

1. State – Versus -- Joginder Singh [1]

IN THE COURT OF DR. SEEMA AGNIHOTRI PCS,
JUDICIAL MAGISTRATE, 1ST CLASS
UID CODE NO.PB0611,
BALACHAUR (S.B.S.NAGAR)

IPC CHALLAN No: 152/01 of 2019

Date of Institution : 16.10.2019

Date of Decision : 03.09.2022

CNR No.PBSBA01-000638/2019

STATE OF PUNJAB

Versus

Joginder Singh son of Pritam Singh, resident of village Mehroli,
Police Station Anandpur Sahib, District Rupnagar.

... Accused.

FIR No. 04 dated 24.01.2019

Under Section 279, 304-A

of Indian Penal Code

Police Station, Pojewal.

District SBS Nagar.

Present: Shri Ashok Kumar, Addl.P.P. for State
Accused on bail with defence counsel Sh.N.K.Arora
Advocate.

JUDGMENT

1. Above named accused Joginder Singh has been sent up to this Court by the police of P.S. Pojewal to face trial under sections 279, 304-A of Indian Penal Code.

2. The factual matrix of the present case is that the present FIR has been registered against the accused person on the statement of complainant Hussan Lal son of Gian Chand with the allegations that on

1. State – Versus -- Joginder Singh [2]

23.10.2019 at about 7:00 p.m in the area of village Krimpur Chahwala accused Joginder Singh drove his vehicle i.e. Truck bearing RC No.PB-02-AP 9915 on a public way in a manner so rash and negligent so as to endanger human life and personal safety of other, caused the death of Chaman Lal not amounting to culpable homicide without blowing the horn. Accordingly, matter was reported to the police. After registration of case under sections 279, 304-A of Indian Penal Code, investigation was pressed into action. The vehicles were taken into police possession. Site plan from the place of occurrence was prepared. Postmortem on the dead body of Chaman Lal was conducted and accused was arrested and released on bail in this case. After completion of the investigation and other formalities of the case, the challan was presented in the Court against the accused person.

3. On appearance before the Court, the accused was supplied with the copies of the challan, under section 207 Cr.P.C, free of costs.

4. Since there existed a prima-facie case under sections 279, 304-A of Indian Penal Code against the accused, he was charge-sheeted accordingly. The contents of the same were read over and explained to the accused in simple Punjabi, to which the accused pleaded not guilty and claim trial.

5. To prove the charge against the accused, the prosecution examined PW-1 Hussan Lal complainant of the case, PW-2 Tirath Ram eye witness, PW-3 ASI Balihar Singh (here-in-after to be called as Investigating Officer. Thereafter, the evidence of prosecution is closed by

1. State – Versus -- Joginder Singh [3]

the Ld.APP for the State as the complainant did not support the case of prosecution and he was declared hostile at the request of APP for the State as nothing fruitful could be gained from his cross examination. There will be no improvement in the case of prosecution by examining the remaining formal witnesses. Moreover, the material documents brought on record has been proved by the IO ASI Balihar Singh examining by the prosecution as PW-3 in this case.

6. Statement of accused, as enumerated in section 313 Cr.P.C was recorded, wherein all the incriminating evidence which has come on record, was put to him separately, to which he pleaded false implication. However, he has led no evidence in support of his defence.

7. I have heard the learned A.P.P. for the State and learned defence counsel and have gone through the judicial file along with the documents very carefully with their able assistance.

8. During the course of evidence, prosecution examined as many as three witnesses out of which PW-1 complainant Hussan Lal appeared in the witness box has deposed that Chaman Lal s/o Gian Chand was his real brother. On 23.01.2019 his brother Chaman Lal who was working in Band Party, had went in a marriage for band purpose in Karimpur Chahwala. There was marriage of Gurpreet Singh on 30.01.2019. His brother had gone by telling him that he will blow the band in the marriage at the time of starting of baraat. He had told him to come their and take him from Karimpur Chahwala. He reached there on his motorcycle at about 10:00 AM . At that time baraat was going and his

1. State – Versus -- Joginder Singh [4]

brother was blowing the band so, he started going along-with the baraat. It was about 10:15 AM when they reach at turn in the said village then a truck came from Anandpur side very fastly which was being driven rashly and negligently, he struck the same from conductor side against his brother in front of his eyes. The driver of the truck fled away from the spot with truck. His brother received serious injuries. One another band blower Kirat Ram s/o Ram Lal arranged the vehicle and took him to PGI Chandigarh where he was admitted but he died at about 07:30 PM. He does not know the number of the said truck nor he know the name of the driver of the said truck. He has seen the accused present in the court but he is not the same person who was driving the said truck. He did not give any statement to the police by name against the accused. Further, this material witness turned hostile and accordingly, he was allowed to be cross-examined at the request of the learned APP for the State as he was suppressing the truth, but during his cross-examination also, nothing favourable to the prosecution came out.

9. PW-2 Tirath Ram who is the most material eye witness of the case appeared in the witness box has deposed that he was doing the work of blowing band in marriage and other functions. Chaman Lal son of Gian Chand was also doing the same work with him. On 23.01.2019 they had gone to Karimpur Chahwala for blowing band and they were blowing the same in the said village in the baraat. He further deposed that it was about 10:15 A.M when they reach at turn in the said village then a truck came from Anandpur side very fastly which was being driven rashly and

1. State – Versus -- Joginder Singh [5]

negligently and struck the same with his brother from conductor in front of his eyes. The driver of the truck fled away from the spot with truck. He further deposed that Chaman Lal received serious injuries due to which one another band blower arranged the vehicle and took Chaman Lal to PGI Chandigarh where he was admitted but he died at about 07:30 PM. He do not know the number of the said truck nor he know the name of the driver of the said truck. He has seen the accused present in the court but he is not the same person who was driving the said truck. He did not give any statement to the police by name against the accused. Further, this material witness turned hostile and accordingly, he was allowed to be cross-examined at the request of the learned APP for the State as he was suppressing the truth, but during his cross-examination also, nothing favourable to the prosecution came out.

10. PW-3 ASI Balihar Singh (here-in-after to be called as investigating officer) appeared in the witness box and deposed that on 24.01.2019 ASI Nirmal Singh recorded the statement of complainant Hussan Lal as EX-P1 upon the Police proceeding is EX-P2. On basis of ruqa FIR EX-P3 was registered. The endorsement qua the same is EX-P4. He had prepared rough site plan of the spot as EX-P5. He further deposed that on 13.02.2019 accused was arrested and personally searched vide memos as EX-P6 and EX-P7. The Driving licence EX-P8 was recovered vide memo EX-P9. The truck PB-02-AP-9915 was recovered vide memo EX-P10. RC of the same is EX-P11. The

permit is EX-P12. The medical certificate of cause of death of Chaman Lal is EX-P13. He further deposed that on 08.05.2019 he moved application EX-P14 before DTO Amritsar in which the screen report is EX-P15. The application moved to SMO regarding postmortem on the dead body of deceased as EX-P17, the application moved to Doctor PGI Chandigarh as EX-P18 and the report of PGI as EX-P19. The postmortem report as EX-P20 and inquest report as EX-P16. The death summary of Chaman Lal is EX-P21, statements of witnesses u/s 175 Cr.P.C as EX-P22 & EX-P23, mechanical test report of above-said vehicle is EX-P24, affidavit of Doctor as EX-P25, identification memo of accused as EX-P26, copies of the Adhar card of Gurmeet Singh and Joginder Singh as EX-P27 & EX-P28. He identified the accused present in the Court. He has seen the case property in the court which is EX-MO/1.

11. Summing up his arguments, Ld. APP further contended that all the material prosecution witnesses examined in this case duly proved the guilt of the accused beyond the shadow of reasonable doubt. Finally, it was prayed that accused be convicted and sentenced.

12. Ld. counsel for accused, on the other hand, submitted that the prosecution has miserably failed to prove the identity of the accused regarding the commission of offence at the place of accident as well as in the Court, which fact is evident from the statement of PW-1 Hussan Lal (complainant of the case) who did not support the case of the

1. State – Versus -- Joginder Singh [7]

prosecution and categorically stated in his examination in chief that the accused present in the Court is not the driver of offending Truck with whom the accident was occurred. Ld. counsel for the accused has further argued that even statement made by PW-1 Hussan Lal complainant goes to show that the accused was not caused the accident nor caused the death of Chaman Lal while driving the aforesaid Truck. Thus, the accused has been falsely implicated in the present case. Finally, it was prayed that accused be acquitted of the charge framed against him.

13. In case **Khujji Versus State of Madhya Pradesh 1991 SCC (CR.) 916** the Hon'ble Supreme held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution choose to treat him as hostile and cross examined him. The evidence of such a witness cannot be treated as washed off the record altogether but the same can be accepted to the extent his version is found to be dependable of a careful scrutiny. It is an established position of law that the accused need not take any defence in a criminal case filed against him. He may take advantage of every laps in the case of prosecution and may elicit any information from the prosecution witnesses to probabilise his defence if any taken or elicit such information it is contradictory to the version of prosecution. The accused may take advantage of the information elicited from the prosecution witnesses to create doubt in the mind of the Court whether the prosecution version is proved and may take

the benefit of such doubt. Averting back to the case in hand as in this case, the perusal of the cross examination of the witnesses after declaring the same as hostile by the Ld.APP for the State nothing has come on record which cannot be accepted against the accused and as it is a settled law that the accused may take advantage of the information elicited from the prosecution witnesses to create the doubt in the mind of the court and in this case the benefit of doubt is given to the accused persons as nothing came on record against the accused persons.

14. I have thoroughly weighed the rival contentions of ld. APP and the ld.defence counsel and gone through the oral as well as documentary evidence brought on record by the prosecution.

15. The present case was registered on the statement of complainant Hussan Lal who himself stepped into the witness-box as PW-1 has deposed that Chaman Lal s/o Gian Chand was his real brother. On 23.01.2019 his brother Chaman Lal who was working in Band Party, had went in a marriage for band purpose in Karimpur Chahwala. There was marriage of Gurpreet Singh on 30.01.2019. His brother had gone by telling him that he will blow the band in the marriage at the time of starting of baraat. He had told him to come their and take him from Karimpur Chahwala. He reached there on his motorcycle at about 10:00 AM . At that time baraat was going and his brother was blowing the band so, he started going along-with the baraat. It was about 10:15 AM when they reach at turn in the said village then a truck came from Anandpur

side very fastly which was being driven rashly and negligently, he struck the same from conductor side against his brother in front of his eyes. The driver of the truck fled away from the spot with truck. His brother received serious injuries. One another band blower Kirat Ram s/o Ram Lal arranged the vehicle and took him to PGI Chandigarh where he was admitted but he died at about 07:30 PM. He does not know the number of the said truck nor he know the name of the driver of the said truck. He has seen the accused present in the court but he is not the same person who was driving the said truck. He did not give any statement to the police by name against the accused. Further, this material witness turned hostile and accordingly, he was allowed to be cross-examined at the request of the learned APP for the State as he was suppressing the truth, but during his cross-examination also, nothing favourable to the prosecution came out.

16. The best evidence to connect any accused with any occurrence is the evidence of complainant/eye-witnesses. They are the material witnesses, who establish the identity and presence of the accused at the spot to connect with the occurrence in dispute.

17. In the present case, the whole evidence brought on record by the prosecution in support of its case nowhere establishes the identity and presence of accused at the spot so as to connect him with the fact that it was accused facing trial, who caused the death of Chaman Lal while driving his Truck rashly and negligently. Identity

of accused is not established concretely beyond shadow of reasonable doubt by prosecution benefit of which must go to him.

Conclusion:

18. In view of my observations in the foregoing paras, in the light of evidence brought on record discussed, I am of the considered view that prosecution has miserably failed to prove its case against the accused Joginder Singh beyond shadow of reasonable doubt. Accordingly, while affording him benefit of doubt, accused is hereby acquitted of charges framed against him. Case property be disposed of after the expiry of period of appeal or revision, if any. File be consigned to Record Room, Shaheed Bhagat Singh Nagar, after due compliance.

Pronounced:
03.09.2022

(Dr.Seema Agnihotri), PCS
Judicial Magistrate, 1st Class
UID Code No.PB0611
Balachaur

(Sanjeev Kumar)
Stenographer-II

1. State – Versus -- Joginder Singh [11]

Present: Sh.Ashok Kumar, Addl.PP for the State

Accused on bail

Accused closed his defence evidence. Arguments heard. Vide my separate detailed judgment of even date, accused stands acquitted of charges framed against him subject to furnishing bail bonds and surety bonds in the sum of Rs.20000/- with one surety of the like amount under section 437 Cr.P.C. Bonds furnished which have been accepted and attested by this court. His previous bail bonds and surety bonds, if any, are discharged. Case property be disposed of after the expiry of period of appeal or revision, if any. File be consigned to Record Room, Shaheed Bhagat Singh Nagar, after due compliance.

Pronounced:

03.09.2022

(Sanjeev)

(Dr.Seema Agnihotri), PCS

Judicial Magistrate, 1st Class

UID Code No.PB0611

Balachaur (S.B.S.Nagar)