

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on : March 22, 2024
Date of Decision : April 01, 2024**

CRR-1666-2019 (O&M

Parveen Kumar **...Petitioner**
Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Ms. Tanu Bedi, Advocate for the petitioner.
 Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

This revision is directed against the concurrent findings of conviction recorded by the Courts below.

2. In a criminal case arising out of FIR No.392 dated 05.08.2015, registered at Police Station Sadar Panipat, petitioner – Parveen Kumar, was convicted under Sections 279, 337, 338 and 304-A IPC, vide judgment dated 05.02.2018 by Ld. JMIC, Panipat. He was sentenced for varying period of imprisonments for committing these offences vide a separate order dated 06.02.2018. The appeal preferred by the petitioner was dismissed by learned Sessions Judge, Panipat on 03.06.2019.

3.1 As per the prosecution case, on getting information regarding admission of Devasish and Sajan at General Hospital, Panipat, having sustained injuries in a road side accident, police party headed by ASI Naresh reached there. By that time, injured had been shifted to Virk Hospital, Karnal. Police party reached there and after getting opinion from the doctor,

statement of injured – Sajjan was recorded, as the other injured Devasish was declared unfit.

3.2 Statement was made by Sajjan to the effect that on 04.08.2015, he along with his friends Devasish and Mukesh (*deceased*) were returning from Delhi towards Karnal in car No.HR-12K-4005. Car was being driven by Mukesh. He (Sajjan) was sitting on the conductor seat, whereas Devasish on the back seat. At about 10.30 p.m. as they reached near village Passina Kalan turn, a tractor attached with a water tanker, being driven rashly and negligently, suddenly took turn towards the right side, without giving any signal, due to which the car hit the back side of the water tanker and was damaged. All the occupants of the car sustained injuries. Mukesh died at the spot. He (Sajjan) had noted down the registration number of the offending tractor to be HR-06Y-3341. The water tanker was not having any reflector.

3.3 FIR was registered. Necessary investigation was completed. Final report under Section 173 Cr.P.C. was filed in the Court. Accused Parveen Kumar -petitioner was put on trial. Charges under Sections 279, 337, 338, 304-A IPC were framed. 09 witnesses were examined by the prosecution. Statement of the accused under Section 313 Cr.P.C. was recorded. Opportunity to lead defence evidence was given. After hearing both the sides, conviction was recorded by the Trial Court, which has been upheld by the Appellate Court.

4.1 Challenging the conviction, it is contended by learned counsel for the petitioner that both the Courts below have committed grave error by not appreciating the evidence properly and have acted against the principles of criminal jurisprudence.

4.2 Prosecution case is dependent on the sole testimony of PW1 Sajan @ Gurpreet, whose statement is quite contrary to the site plan of the place of accident and the mechanical inspection reports of the two vehicles and so, does not inspire confidence. Learned counsel contends further that the other injured – Devasish, whose version under Section 161 Cr.P.C. is in conformity with the site plan, has not been examined by the prosecution.

4.3 Further attention is drawn towards the fact that the medical officer, who conducted postmortem examination of deceased Mukesh was not examined and so, it cannot be stated that Mukesh died due to accidental injuries. Had the Medical Officer been examined, the petitioner would have got opportunity to prove the defence version that in fact deceased was driving the car at high speed under the influence of liquor.

4.4 Learned counsel contends that the entire circumstances would clearly indicate that in fact, the car hit the water tanker from behind and so, the story of the prosecution based upon the testimony of PW1 to the effect that tractor driver tried to take right turn suddenly and car hit the front side, is not believable.

4.5 Prayer is made for setting aside the impugned judgments of conviction; and to acquit the petitioner by allowing this revision.

5. Opposing the petition, learned State counsel contends that the findings of facts as recorded by the Trial Court is affirmed by the Appellate Court and that there is no scope for interference. He defended

the impugned judgments and prayed for dismissal of the revision petition.

