

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

232

CRR-514-2021

Date of decision: 26.04.2024

Bashir Mohammad

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Luvinder Sofat, Advocate as Amicus Curiae and
Mr. Jamshed Ahmed, Advocate for the petitioner.

Ms. Jasleen Chahal, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning order dated 15.11.2018 passed by the learned Trial Court whereby he was convicted and sentenced to undergo RI for a period of two years and six months under Sections 304A and 279 of the IPC in case FIR No.869 dated 15.12.2014 under Sections 279, 337, 338, 304A of the IPC registered at Police Station Jhajjar, and order dated 07.04.2021 whereby the appeal preferred by him was dismissed by the learned Appellate Court.

2. As per the case of the prosecution, a telephonic call was received from the Police Control Room, Jhajjar, that ahead of Village Luhari, an accident had taken place between a motorcycle and a truck, leading to the death of the rider of the motorcycle while two other persons riding on the ill fated motorcycle had sustained serious injuries. On reaching the spot, the brother of deceased No.1 i.e. complainant Devender, was found next to his dead body, who then got recorded his complaint leading to the registration of the FIR in question (PW5/A)

under Sections 279, 337, 338 and 304A of the IPC wherein he alleged in brief as follows:

That on 15.12.2014 at about 12:15 PM, Sudhir (hereinafter referred to as 'deceased No.1'), was riding his motorcycle, with Rajesh and Rakesh (hereinafter referred to as 'deceased No.2'), pillion riding behind him; complainant Devender (brother of deceased No.1) was standing outside his house, on the katcha path. He saw that truck bearing registration No.HR74A-0626, came driven in a rash and negligent manner, from the opposite side, and collided with the motorcycle of the deceased; as a result of the collision all the three occupants on the motorcycle, fell down on the road; the offending truck ran over deceased No.1 and dragged him to about 12 feet on the road, crushing him badly. The truck driver, however, fled away. Deceased No.1 died on the spot whereas the other two occupants of the motorcycle, were removed to the hospital with serious injuries on their person. Deceased No.2 also succumbed to his injuries later in the hospital, however, injured Rajesh survived the accident. The complainant also stated that although the truck driver was unknown to him, however, he could identify him in case he came before him.

3. On the basis of material collected during investigation, challan was presented before the learned Trial Court leading to the framing of charges under aforementioned Sections of the IPC. The petitioner pleaded not guilty and claimed trial. The prosecution in support of its case examined as many as 10 witnesses, including PW-2 Rajesh (injured witness). On the basis of the material on record and the evidence led during trial, the learned Trial Court convicted the

petitioner and sentenced him as follows:-

Offence(s) u/s	Period of sentence(s)	Fine	Period of sentence in default of payment of fine
279 IPC	RI for 06 months	Rs.1,000/-	SI for 01 month
304A IPC	RI for 02 years	Rs.1,000/-	SI for 01 month

4. The appeal preferred by the petitioner against the aforementioned order of the learned Trial Court was also dismissed on 07.04.2021 by the learned Additional Sessions Judge, Jhajjar.

5. Learned Amicus Curiae appearing on behalf of the petitioner has vehemently argued that no doubt concurrent findings stand recorded by both the learned Trial Court as well as the learned Appellate Court against the petitioner, however, the Courts had gravely erred in not appreciating the evidence in its right perspective.

6. While arguing further, learned Amicus Curiae has asserted that there is no dispute that deceased No.1 and deceased No.2 did die in a motor vehicular accident which took place on 15.12.2014 with truck bearing registration No.HR74A-0626; the prosecution had not been able to prove the identity of the driver who was alleged to be driving the offending truck at the relevant time, so as to bring home his guilt. While drawing the attention of this Court to the deposition of the injured witness, PW-2 Rajesh, learned Amicus Curiae further argued that during his cross-examination, this witness had explicitly and categorically deposed that after the collision with the truck, he had become unconscious, and thereafter the truck driver had fled away from the spot. Hence, once he had become unconscious immediately after the collision, which was a sudden accident, it is highly improbable he could have seen the face of the driver of the offending truck. He further

argued that during his cross-examination, this very witness first deposed that “I know the driver” but further in the same breath deposed that “he did not see the truck driver at the spot”. Still further, it was asserted by the learned Amicus Curiae that complainant Devender, who was the real brother of deceased No.1 and who allegedly witnessed the accident in question, though cited as a witness, strangely did not even step into the witness box to get his testimony recorded. Learned Amicus Curiae vehemently argued that since complainant Devender who was the most material witness, and who had also given the registration number of the offending truck, not getting his testimony recorded during trial, created a serious dent in the case of the prosecution, and rather demolished the very foundation of the prosecution case.

7. Learned Amicus Curiae still further contended that even the investigating officer i.e. PW HC Vinod Kumar failed to explain as to how the petitioner was linked to the accident in question in the absence of any other cogent evidence or even any test identification parade having been carried out.

8. Per contra, learned State counsel contended that the prosecution had been successful in proving its case beyond reasonable doubt by examining its witnesses. She asserted that no doubt the complainant who had witnessed the accident in question and had also given the registration number of the offending truck, had not been examined but the fact remained that once he had been cited as a witness, the failure to examine him could not be deemed to be fatal for the case of the prosecution; it was rather the duty of the defence to summon the said witness and examine him in the present case. She also

asserted that once PW Rajesh (injured witness) had stepped into the witness box as a prosecution witness and still further had supported the case of the prosecution, no adverse inference could be drawn against non-examination of the complainant in the present case. Learned State counsel still further vehemently argued that the learned MACT had awarded compensation to the family of the deceased, which further corroborated the case of the prosecution that not only was the truck in question involved in the accident in question but it was the petitioner who was driving the truck negligently and rashly leading to two fatalities and one person i.e. PW Rajesh having sustained serious injuries in the accident.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. In criminal jurisprudence, a fundamental principle dictates that the prosecution must independently prove its case. The accused is presumed innocent and the onus lies on the prosecution to establish the guilt of the accused beyond reasonable doubt. This presumption of innocence serves as a cornerstone principle guiding criminal trials. It is crucial to underscore that within the framework of the Indian Evidence Act, 1872, particularly Sections 101 and 102, concerning criminal cases, the sole responsibility of proving the case against an accused beyond reasonable doubt, rests with the prosecution, even in instances where some witnesses may have turned turtle and not supported the case of the prosecution. The argument of the learned State counsel that once the complainant had been cited as a witness, the role of the prosecution beyond that ended and it was the defence which

should have sought to summon and made efforts to examine the complainant, thus, clearly deserves to be rejected. Moreover, in a criminal trial, the guilt of an accused is to be proved beyond shadow of reasonable doubt whereas in cases under the MACT are decided on preponderance of probability.

11. Adverting to the instant case as well, the fundamental principles of Indian Evidence Act, 1872 cannot be ignored; it is a matter of record that the complainant, who witnessed the accident in question and who also gave out the registration number and other details of the offending truck, did not put in appearance for getting his evidence recorded before the learned Trial Court. Furthermore, PW Rajesh contradicted himself. Injured PW Rajesh testified and came up with self contradictory statements: *"I know the truck driver"*; *"that the truck driver ran away from the spot with the truck"*; and *"it is correct that I did not see the truck driver at the spot"*. Furthermore, injured Rajesh also testified during his deposition following the collusion with the truck, he lost consciousness, and subsequently, the truck driver absconded from the scene. Consequently, given that PW Rajesh lost consciousness immediately after the sudden accident, as per the case of set up by the prosecution, itself, it seems highly improbable that PW Rajesh could have identified the driver of the offending truck i.e. the petitioner. This improbability is further compounded by the fact that he was seated behind the deceased on the motorcycle at the time of the accident; the truck driver was positioned at a higher elevation as he was driving a truck, while the injured PW Rajesh was seated on a motorcycle, significantly lower in height, making it improbable for him

to have discerned the facial features of the driver i.e. the petitioner. This Court also concurs with the argument raised by the learned Amicus Curiae that even PW HC Vinod Kumar miserably failed to bring on record any evidence as to how the petitioner was linked to the accident in question; no doubt, this witness, stated that on 17.12.2014 the petitioner was arrested, however, other than this, no cogent evidence was led by the prosecution to point out the involvement of the petitioner in the accident in question. The owner of the offending truck could have been a material witness to testify as to whether the petitioner was driving the offending truck at the relevant time but admittedly he was not even cited as a prosecution witness.

12. As a sequel to the above, this Court has no hesitation in observing that the prosecution failed to conclusively bring home the guilt of the petitioner beyond reasonable doubt.

13. Accordingly, the instant revision petition is allowed and the impugned orders are hereby set aside. The petitioner is acquitted of the charges framed against him.

26.04.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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