

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

Reserved on : April 05, 2024
Date of Decision : April 08, 2024
CRR-2951-2023 (O&M)

Darshan Singh **...Petitioner**

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Amandeep Singh, DAG, Punjab.

Mr. Barjinder Singh, Advocate for respondent No2.

DEEPAK GUPTA, J.

Petitioner was tried by the Court of learned Judicial Magistrate 1st Class, Kharar, in a case arising out of FIR No.07 dated 13.01.2015, under Sections 279, 427 and 304-A IPC, registered at Police Station City Kharar, in criminal case bearing No.PBSAA1-000201-2015. Vide judgment dated 21.02.2017, petitioner was held to be guilty for the commission of offences under Sections 279 and 304-A IPC and convicted thereunder accordingly. Vide a separate order of even date, he was sentenced as under:-

Sr. No.	Offence convicted u/s	Sentence awarded	Fine	Default imprisonment
1.	279 IPC	R.I. for 06 months	₹100/-	R.I. for 15 days
2.	304-A IPC	R.I. for 02 years	₹200/-	R.I. for 01 month

Both the sentences were directed to run concurrently.

2. In appeal [CNR N: PBSA01-001581-2017] against the aforesaid judgment of conviction and order of sentence, learned Addl. Sessoids Judge, S.A.S. Nagar, Mohali, maintained the conviction vide judgment dated 22.11.2023, though reduced the substantive sentence to 01 year.

3. Against the aforesaid concurrent findings of conviction as recorded by the Court below, this revision has been filed.

4. It is contended by learned counsel for the petitioner that both the Courts below failed to appreciate the evidence in right perspective, inasmuch as identity of the petitioner as a driver of the offending vehicle, was not at all established. Learned counsel points out that in the FIR, it is clearly mentioned that when Daljinder Singh alongwith Gurpreet Singh reached the spot, by that time the driver had fled away from the spot. Learned counsel points out further that there is nothing in the FIR to show that complainant – Daljinder Singh was able to see the face of the driver of the offending vehicle. Learned counsel contends that in these circumstances, statement of PW3 – Daljinder Singh during trial, identifying the petitioner to be the driver of the offending vehicle, is not believable in the absence of any test identification parade. Attention is further drawn towards the testimony of PW4 – Gurpreet Singh, who improved his statement during trial by stating that he had seen the driver, when he was alighting from the same after causing the accident, but nothing to this effect was stated by him in the statement recorded under Section 161 Cr.P.C. during investigation, to which he was duly

confronted. Learned counsel contends that the only other evidence with the prosecution was the statement of PW7 – Karnail Singh, the owner of the offending vehicle, who had allegedly produced the petitioner before the Investigating Officer, but said PW7 – Karnail Singh did not support the prosecution version during trial. It is urged that in all these facts and circumstances, the identity of the petitioner as driver of the offending vehicle, was not at all established and so, he has been wrongly convicted by the Trial Court and his conviction has been wrongly maintained by the Appellate Court.

5. Learned State counsel has opposed the petition by submitting that Ld. Courts below have discussed the evidence produced by the prosecution at length and rightly came to the conclusion that it is the petitioner-accused, who was driving the offending vehicle.

6. I have considered submissions of both the sides and have appraised the Trial Court record as available on the Document Management System (DMS) of this Court.

7.1 FIR (Annexure P-1) was lodged on the statement of Daljinder Singh (*examined as PW 3 during trial*), as per which on 13.01.2015, his father Parminder Singh (deceased) had left on his motorcycle bearing registration No.PB-12N-1455 for his work at village Dau; whereas he (Daljinder Singh) alongwith Gurpreet Singh (*examined as PW 4 during trial*) was behind him on a separate motorcycle and going for some work at Mohali. As they reached near Bansa Wali Chungi, his father while driving his motorcycle was going ahead of them, when a

tipper bearing registration No.PB-65L-7086, being driven by an unknown person came from behind at high speed and in careless manner struck against the motorcycle of his father, who fell on the road and tyre of the tipper ran over him, causing serious injuries. It was further stated by Daljinder Singh that by the time they stopped their motorcycle, the unknown driver of the tipper had ran away from the spot by leaving the tipper behind. With the help of passersby, they arranged a vehicle and took injured Parminder Singh to the Government Hospital, Mohali, but he succumbed to injuries.

7.2 Further prosecution case is that on next day, i.e. 14.01.2015, Karnail Singh (*examined as PW7 during trial*), the owner of the offending vehicle produced accused – Darshan Singh (petitioner herein) alongwith the documents of the tipper and the driving licence of the petitioner, which were taken into possession. Necessary investigation was carried out and after completion thereof, final report under Section 173 Cr.P.C. was filed.