6. I have considered submissions of both the sides and perused the trial court record as available on Document Management System (DMS) of this court.

7. Before this Court, petitioner neither denies the accident nor the fact that he was driving the offending tractor. However, he has seriously disputed the manner of accident as projected by the prosecution.

8. Since, it is admitted position that Mukesh was driving the car and he died on the spot as a result of collision between the car and the tractor being driven by the petitioner, so much significance cannot be attached to the fact that postmortem report has not been proved by examining the concerned medical officer; or that it is not proved that Mukesh died due to accidental negligence.

9. As per the testimony of PW1- Sajan @ Gurpreet, the water tanker fitted with the tractor coming from the opposite side, suddenly he tried to take turn suddenly towards right, without giving any signal and hit the car. As per him, tractor was not going ahead of the car. The said statement of PW1, the sole eye witness as has been examined by the prosecution, is totally contradicted by the site plan (Ex.PW5/H); as well as the mechanical inspection reports of two vehicles Ex. PW7/A and PW7/B.

10. The accident occurred on the G.T. Road, as the car was traveling from Delhi towards Karnal. An examination of the site plan reveals a divider along the road, with a break at the turn for village

Passina Kalan. This turn is only accessible from the right side, when approaching from Delhi, while it would be on the left side for those coming from Karnal. Since it is established by the prosecution that the tractor turned right at this point, it implies that both the tractor and the car were moving in the same direction, from Delhi towards Karnal, as is also depicted in the site plan. Testimony of PW1 suggesting that the tractor came from Panipat/Karnal or denying its position ahead of the car, is contradicted by the site plan. Additionally, if the tractor indeed came from Panipat/Karnal and attempted a right turn without giving any signal, it would be inconsistent with the layout of the road, as the village Pasina Kallan is on the left side from that direction.

11. Not only above, perusal of the mechanical examination reports (Ex.PW7/A and PW7/B) totally demolishes the prosecution case. The report of the tractor reveals that colour of car was present at the rear side of the water tanker. It is further reported that the rear angle of the water tanker and the bolts of the angle were broken. On the other hand, the mechanical examination report of the car reveals that front side of the car was totally damaged and dented. The roof, the fender, the bonnet and the glass were totally broken. These two reports of the mechanical examination of the two vehicles involved in the accident would leave no doubt in holding that car had hit the tractor attached with the water tanker from behind and not from the front side, as has been tried to be projected by the prosecution through the statement of PW1.

12. The contention of learned State counsel to the effect that petitioner had not given any signal and that the water tanker was not having any reflector, becomes insignificant, once it is found that the accident had not taken place in the manner as has been projected by the prosecution.

13. The testimony of PW1 Sajan @ Gurpreet is absolutely not reliable, having regard to the circumstances depicted from the site plan and the mechanical examination reports of the two vehicles as have been discussed above. Though, the Courts below referred about these documents, but failed to notice the implication thereof *vis-a-vis* the statement of PW1.

14. Further, the damage to the front side of the car would itself indicate that as to at what speed, the car must be coming when it hit the tractor fixed with water tanker from behind. Even if, it be assumed that petitioner driving the tractor suddenly applied the brakes to take turn towards the right side, that in itself cannot be considered to be gross negligence on his part because as per Rules of the Road Regulations, 1989, the driver of a motor vehicle moving behind another vehicle, is required to keep a sufficient distance from the other vehicle to avoid collision, if the vehicle in front suddenly slowed down or stopped.

15. Having regard to the aforesaid discussion, the impugned judgment dated 05.02.2018 and order of sentence dated 06.02.2018 passed by the Trial Court; and as have been affirmed by the Appellate Court vide judgment dated 03.06.2019, cannot be sustained. These are

hereby set aside. Petitioner is acquitted of all the charges. He is also discharged from his bonds. Petition is accordingly allowed.

April 01, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No