



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-214-2024 (O&M)
Reserved on :13.09.2024
Date of Pronouncement: 23.09.2024

JARNAIL SINGH ALIAS JAILUPetitioner

VERSUS

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. A.S. Barnala, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI. J.

1. Through the instant revision petition, the petitioner has assailed the verdict of conviction dated 25.10.2016, and consequent thereto, order of sentence of even date, whereby, the learned Judicial Magistrate Ist Class, Barnala (hereinafter referred to as 'the learned trial court concerned'), has convicted him for commission of offences punishable under Sections 279, 304-A and 338 of the IPC and, sentenced him to undergo following imprisonment:-

Offences	To undergo rigorous imprisonment for	And to pay fine	To further undergo simple imprisonment in default
279 of IPC	Six Months	-	-
304-A of IPC	Two years	Rs.1000	7 days
338 of IPC	One year	-	-

2. In addition, the petitioner has also assailed the verdict dated 08.08.2023, whereby, the learned Sessions Judge, Banala, (hereinafter referred to as 'the learned appellate court concerned') has dismissed statutory appeal filed by the petitioner, against the verdict of conviction and order of sentence (*supra*).

ALLEGATIONS AGAINST THE PETITIONER

3. It is a case of an unfortunate death of two persons in a roadside accident, wherein the present petitioner is facing incarceration, being held guilty by the learned trial court concerned, as his act was held to be rash and negligent while driving the offending vehicle, i.e. the truck.

4. On the fateful day, i.e. on 27.02.2012, on receipt of a telephonic information regarding admission of Nirmal Singh and other persons at Civil Hospital, Barnala, after suffering injuries due to the said roadside accident, ASI Iqbal Singh (who later on stepped into the witness box as PW6, being one of the investigating officer), reached the hospital and moved an application to the doctor concerned, for seeking information regarding complainant's fitness for making statement, and after permission was granted, the statement of complainant-Nirmal Singh was recorded. After recording the statement, a *ruqqa* (Ex.P3) was sent for registration of the FIR (*supra*), and thereupon, the FIR (Ex.P4) was registered. The investigating officer, conducted investigation, and the offending truck PB-03R-9248, was recovered by way of recovery memo (Ex.P.6) from the spot, and the car make Zen bearing Registration

No.PB-48-A-7009, was also recovered vide recovery memo Ex.P-7. In the said accident, two persons have unfortunately died. The postmortem of the dead bodies were conducted, and proved on record as Ex.P-10 and Ex.P-11.

5. In the instant case, the present petitioner was arrested being a driver of the offending truck, and after completion of the investigation, final report was filed, and the petitioner was sent by the Station House Officer to face the trial in FIR bearing No.23, dated 27.02.2012, under Sections 279, 304-A, 337, 338 and 427 of the IPC. The trial court concerned framed charges after making compliance to provision of Section 207 Cr.P.C., under Sections 279, 304-A, 337 and 338 of the IPC, to which the petitioner pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined as many as 9 witnesses. The petitioner opted not to lead any evidence however, under Section 313 Cr.P.C., he took a defence that the car in which the deceased were travelling was occupied by 8 persons whereas the capacity of the said Zen car is only of 5 persons, and it was the negligence of the driver of the car which led to the accident.

7. The learned trial court concerned, after appreciating the evidence, held the petitioner guilty for the charges framed against him, and convicted and sentenced him vide impugned judgment and order (*supra*). The statutory appeal preferred by the petitioner, against the aforesaid verdict, also met the same fate, and was also dismissed by the first appellate court, vide judgment (*supra*).

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

8. The first submission as made by learned counsel for the petitioner is that the petitioner's name is not included in the FIR and it is an admitted case of the prosecution that no test identification parade was conducted during the investigation, therefore, petitioner's identification was conducted for the first time in the witness box, that too after many years of the occurrence, which is a weak piece of evidence, and the courts below ought to have given weightage to the defence evidence, instead of accepting the statement of eyewitnesses account in its totality.

9. Secondly, while referring to the cross-examination of PW2-Charanjit Kaur, he submitted that the deceased, and other family members, were coming from a marriage party, at 5:00 p.m. in the winters of the month of February, and it was admitted by Nirmal Singh-PW1, that there was an arrangement of alcohol in the marriage palace, therefore, there was all probability that the driver of the car was under the influence of alcohol, which led to the instant occurrence.

10. Thirdly, he submitted that the major link evidence, which could prove the genesis of accident is missing. He further submitted that from the site photographs, which were placed on record, by Makhan Lal, who stepped into the witness box as PW4, clearly established that the car was hit from the rear side of the truck, therefore, there is nothing on record with the prosecution to establish that the petitioner was driving in a rash and negligent way. He while drawing attention towards the statement of investigating officer i.e. ASI Iqbal Singh (PW6), submitted

that there is no site plan on the judicial file, which, in fact was prepared by the investigating officer, during the investigation.

11. He also submits that in the absence of any other corroborative evidence, except the statements of eyewitness, the guilty of the petitioner is not proved beyond reasonable doubt.

12. He over and above submitted that the petitioner has undergone the actual sentence of more than 01 year 01 month, as on today and submits that in case this court comes to a conclusion that petitioner is guilty, it may be considered that he is the only bread earner of his family, and is a first time offender, therefore, his sentence may be reduced to already undergone.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

13. On the other hand, learned State counsel, opposed the submissions made by learned counsel for the petitioner, and submits that there is no perversity and illegality in the order passed by the courts below, therefore, the judgments/order passed by the courts below does not require any interference by exercising the revisional powers by this Court.

14. He further submits that merely because no test identification parade was conducted at the time of investigation stage, does not *ipso facto* entitle the petitioner casts doubt on the prosecution version, specifically when two independent eyewitnesses, identified the petitioner in the witness box.

15. Finally, he submitted that both injured eyewitnesses, PW1-

Nirmal Singh, and PW2-Charanjit Kaur, *unambiguously*, stated that the petitioner was driving the offending vehicle in a rash and negligent manner, and caused a head on collision with the car, which resulted in the death of two persons. Both the witnesses were put to lengthy cross-examination, but the defence failed to impeach their credibility

FACTUAL ANALYSIS

16. This Court has considered the submissions made by both learned counsel for the petitioner, as well as State, and has perused the entire case file.

17. So far as, the first submission made by learned counsel for the petitioner is concerned, it does not haul any merit. There is no doubt, that no test identification parade was conducted in the instant case, however, it was not the case of the petitioner that he was not the driver of the offending vehicle, rather from the perusal of the cross-examination, and statement of the petitioner recorded under Section 313 Cr.P.C., the main thrust of the defence (petitioner/accused) is that it was the driver of the car who was, in fact, rash and negligent, and struck his car at the back side truck, and the car was, in fact, overloaded. The petitioner cannot take two contradictory defence.

18. Further, the injured eyewitnesses, who lost their family members in the said accident, would not have falsely implicated the present petitioner without any reasons. They were subjected to cross-examination in this regard, but nothing material could elucidate from their statements, helping the accused to make a case of disputed identity

of the driver. Therefore, the first submission made by learned counsel for the petitioner, is hereby, rejected.

19. To substantiate, the second submissions, as made by learned counsel for the petitioner, the defence has not produced any evidence. The defence cannot be presumed by the court, however, the inference which the petitioner wants this Court to have, but, without any supportive evidence, as there is no medical record of the deceased driver that he was under the influence of alcohol. Therefore, this plea is also rejected by this Court.

20. So far as the third plea of learned counsel for the petitioner, is concerned, this Court finds merits therein, on perusal of statement of PW6-ASI Iqbal Singh (IO), it clearly reflects that, there was no site plan on the judicial file. He further admitted that he prepared the site plan during the investigation.

21. The instant case revolves around the statements of PW1 and PW2, who are the eyewitnesses, and also the occupants of the ill-fated vehicle, and according to their statements, on the fateful day, the petitioner while driving the truck in a rash and negligent manner, straightway collided with their vehicle, and the courts below. on the statements of the above two witnesses, concluded that the act of the petitioner was rash and negligent, while driving the truck.

22. In case of a roadside accident, in order to prove the act of a person, either rash or negligent, the site plan is one of a crucial evidence, from which a court can appreciate; whether, the driver of the offending

vehicle was driving, with a standard of due care and caution, or rashly and negligently.

23. From the photographs as placed on record, it reflects that the car struck on the back side of the truck, whereas, from the eyewitness account, it was the case of head on collision. To rule out any discrepancy, the site plan would have depicted the place and status of each vehicle on the road, and thereupon, the court below would have been in a position to analysis; whether, the act of the driver of the offending vehicle was rash or negligent or not. Furthermore, whether the act of the petitioner was rash or negligent, is required to be proved beyond reasonable doubt, and merely because two persons have died in the ill-fated vehicle, and the petitioner has survived being sitting on a higher wheel, would not be sufficient to presume the guilt of the petitioner. A Court cannot presume existence of a fact, which is required to be proved beyond reasonable doubt. It is a burden upon the prosecution to prove that the act of the present petitioner was rash or negligent, while driving his truck, by leading cogent evidence.

24. As discussed above, this is gross lacking in the instant case, therefore, it creates dent in the story of the prosecution, which goes to the root of the matter, therefore, the benefit of doubt goes to the petitioner/accused.

FINAL ORDER

25. In view of the above discussion, the instant revision petition is, hereby, **allowed**, and the petitioner is **acquitted** of the charges, as

framed against him. The impugned verdict of conviction and order of sentence dated 25.10.2016, as passed by the learned trial Court concerned, is set aside. Furthermore, the impugned verdict dated 08.08.2023, whereby, the learned Sessions Judge concerned, had upheld the conviction of the petitioner, is also **set aside**.

26. The petitioner is directed to be released from custody, if not required in any other case. His bail bonds and surety bonds, if any, also stand discharged.

27. All pending application(s), if any, also stand disposed of accordingly.

September 23, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No