

2024:PHHC:041964

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.301

CRR-276-2006 (O&M)
Reserved on : 01.03.2024
Pronounced on: 22.03.2024

Amarjit Singh Petitioner

VERSUS

State of Punjab Respondent

CORAM: HON’BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Akshit Pathania, Advocate (Amicus Curiae)
for the petitioner.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

KIRTI SINGH, J.

The present revision petition has been preferred against the judgment of conviction and order of sentence dated 05.08.2005 passed by the Judicial Magistrate Ist Class, Bathinda, whereby the petitioner has been convicted for commission of offences punishable under Sections 279, 304-A and 338 IPC in case FIR No.54 dated 08.08.2000 registered at Police Station Thermal, Bathinda and has been sentenced as under:-

Section of IPC	RI	Fine	In default of payment of fine
279	Six months	Rs.500/-	Further undergo RI for 15 days
304-A	Two years	Rs.1000/-	Further undergo RI for 30 days
338	One year	Rs.500/-	Further undergo RI for 15 days

2. The trial Court had ordered that all the sentences shall run concurrently.
3. A further challenge has been raised to the judgment dated 20.01.2006 passed by learned Addl. Sessions Judge (Adhoc), Fast Track

Court, Bathinda whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Bathinda has been affirmed.

4. Learned counsel appearing on behalf of the petitioner submits that he has various grounds to challenge the judgment of conviction which are mentioned as under:-

- (i) the sole witness Vinod Kumar turned hostile.
- (ii) the test identification parade was done in the Court for the first time when the trial was going on and not before that.
- (iii) the testimony of the defence witness was totally ignored.
- (iv) there are material contradictions in the statement of prosecution witnesses.

5. *Per contra*, learned counsel appearing on behalf of the respondent-State submits that the prosecution has duly established the case against the petitioner and that on account of his rash and negligent driving, a person has lost his life. He further submits that the judgment of both the Courts below have been passed after considering the entire evidence and material on the record. The other factual aspects have not been rebutted by the learned counsel for the State. He has produced on record the custody certificate of the petitioner which is taken on record. As per the custody certificate, the period of custody as stated by the learned counsel for the petitioner is correct.

6. The brief background of the prosecution case is that FIR No.54 dated 08.08.2000 was registered under Sections 279, 337, 304-A and 427 IPC on the statement of PW2 DSP-Kaka Singh who stated that he was travelling in his Government gypsy bearing No.PB-08B-2996 which was

driven by Constable Mangal Ram (since deceased) and his gunman Constable Kuldeep Singh was also with them. He alongwith abovesaid persons were going to his residence to have lunch and one Vinod Kumar Mittal, employee of NFL, also joined them. When the driver of gypsy turned towards Bathinda city, then one truck bearing No.RJ-13G-5212 came at high speed from Goniana side and hit the gypsy in which the complainant and the deceased were travelling and on account of the injuries received the said Constable Mangal Ram died whereas Constable Kuldeep Singh, Vinod Kumar Mittal and the complainant suffered injuries. It has been alleged that it was the present petitioner who was driving the offending vehicle. After investigation, the challan was presented and the charges were framed. The prosecution examined 14 witnesses.

7. Statement of the accused was recorded under section 313 Cr.P.C. wherein the incriminating evidence appearing against the accused in the statements of witnesses was put to him, but the accused denied the same and took the plea that DSP Kaka Singh himself was driving the gypsy and he did not know how to drive properly and he at once turned the gypsy it towards link to the main road as a result of which the gypsy turned down and driver Mangal Dass died and remaining persons sitting in the gypsy sustained injuries. Case is falsely implicated upon him. In defence, the accused examined Surjit Singh as DW 1 and placed on record Ex.DA and then closed the defence evidence.

8. PW2 deposed on oath that on 08.08.2000, he was posted as DSP City and he was in his Government gypsy bearing No.PB-08B-2996 which was driven by Constable Mangal Ram and his gunman Constable Kuldeep Singh and Constable Pardeep Singh were also with them. At about

1.30 p.m., he alongwith abovesaid persons were going to his residence for taking meal. One NFL employee-Vinod Kumar Mittal also sat in his gypsy from NFL Gate No.1. A truck No.RJ-13G-5212 which came from Goniana side was driven by driver rashly and negligently due to which the truck hit the gypsy at the rear side. All the persons sitting in the gypsy received injuries and he got injuries on his shoulder. The truck was driven by Amarjit Singh. Sub Inspector Darshan Singh came to the spot and took all of them to the hospital.

9. PW 10 Constable Kuldeep Singh corroborated the statement of PW-2 by deposing to the similar effect.

10. PW 1 Dr. Pawan Kumar Bansal, SMO, Civil Hospital, Bathinda placed on record his report Ex.PA and in regard to MLR of DSP Kaka Singh and pictorial diagram Ex.PA/1. He also proved on record his report Ex.PC/1 whereby he declared injury No.5 i.e. injury on right shoulder to be grievous in nature and further opined that remaining injuries were simple in nature.