8. During trial, both PW3 Daljinder Singh as well as PW4 Gurpreet Singh supported the prosecution case regarding the negligence of the driver of the tipper in causing the accident, which resulted into the death of Parminder Singh. Before this Court, facts to this extent that accident was caused by tipper No.PB-65L-7086 due to rash and negligent driving of its driver, which resulted into the death of Parminder Singh, are not in dispute. It is also undisputed that the offending vehicle as well as motorcycle of the deceased were recovered from the spot itself. The sole

dispute before this Court is regarding the identity of driver of the offending vehicle, as to whether it is the petitioner, who was behind the driving wheel of the same.

9. It may be noted at the outset that the two alleged eye witnesses, namely Daljinder Singh (PW3) and Gurpreet Singh (PW4) are close relatives of the deceased, inasmuch as PW3 is the son of the deceased and PW4 is the brother of the deceased. Though, the testimonies of such relative witnesses cannot be brushed aside simply because that they are relatives of the deceased, but at the same time, the same are required to be examined with caution.

10. PW 3 – Dajinder Singh, complainant of the case though stated during his testimony that accused was driving the offending vehicle, but admitted during cross-examination that police had told him the name of the driver in the police station, where he had seen him (driver) for the first time and that after seeing the accused in the police station, he was seeing him in the Court for the first time. Since, it is the conceded case of the prosecution that accused was produced in the police station by Karnail Singh on 14.01.2015, i.e. next day of the accident; and PW 3 saw him for the first time in the police station and it is the police, who told him the name, it is obvious that PW3 Dajinder Singh had not seen the driver of the offending vehicle at the time of accident, i.e. on 13.01.2015. As such, testimony of PW 3 Daljinder Singh regarding identity of the accused-petitioner as driver of the offending vehicle, is not at all reliable.

11. Coming to testimony of PW4- Gurpreet Singh, though he also established the identity of accused-petitioner to be the driver of the offending vehicle during trial, but has made lot of material improvements, rendering him unworthy of credit. According to him, he had seen the driver of the truck/tipper, when he was alighting from the same after causing the accident. He pleaded ignorance as to whether he had disclosed this fact to the police or not. He was duly confronted with the statement (Ex. DX) recorded under Section 161 Cr.P.C., wherein this fact is nowhere mentioned. In case, PW4 Gurpreet Singh; or PW3 Daljinder Singh had seen the face of the driver of the offending vehicle, they must have disclosed the said fact to the police, but it is not so.

12. Further, PW4 - Gurpreet Singh puts more dent in his testimony, when he said that when they were getting the FIR registered, accused was present at the spot. The same is factually incorrect because FIR was registered on 13.01.2015 and the driver had fled away from the spot and the accused was produced by Karnail Singh only on 14.01.2015. It is neither in the statement of PW3 nor in the statement of PW 8 – ASI Amar Nath, the Investigating Officer of the case that accused was present at the time of recording of the FIR on 13.01.2015. Not only this, PW4 is unable to tell as to whether the motorcycle of deceased Parminder Singh was 500 meters ahead of them or 1000 meters ahead of them.

13. In view of above material contradictions, when the statement of PW4 is read as a whole, it indicates that he was not even present at the spot and has been introduced as an eye witness of the occurrence later on.

In these circumstances, his statement is absolutely not reliable regarding the identity of the accused-petitioner as a driver of the offending vehicle.

14. As per prosecution, PW7 – Karnail Singh, admittedly the owner of the offending vehicle produced the accused-petitioner on 14.01.2015 in the police station alongwith documents of the vehicle, which were taken into possession. However, said Karnail Singh during his testimony before the Court, turned hostile and denied to have produced the accused before the police. The Courts below have disbelieved his part of the testimony to the extent that he had not produced the accused after observing that he is admittedly the owner of the offending tipper and that documents of the vehicle and the driving licence of the accused were produced and that in case, accused was not the driver, why he would produce him. The said logic given by the Courts below, is absolutely not sustainable. Simply because PW7 Karnail Singh is the owner of the offending tipper and had produced the documents of the vehicle, cannot be a reason to come to the conclusion that he must have produced the same person, who was driving the offending tipper at the relevant time.

15. PW8 – Amar Nath, the Investigating Officer of the case, admitted during cross-examination that no test identification was conducted by him. There is nothing in the prosecution case to show that when the offending vehicle was taken into possession from the spot, any document of accused-petitioner, connecting him with the crime, was found from the spot. Had the driving licence of the accused-petitioner or

any document pertaining to him been collected from the tipper recovered from the spot, presumption could have been raised that he was the driver, but there is no such evidence on record.

16. On account of the entire discussion as above, it is held that the conviction of the petitioner as recorded by the Trial Court and as affirmed by the Appellate Court, cannot be sustained. Prosecution has failed to prove that it is the accused-petitioner, who was driving the offending tipper at the relevant time, beyond reasonable doubts.

17. As such, the present revision is hereby allowed. The impugned judgment of conviction and order of sentence dated 21.02.2017 passed by the Trial Court and as affirmed by the Appellate Court vide judgment dated 22.11.2023, are hereby set aside. Petitioner is acquitted of the charges and is also discharged from his bonds.

April 08, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No