHAUDHARY, J.

1. Challenge has been laid to judgment/ order dated 24.04.2004, passed by learned Additional Sessions Judge, Faridabad, whereby the appellant was convicted and sentenced as under:-

Offence U/s	Imprisonment	Fine	Default sentence
304 Part-II IPC	RI for six years	Rs.5000/-	RI for six months
337 IPC	RI for three months	Rs.300/-	RI for seven days
338 IPC	RI for one year	Rs.500/-	RI for fifteen days

All the sentences were ordered to run concurrently.

2. Succinct facts at first. On 19.11.1999, when a Parbhat Pheri reached in front of KD Gas Agency in the wee hours, a truck bearing registration No. HR 38-8768 being driven by the appellant in a rash and negligent manner, hit the devotees, on account of which one lady namely; Laxmi Devi w/o Hari Mohan Khati died at the spot, whereas Geeta succumbed to the injuries on the way to the hospital and many others suffered multiple injuries. However, the driver fled the spot. On basis of the statement of one Ram Sarup, FIR in question was registered.

3. After completion of investigation, the final report under Section 173 Cr.P.C. was presented in the Court against the accused-appellant. On finding a prima facie case, charges under Sections 304, 325 and 323 of IPC were framed against him, to which he pleaded not guilty and claimed trial.

4. To bring home guilt of the accused, the prosecution examined PW1- Govind Ram, PW-2 Ashok Kumar, PW-3 Ram Sarup, PW-4 Pushpa, PW-5 Kunti, PW-6 Bimla, PW-7 Rambir, PW-8, Mahener Kumar, PW-9, Dr.Meenu Kapoor, PW-10 Hari Mohan, PW-11, Dr.SK Mittal, PW-12 Inderjit, PW-13, ASI Dir Singh, PW-14 HC Randhir singh, PW-15, Dr.Nirja, PW-Tej Pal, PW-17 Anoj Kumar, Draftsman, PW-18, Dr.SP Jayant, PW-19, Dr.Hilala Anand, PW-20, Dr.NC Gaur, and PW-21 Inspector Ramesh Pal. On closure of prosecution evidence, statement of the accused-appellant was recorded under Section 313 Cr.P.C. All the incriminating evidence was put to him, which was denied and he pleaded innocence and false implication. No evidence was led by the accused in his defence.

5. On scrutinizing the evidence led by the parties and hearing the counsel, the trial Court finding the prosecution proved beyond reasonable doubt, convicted and sentenced the accused-appellant as noticed above.

6. Aggrieved appellant is before this Court.

7. Learned counsel would contend that the appellant was not the driver of the offending truck and it was one Swaran Pal, as is apparent from FIR. He has been falsely involved only to get the compensation, as he was holding a valid driving licence. Even ASP Mamta Singh, who had investigated the matter did not appear as a witness, which is fatal to the case. There were contradictions in the statements of the prosecution witnesses regarding the accident. Further, it is at the most a case of offence falling under Section 304-A IPC. The prosecution case is based on conjecture and surmises.

To buttress his submissions, reliance was placed on **Alister Anthony Pareira vs. State of Maharashtra**, (2012) 2 SCC 648, **Bahadur Naik vs. State of Bihar**, (2000) 9 SCC 153 and **State of Karnataka vs. Satish** (1998) 8 SCC 493. In the alternative, prayer for letting off the appellant on probation was made as he has suffered a protracted trial of 25 years and by drawing the attention of this Court to para 8 of the grounds of appeal, wherein it has been stated that appellant is not a previous convict and having a large family to support, of which he is the only bread earner. He never misused the concession of bail granted to him. He has undergone 6 months and 19 days of imprisonment.

8. Per contra, learned State counsel has submitted that the trial Court after evaluating the evidence, has rightly convicted the appellant, therefore, he prays for the dismissal of the present appeal. In the claim petition filed before the Tribunal under the Motor Vehicle Act, the owner of the offending truck in his written statement, specifically stated the appellant to be the authorised driver of the vehicle at the time of the alleged accident, though denying it had taken place due to his rash and negligent driving. The appellant did not even choose to appear in the said proceedings and was proceeded against ex parte on 22.1.2005 as his counsel pleaded no instructions, a fact noticed in para 9 of the award dated 19.03.2005, the Tribunal after going through the statements made by Hari Mohan PW3, Ashok Kumar PW4, Smt. Pushpa Sharma, PW10, Smt. Meera Devi PW11, Smt. Saroj Bahl PW13 and Smt. Kunti Bai PW14, held that the accident had taken place due to rash and negligent driving of the appellant and allowed the claim petition. However, he affirms the factum of the period undergone by the appellant and also his non-involvement in any other case prior and after the present one.

