

117

2024:PHHC:146203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1161-2024

RESERVED ON: 24.07.2024

PRONOUNCEMENT ON : 24-10-2024

ANSHUM UBVEJA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. K.S.Nalwa, Advocate, for the Petitioner.

Mr. Rajiv Verma, DAG, Punjab

SANDEEP MOUDGIL, J (ORAL)

1. The revisional jurisdiction of this court has been invoked for setting aside judgment dated 07.08.2019 passed by ACJM, Fazilka wherein the appellant has been convicted in FIR No. 16 dated 26.02.2017 under sections 279, 338, 304-A (added later on) and judgment dated 15.05.2024 passed by Session Judge, Fazilka which has upheld the judgment of the ACJM, Fazilka while reducing the sentence for an offence under section 304-A for a period of two years to one year.

2. Factual matrix of the case unfolds that on 17.02.2017, one ruqa no. 259 in respect of Amandeep, Sukhdev Raj, Rakesh Kumar was received at Police Station upon which ASI Jagtar Singh visited civil hospital, Fazilka where he came to know that the injured have been shifted to some other

hospital. Thereafter, on 26.02.2017, Amandeep son of Om Prakash resident of Chak Dhabwala got recorded his statement with ASI stating that on 17.02.2017, Amandeep and his cousin namely Sukhdev Raj were going on a motorcycle when at 10:00AM, one car bearing no. PB 22M-5647 being driven by Anshum Ubveja was coming from front side at a high speed when it got hit while overtaking with the motorcycle of one Rajesh Kumar son of Ashok Kumar and then it struck against the motorcycle of Amandeep due to which he along with Sukhdev Raj fell down and all three received injuries. Further, driver of the car caught hold Rajesh Kumar with hair while threatening him not to complaint the incident to the police and seeing the crowd gathering ran from the spot leaving the offending vehicle at the spot and the same was witnessed by Sandeep Kumar son of Ved Prakash and Harbans Lal son of Harbhajan Lal who took them to the hospital. Thereafter, the site plan was prepared and the offending vehicles were taken into police possession after recording the statements of the witnesses and the accused was arrested.

Thereafter, on 11.04.2017, Sukhdev Raj died in Amandeep Hospital, Amritsar which led to adding of offence under section 304A IPC.

3. Counsel for the petitioner-revisionist contends at the very outset that the impugned judgments have been passed in an arbitrary manner while ignoring the delay in registration of FIR wherein the alleged incident took place on 17.02.2017 at about 10:00AM whereas the same was reported on 26.02.2017 and cause of death of Sukhdev Raj being due to septicemia as per the post mortem report(Annexure P-2) does not attract Section 304-A IPC. He further contends that the prosecution has failed to prove the identity of the petitioner as he was first time identified in the court only

which is against the settled principle of test identification parade as held in catena of judgments that where a person is alleged to have committed the offence and is not previously known to the witnesses, it is obligatory on the part of the investigating agency to hold identification parade for the purpose of enabling the witnesses to identify the person alleged to have committed the offence which also finds support in the ***“Dana Yadav and others vs State of Bihar AIR 2002 SC 3325”*** wherein it has been categorically held that ordinarily identification of an accused by a witness for the first time in court should not form the conviction, the same being from its very nature inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence therefore the lower courts have erred in passing the judgments of conviction against the revisionist.

4. He vehemently argues that PW-8 Rajesh Kumar, who as per the complainant narrative was the first one to have been hit by the offending vehicle was declared hostile by the prosecution witness added with the fact that after receiving undated ruqa(Ex. PW6/A), the police did not proceed to visit the hospital to record the statements of the injured which has made the investigation full of holes.

5. He strenuously argues that both the lower courts have failed to consider the statement of PW-3 Hardial Singh coupled with examination report of car bearing no. PB-22-M-5647 which clearly shows that nothing incriminating has been reported qua the condition of the vehicle after the alleged accident on 17.02.2017.

6. On the other hand, learned state counsel contends that the delay in registration of FIR has been duly explained by the complainant Amandeep

wherein he was not in town for ten days after the alleged incident and rather was in hospital(Ex.PW 9/A)at Shri Muktsar Sahib for his treatment added with the fact that ruqa was received to the police on same day while the offending vehicle was also taken into possession of police custody on the same day which is suffice enough to justify the delay in registration of FIR.. Further, a/c to PW10 Dr. Avtar Singh, patient Sukhdev Raj had multiple fracture and bleeding over right lower limb and ultimately lost his life on 11.04.2017 which attracted section 304A IPC in the instant FIR.

