

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-833-2008
Reserved on: 24.01.2024
Pronounced on: 25.01.2024
2024: PHHC: 010610

ANGREJ SINGH

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ashok Kumar Khubbar, Advocate,
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

DEEPAK GUPTA, J.

This criminal revision is against the conviction recorded by the trial Court and as affirmed by the Appellate Court.

2. As emerges on the perusal of the paper-book, petitioner was tried by the Court of Id. Additional Chief Judicial Magistrate, Kaithal in criminal case No.7 of 1998, arising out of FIR No.930 dated 27.12.1997 registered at Police Station, Sadar Kaithal and vide judgment dated 03.03.2006, was convicted under Sections 279/337/338/304A IPC. Vide separate order dated 06.03.2006, he was sentenced as under: -

Offence u/s	Punishment	Fine	In default
279 IPC	Six months RI	-	-
337 IPC	Six months RI	-	-
338 IPC	Two years RI	₹1000/-	30 days
304-A IPC	Two years RI	₹2000/-	30 days

3. Against the aforesaid judgment of conviction and order of sentence, petitioner preferred an appeal before the Id. Sessions Judge,

Kaithal bearing Criminal Appeal No.25 of 2006, which was dismissed on 15.04.2008, thus affirming the conviction as well as sentence.

4.1 Impugning the aforesaid judgments by way of this revision, Ld. Counsel contends that both the Courts fell in error in ignoring the fact that accident took place at about 12:30 AM in the mid-night, when there was dense fog, as has come in the testimony of witnesses and so, witnesses could not be in a position to identify the driver of the offending tractor. Ld. Counsel contends that no test identification parade was conducted and simply on the basis of dock identification made by the witnesses for the first time in the court, the petitioner has been held to be the driver of the offending vehicle. Still further, it is contended that prosecution failed to connect the petitioner with the offending tractor; that testimony of the prosecution witnesses regarding identification of the petitioner for the first time was not at all reliable.

4.2 Ld. counsel further contends that though as per the statement of witnesses, the offending tractor directly hit the jeep but it is the left side of the jeep, which had a dent as per the mechanical report.

4.3 It is argued that in all the above circumstances, conviction and sentence recorded by the trial Court and as affirmed by the appellate Court deserves to be set aside.

5. Ld. State counsel, on the other hand, has defended the judgment and conviction recorded by the trial Court and as affirmed by the Appellate Court, by pleading that the same are based upon the proper appreciation of evidence.

6. I have considered submissions of both the sides and have also appraised the trial Court record with the able assistance of Ld. counsels.

7. Accident admittedly took place on the night intervening 26/27.12.1997 at about 12.30 AM at Kaithal-Pehowa Road. The collision was between a tractor bearing No.PB-11-2837, which was attached with a trolley loaded with wooden logs; and jeep No.GJI-HH-1159. The jeep was occupied by the complainant of the FIR, namely, Arvind PW7, besides Bachu Bhai PW8, Moti Bhai PW9, Ishwar Bhai PW10, Jai Inder PW11, Rajesh, Krishan Kumar and Parvat Bhai besides deceased Raman and Dalip. Said jeep was being driven by one Hasmukh. Raman and Dalip died in the accident, whereas other occupants of the jeep sustained injuries, as is evident from the postmortem reports/medico-legal reports duly proved on record.

8. As per the prosecution version, as the jeep was going towards Ambala side, the offending tractor came from the side of Pehowa and struck the right side of the jeep, due to which the steering wheel of the jeep and its roof was broken and the jeep fell in the side pit. The FIR was lodged on the statement (Ex.PD) of Arvind made to the police, as per which Raman and Dalip i.e. two deceased were sitting on front seat along with driver Hasmukh, whereas four persons were sitting in the middle seat and other four persons were sitting on the rear seat. In the statement (Ex.PD), Arvind has given not only the registration number of the offending tractor to be PB-11-2837 but also told that same was being driven by Angrej Singh (accused - petitioner) son of Banta Singh as came to be known and that tractor driver had fled away from the spot.