9. Heard the learned counsel on either side and perused the record with their able assistance.

10. Evidently, PW-2 Ashok Kumar had specifically stated that they were a part of Parbhat Pheri, which is being organised in the month of Kartik and from the front side, a truck being driven at a very high speed by the accused-appellant came towards the Sangat and hit them due to which, 7/8 persons received injuries, out of whom, two ladies including his wife, died. The said statement stood corroborated by complainant-Ram Sarup PW-3, who was also a part of the congregation by stating that they signaled the truck to slow down but he did not do so and caused the said accident. Even injured-eyewitnesses, PW-5, Kunti Bai, PW-6, Bimla Rani and PW-8 Mahender Kumar, had in one voice narrated that the accident had taken place in the same manner. PW-7 Rambir in his deposition has categorically deposed that the said truck was driven by Rajinder Singh, the present appellant and his driving licence was handed over to the police in his presence vide recovery memo Ex.PW7/A, of which he was a witness. The cause of death of Laxmi wife of Hari Mohan was proved by Dr.Meenu Kapoor, who had conducted the postmortem as per which, it was due to haemorrhage shock and injuries to vital organs, spleen and lungs, which are ante mortem in nature. She also conducted the postmortem of Geeta, who died in the said accident, and similarly opined regarding her cause of death.

11. Insofar as the contention of the appellant that he has been falsely implicated in the present case, he did not lead any defence evidence during the course of trial. There is also no record to show that any application was filed to the higher police authorities by him stating that his name has been wrongly indicated in the final report in place of one Swaran Pal. Further the testimonies of the witnesses remained unshaken during their cross

examinations. Thus, the appellant has not been able to create any dent in the prosecution case.

12. In **Birbal Nath vs. State of Rajasthan**, 2023 SCC OnLine SC 1396, Hon'ble the Supreme Court held that "contradictions in two statements may or may not be sufficient to discredit a witness, Sections 145 read with 155 of Evidence Act, 1872 must be carefully applied in a given case. Coming back to the instant case, the Court accepted that "Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness."

13. A gainful reference can be made to **M.P. vs. Mansingh**, (2003) 10 SCC 414, wherein Hon'ble the Supreme Court observed that the statement of an injured eyewitness to be an important piece of evidence, which cannot be easily discarded by a Court, and that minor discrepancies do not matter.

14. Further, as regards the contention of non-examination of the Investigation Officer, it does not cut much ice. In **Bahadur Naik vs. State of Bihar case**, (2000) 9 SCC 153, Hon'ble the Supreme Court observed that non-examination of the Investigating Officer would not be fatal to the prosecution if there were no material contradictions in the testimony of the witnesses.

15. Hon'ble the Supreme Court in **State through PS Lodhi Colony vs. Sanjeev Nanda**, (2012) 8 SCC 450, held thus:

“41. We are of the considered view that looking to the nature and manner in which the accident had taken place, it can safely be held that the respondent had no intention to cause death but certainly had the knowledge that his act may result in death.

42. Thus, looking to the matter from all angles, we have no doubt in our mind that knowledge can still be attributed to accused Sanjeev that his act might cause such bodily injuries which may, in ordinary course of nature, be sufficient to cause death but certainly he did not have any intention to cause death. He was not driving the vehicle with that intention. There is nothing to prove that he knew that a group of persons was standing on the road he was going to pass through. If that be so, there cannot be an intention to cause death or such bodily injury as is likely to cause death. Thus, in our opinion, he had committed an offence under Section 304 Part II IPC. We accordingly hold so.”

16. The non-examination of the Investigating Officer being not fatal to the prosecution case, and there being overwhelming evidence in shape of the ocular version of the injured-eyewitnesses, which stood supported by the medical evidence and the trial Court having meticulously examined the evidence, arrived at the right conclusion that it was a case which securely fell within the mischief of the offence under Section 304 Part II IPC, as the prosecution was successful in bringing home the guilt of the appellant in that regard.

17. The judgments cited by the learned counsel for the appellant being distinguishable on facts do not come to his aid.

18. On conspectus evaluation and in light of the judgments referred to hereinabove, this Court finds no infirmity or perversity in the impugned judgment of conviction, which is thus upheld.

19. In so far as, the prayer for grant of probation is concerned, a profitable reference can be made to **State of Karnataka vs Muddappa (1999) 5SCC732**, wherein Hon’ble the Supreme Court has observed and held that, “...whether the benefit of the Probation of Offenders Act could be

extended in any particular case depends upon the circumstances of that case. Admittedly, there is no statutory bar for application of the Act to an offence under Section 304 Part II where the maximum punishment is neither death nor imprisonment for life. In that view of the matter and on examining the impugned judgment of the High Court, we find that the Court did consider the relevant material and then came to the conclusion that the accused should be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act. We see no infirmity with that order to be interfered with by this Court after this length of time, more so when nothing has been pointed out as to whether the accused has, in any way, violated the terms and conditions of allowing him on probation.”

20. In **Satish vs. State of U.P.**, (2021) 14 SCC 580, Hon’ble the Supreme Court had observed that, “Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future. [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]”.

21. Humanistically viewing, the appellant having suffered the ignominy of trial since long; successfully warded off his crime-proneness-an evident learning of a lesson; his socio-economic circumstances, this Court finds extenuation to be implicit. Thus, to strike a balance and serve the interest of justice, the appellant deserves to be granted an opportunity to

assure the authorities of his reformation. He be released on probation for a period of one year, on the following conditions as enshrined under Section of the Probation of Offenders Act, 1958:-

- (1) He shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.10,000/- which shall be executed before the trial Court within a period of one month from today.
- (2) The said bond shall be in force for a period of one year.
- (3) He shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

22. It is clarified that in case there is any breach of the aforesaid conditions, the appellant will forthwith be taken into custody and shall have to undergo the sentence awarded to them by the trial Court.

23. Appeal stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

02.02.2024
Hemant

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