

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2765-2023 (O&M)
Reserved on: 06.05.2024
Pronounced on: 08.05.2024
2024: PHHC: 064436

MAKSUD

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Imtiyaz Hussain, Advocate,
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

DEEPAK GUPTA, J.

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

2. Petitioner was convicted by the Court of Id. Additional Chief Judicial Magistrate, Rewari in criminal case bearing CNR N: HRRE03-000839-2014, arising out of FIR No.519 dated 22.12.2013 registered at Police Station, Dharuhera, Rewari and vide judgment dated 12.10.2017 under Sections 279/304-A IPC. Vide separate order dated 13.10.2017, he was sentenced as under: -

Offence u/s	Punishment	Fine	In default
279 IPC	Two Months RI	₹500/-	15 days
304-A IPC	One year RI	₹2500/-	One month

The substantive sentences were directed to run concurrently.

3. Against the aforesaid judgment of conviction and order of sentence, petitioner preferred an appeal before the Id. Additional District and Sessions Judge, Rewari bearing Criminal Appeal No.362 of 2017, but the

same was dismissed on 31.10.2023, thus affirming the conviction as well as sentence.

4.1 Facts are as under:

On perusal of the paper-book, it emerges that on getting information about the motor vehicular accident having taken place near Nikhri Cut, ASI Ranbir Singh (PW5) along with other police officials reached the spot on 22.12.2013, where it was informed that injured-Mukesh wife of Shishpal had been taken to the Apex Hospital, Dharuhera. ASI Ranbir Singh reached there, collected Rukka and came to know that Mukesh had already expired. Shishpal (PW6), the husband of the deceased-Mukesh got recorded his statement Ex.P1, as per which on that day i.e. 22.12.2013, he along with his wife-Mukesh were going from village Mumtajpur towards the village of his in-laws in Shahjahanpur (Rajasthan) on a motorcycle being driven by him, on which his wife Mukesh was the pillion rider. At about 10:30/11:00 AM, as they reached near Nikhri Cut, a trolly came and hit his motorcycle from the back side. It is alleged that trolly was being driven in rash and negligent manner. Motorcycle fell down. He fell on one side, whereas his wife Mukesh came under the trolly and received serious injuries. He noticed registration number of the trolly as RJ-14GE-2723. The driver fled away from the spot. It was further stated by Shishpal that he and his wife were brought to the hospital, but his wife expired.

4.2 FIR was registered. Necessary investigation was conducted. Trolly found from the spot was brought to the Police Station. Notice under Section 133 of the Motor Vehicles Act, 1988 was issued to the registered owner of the trolly namely Himanshu Singal, who got recorded his statement as per which the trolly was being driven at the relevant time by accused

Maksud (appellant herein). Said accused-appellant was arrested on 26.12.2013. After completion of necessary investigation, final report under Section 173 CrPC was filed in the Court.

4.3. Accused was charge-sheeted under Sections 279/304A IPC, to which he pleaded not guilty and trial. Evidence produced by the prosecution was taken on record. Statement of the accused under Section 313 CrPC was recorded. Opportunity to produce the defence evidence was given to the accused, but he did not avail the same. After hearing both the sides, trial Court held the accused to be guilty under Section 279/304-A IPC and convicted him thereunder as per details given earlier and his conviction along with sentence has been upheld by the appellate Court.

5. Before this Court, the only issue raised by Id. counsel for the petitioner is regarding the identity. It is contended that as per the FIR version, the driver of the offending trolly had fled from the spot. FIR was lodged against unknown person. It was not disclosed by the complainant Shishpal that he could identify the driver of the offending vehicle, if brought before him. No other person from the public, who might have witnessed the accident, has been joined during investigation. Id. counsel for the appellant then drawn attention towards the statement of PW6 Shishpal, made during trial, in which he clearly stated that that he had seen the driver, when he was running from the back side. It is pointed out that it is not in the statement of PW6 that he had seen the face of the driver. Id. counsel contends further that Himanshu Singal, the owner of the offending vehicle, has not been examined by the prosecution during trial and that identity has been held to be proved by the Courts below only on the basis of statement of the IO. Further attention is drawn towards the fact that no test identification parade

was conducted. Ld. counsel contends that in view of all these facts and circumstances, both the Courts below fell in grave error in holding the petitioner to be the driver of the offending vehicle and to convict him under Section 279/304-A IPC. Prayer is made for setting aside the impugned judgments of conviction; and to acquit the petitioner.