7. He strenuously argues that neither any previous enmity between the parties nor any such suggestion has come on record which would give rise to false implication of the accused therefore there is genuinity by the witness in identifying the identity of the revisionist. It is further urged that PW3 Hardial Singh had only checked the steering, brakes and clutches of the car and no exterior examination of the offending vehicle was conducted and rather the damage to the offending vehicle stands clearly visible from the photographs taken by the only the vigilant eye witness PW5 Baldev Krishan showing the offending car in an accidental condition.

8. Heard learned counsel for the respective parties at length.

9. The instant revision has come up to this court with succinct facts that one Complainant Amandeep and deceased Sukhdev Singh met with an accident on 17.02.2017 when it got hit by one car bearing no. PB 22M-5647 being driven by revisionist Anshum Ubveja who was coming at high speed and also hit the motorcycle of one Rajesh Kumar causing serious injuries to all three leading to registration of FIR No. 16 dated 26.02.2017 u/s 279, 337, 338, 427, 304-A(added later on) which led to serious injuries to Amandeep whereas Sukhdev Raj died after few days in the hospital.

10. Before delving on the merits of the case, it is apposite to mention section 304A which is reproduced herein below:

304A. Causing death by negligence.—

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In “[Mohammed Aynuddin @ Miyan vs. State of Andhra Pradesh](#), AIR SC 2511” Hon'ble Apex Court has discussed in detail as to what constitute a rash or negligent act. It interalia held the following:

"A rash act is primarily an over hasty act. It is opposed to deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

11. After hearing the respective counsels at length and perusal of the record in hand, this court is of the considered opinion that in this case, the accused-revisionist was driving at a high speed when he tried to overtake

the motorcycle of one Rajesh Kumar and got hit him and the complainant Amandeep and deceased Sukhdev Raj wherein identity of the accused-revisionist has been established by the prosecution witnesses PW1, PW2, PW5 first time in the court only is beyond reasonable doubt. Any irregularity committed during investigation cannot be a sole ground to discard the prosecution case in its entirety if it is otherwise proved by other cogent and reliable evidence which also finds mention in ***“Matru vs State of UP(1971)2 SCC 75”*** where it has been held that identification tests did not constitute substantive piece of evidence. They were primarily on assurance to the investigating agency that their investigation was progressing in the right line. The identification could only be used as corroborative evidence. In the instant case, PW1, PW2 and PW5 have categorically stated that after the accident, accused-revisionist left the offending car at the spot after seeing the crowd gathering and ran away. Further, a perusal of the record in hand makes it all the more clear that deceased Sukhdev Raj not only died of septicimia, rather in the postmortem report, following injury was also found:-

“Right leg amputated from just below the right hip joint with the muscle exposed with a few pus point present over the wound”.

Moreover, it is a settled proposition of law that merely delay in the registration of FIR, does not prove fatal to the case of prosecution and the same has been elaborated by the Apex court in ***“Hariprasad @ Kishan Sahu vs The State Of Chhattisgarh Criminal Appeal no 1182 of 2012”*** wherein it has been held that:-

10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.

12. In exercise of revisional jurisdiction, the court is to confine itself to the legality and propriety of the judgment or order and in normal parlance would not interfere with the impugned order, unless it was perverse.

13. This court while taking into consideration the facts as well after meticulous perusal of the record in hand is of the strong view that the respondent has duly proved its case beyond reasonable doubt and this court finds no reason to interfere with the finding of both the lower courts and therefore uphold the judgment of conviction dated 07.08.2019 by ACJM, Fazilka and judgment dated 15.05.2024, wherein the judgment dated 07.08.2019 has been upheld while reducing the sentence for an offence under section 304A for a period of two years to one year while taking a lineant view on the ground that the revisionist-accused being first time offender and sole bread earner of the family have faced the music of litigation for good seven years stands justified supported with the judgment

of Apex court In *Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359]* wherein it has been upheld that:-

*“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: ‘State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.’ Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it*

was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

13. This court finding no merits in the instant revision dismiss the same while upholding the judgment of ACJM, Fazilka dated 07.08.209 and judgment dated 15.05.2024 passed by the Session judge, Fazilka.

14. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

24-10-2024

Poonam Negi

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>