11. PW14 Dr. O.P. Aggarwal conducted the post mortem of the dead body of Mangal Ram who was the driver of the DSP Kaka Singh and proved on record his report Ex.PW13A. He opined that the cause of death was shock and haemorrhage resulting from the injuries on the person of Mangal Ram and all the injuries could be the result of the accident.

12. PW3 Gulab Singh duly proved on the record the mechanical test report of the gypsy and placed on record his report as Ex.PD.

13. PW9 Manjit Singh placed on record the posting order of Constable Kuldeep Singh vide Ex.PW9/A and contended that a perusal of Ex.PW9/A reveals that Constable Kuldeep Singh was posted as gunman with DSP Kaka Singh.

14. With regard to the first contention of the counsel for the petitioner that the prosecution witness PW5 turned hostile, it is held that during examination-in-chief PW5 stated that he was riding in the accidental gypsy and his presence at the spot was proved beyond doubt as he sustained injuries alongwith other persons. During cross examination, he denied the fact that his statement was recorded by the police. He also denied the fact that DSP Kaka Singh was driving the gypsy. The investigating officer has proved the fact that he recorded the statement Ex.PY of Vinod Kumar Mittal and as per version made by him and the investigating officer has not been cross examined on this point. Thus, there exists no reason to disbelieve the testimony of the investigating officer. The mere fact that the PW5 Vinod Kumar Mittal has not supported the case is not sufficient to discard the material evidence of the other injured witnesses.

15. With regard to the second contention that the testimony of defence witnesses was totally ignored in which he has alleged that the deceased before his death stated before him that DSP Kaka Singh was driving the gypsy. It is held that PW14 Dr. O.P. Aggarwal who had conducted the postmortem of Mangal Ram on 09.08.2000 stated that there was diffused swelling on the back of the head of the deceased. The clotted blood was present in the skull cavity and his brain was injured. The person who has sustained so many injuries which ultimately resulted into death in less than 24 hours cannot narrate the entire occurrence. There exists no reason to presume that the injured was fit to make the statement. As per the documents tendered into evidence, the dead body and police papers were brought by Sub Inspector Darshan Singh and the dead body was identified by Joginder Singh and Jagat Ram. There is no document on the record

which shows the presence of DW1 alongwith Mangal Ram deceased. Hence, the testimony of DW1 cannot be relied upon.

16. With regard to the next contention that the test identification parade was done for the first time in the Court, it is held that the evidence obtained from the test identification parade is admissible under Section 9 of the Indian Evidence Act but it can only be used to corroborate the substantive evidence presented by the witness in Court regarding the identification of the accused. In other words, the primary value of the test identification parade lies in supporting and strengthening the witness testimony during trial. The earlier identification made by the witness during test identification parade is not considered to have independent value. It is the testimony and identification made by the witness in the Court that hold substantive value.

17. The Hon'ble Supreme Court in the case of in **Malkhan Singh Vs. State of M.P., (2003) 5 SCC 746** it has been held thus:

"7. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section [162](#) of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ..."

And again:

"16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ..."

18. With regard to the fourth point of determination that there are material discrepancies in the testimonies of prosecution witnesses, it is held by The Hon'ble Supreme Court in ***Yogesh Singh v. Mahabeer Singh, 2017(11) SCC 195*** held that minor discrepancies in the testimony of witness is not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The relevant extract of the said order is reproduced as under:-

"29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious

contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.”

19. After hearing learned counsel for the parties and considering the entire material on record it is clear that there is no infirmity and illegality in the orders passed by the Courts below.

20. The Hon'ble Supreme Court in **State of Punjab Vs. Bakshi 2015 (5) SCC 182** had reduced the sentence of 02 years for commission of offence under Section 304A IPC to the period already undergone. The Coordinate Bench in CRR-4830-2016 decided on 08.03.2017 titled as **Balwinder Singh @ Bindhi Vs. State of Punjab**, has reduced the sentence to 04 months in case of conviction under Sections 279/304A IPC where rigorous imprisonment was awarded for 02 years.

21. In so far, the conviction of the present petitioner under Sections 279, 304A and 338 IPC is concerned, this Court is of the view that both the Courts below have considered the entire evidence and material on record in detail and have rightly come to the conclusion that it is the petitioner who is involved in the accident and thus, the conviction of the petitioner under Sections 279, 304A and 338 IPC is upheld.

22. With regard to the sentence which has been awarded to the petitioner, this Court is of the view that the accident in the present case is of the year 2000 and the petitioner has never misused the concession of bail/suspension of sentence. The petitioner is 49 years (approx.) of age and as per the custody certificate, he has undergone one month of actual custody out of the entire sentence awarded to him.

23. Thus, in view of the above facts and circumstances, sentence awarded to the petitioner is ordered to be reduced to the period already undergone subject to the fact that an amount of Rs.10,000/- will be deposited by the petitioner before the learned trial Court within a period of 02 months from the date of this judgment and in default he will be liable to undergo simple imprisonment for a period of one month.

24. With the abovesaid observations, the petition is partly allowed.

25. Pending miscellaneous application(s), if any, also stands disposed of.

26. Records of the Court below be sent back.

(KIRTI SINGH)
JUDGE

22.03.2024
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No