6. On the other hand, ld. State counsel has defended the impugned judgments by submitting that identity of the petitioner as driver of the offending vehicle was duly established.

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

8. After considering submissions of both the sides, I find merit in this petition. Out of the 9 witnesses examined by the prosecution, only PW6 Shishpal, complainant of the case and the husband of the deceased, is the alleged eyewitness. Although his testimony reveals that accident was caused when a trolly bearing No. RJ-14GE-2723 hit the motorcycle being driven by him from backside, resulting in the death of his wife Mukesh, but it is clearly stated by the said witness that after the accident, driver fled away from the place of occurrence and that he saw him, when he was running from the backside. It is not in his statement that he (PW6 Shishpal) was able to see the face of the driver of the offending vehicle. He also disclosed the time of the accident to be 10-11 AM and that huge traffic jam had taken place because of the accident. Despite the fact that accident occurred in broad day light and lot of public was present there, no effort appears to have been made by the Investigating Officer of the case so as to join any another person, apart from complainant-Shishpal, who might have seen the accident. PW6, as noted above, did not see the face of the driver of the offending

vehicle and simply on the basis of the fact that he had seen the driver from the backside, it cannot be stated that identification of the accused-petitioner as driver of the offending vehicle is established.

9. Besides, there is nothing on record to suggest that Investigating Officer took any step to arrange the test identification parade so as to test the veracity of the version given by the complainant regarding identification of the accused simply by seeing him from the backside.

10. Further, it has come in the statement of PW5-ASI Ranbir Singh, the Investigation Officer of the case that notice under Section 133 of the Motor Vehicles Act was sent to the owner of the offending vehicle and that the owner produced the driver. As per the impugned judgment recorded by the trial Court, on the notice under Section 133 of the Motor Vehicles Act, it was endorsed by the owner Himanshu Singla that offending vehicle was being driven by the present accused-Maksud. However, concededly, prosecution failed to examine the owner of the vehicle Himanshu Singal before the trial Court concerned. The trail Court recorded conviction simply on the basis of the fact that no suggestion had been given to the ASI Ranbir Singh regarding his report about the endorsement made by Himanshu Singla, which was proved by him.

11. I am afraid that the approach adopted by the Id. trial Court in this regard is absolutely flawed. In the absence of examination of Himanshu Singla before the trial Court, his any statement made before the Investigating Officer to the effect that accused was driving the offending vehicle at relevant time, cannot be accepted as a gospel truth. In case, the logic as applied by the trial Court is accepted, it would mean that statement of any witness recorded by the Investigating Officer during investigation, will be

treated as evidence, without the person making the statements, being examined in the Court.

12. Apart from above, the offending vehicle was recovered from the spot. There is nothing in evidence that any document whatsoever was recovered from the offending trolla, which could connect the petitioner with the said vehicle so that inference could be drawn that at the time of accident, he was driving the same.

13. In view of the aforesaid facts and circumstances, it is held that the conviction of the petitioner cannot be sustained in the eyes of law. Both the Courts have come to a wrong conclusion so as to hold that it is the petitioner, who was driving the offending vehicle. It was for the prosecution to establish beyond doubt that it is the petitioner-accused, who was driving the offending vehicle. The evidence produced on file is not sufficient so as to hold that it is the petitioner, who was driving the vehicle.

14. Consequently, the present revision is allowed. The petitioner is hereby acquitted of the charges. The impugned judgment of conviction as recorded by the trial Court and as affirmed by the Appellate Court, is hereby set aside. Petitioner is directed to be released immediately, if not required in any other case.

08.05.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No