9. It is not disputed by the prosecution that complainant-Arvind as well as all the material witnesses of the prosecution, who were the occupants of the jeep, were residents of Gujarat. None of them knew the

tractor driver earlier, as has also come in the testimony of prosecution witnesses. The question is that how the complainant-Arvind came to know about the name of the tractor driver to be Angrej Singh as was stated by him in his statement (Ex.PD) to the police.

10. The aforesaid fact becomes clear, when the testimony of Arvind-PW7 is closely analysed. As per the cross-examination of PW7-Arvind, he did not know the tractor driver earlier. The name of the tractor driver was disclosed to him by the police. He further says that prior to his medico legal examination, he had gone to the police station, where the police officials asked him about the accident. At that time, the police did not record his statement and accompanied him to the spot. Police reached to the spot and it is only thereafter that his statement was recorded.

11. It is evident from the aforesaid testimony of PW7-Arvind that he did not know the tractor driver earlier and name thereof to be Angrej Singh was told to him by the police. This testimony is also quite contrary to the endorsement Ex.PD/1 made by the Investigating Officer of the case below the statement Ex.PD of Arvind, in which it is mentioned that Arvind had got recorded his statement in the hospital, when the police reached there. It is quite clear from the testimony of PW7 that prior to recording the statement (Ex.PD) of Arvind, police had reached the spot. It is the police, who told the name of the tractor driver to Arvind and then his name was introduced in the statement of Arvind (Ex.PD). Otherwise also, it has been observed earlier that complainant and other occupants of jeep, all being residents of Gujarat, had no occasion to know the tractor driver, who is resident of a village in District Patiala (Punjab). It has also

come in the testimony of witnesses that the tractor driver had fled away from the spot after causing the accident.

12. One of the observations made by the trial Court is that petitioner-Angrej Singh is also the registered owner of the offending tractor. Inference has accordingly been drawn that he was driving the tractor. Probably the trial Court did not notice the certificate of registration Ex.P1 carefully, which clearly reveals that apart from the petitioner-Angrej Singh, Banta Singh son of Kishan Singh, and Subegh Singh are also recorded to be the registered owners of the offending tractor. There is nothing in the investigation to show that as to whether the statements of Banta Singh and Subegh Singh were recorded in order to know as to who was driving the tractor trolley at the relevant time.

13. Coming to the testimony of other occupants of the Jeep, PW8 Bachi Bhai has clearly stated in the cross-examination that name of the tractor driver was told to him by Arvind and that the tractor driver had fled away from the spot. PW9 Moti Bhai says that immediately after the accident, he had become unconscious and that he gained consciousness only in the hospital. PW10 Ishwar Bhai says that he did not know the tractor driver and that he is not aware, as to by whose negligence the accident occurred, as he was sitting on the rear seat of the jeep. PW11 Jai Inder of course stated that tractor was being driven by accused Angrej Singh, but he too admitted in the cross-examination that he did not know accused Angrej Singh earlier and that his name was disclosed to him by the police.

14. In all the aforesaid circumstances, when the accident took place in the mid-night at 12:30 AM on a foggy night as stated by PW7 and

the driver of the offending tractor had fled away; and none of the occupants of jeep knew the tractor driver nor had the opportunity to see his face, holding of the test identification parade was utmost necessary in order to see as to whether any of the occupants of the jeep/eye witnesses were in a position to identify the driver of the offending vehicle. In such like circumstances, identification of the petitioner as the driver of tractor trolley for the first time in the Court, is absolutely not reliable.

15. Having regard to the aforesaid discussion, present revision is allowed. The conviction as recorded by the trial Court and as affirmed by the Appellate Court, cannot be sustained. Impugned judgments are hereby set aside. The petitioner is hereby acquitted of the charges.

25.01.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |