

IN THE COURT OF MONIKA CHOUHAN, PCS,
JUDICIAL MAGISTRATE IST CLASS,
SHAHEED BHAGAT SINGH NAGAR (UID No.PB0424)

CNR No.:PBSB-03-000126-2021

CIS No. CHI/27/2021

Date of Institution: 21.01.2021

Date of decision:-08.12.2022

State

Versus

Jasvir Chand @ Lally son of Pargan Ram r/o Hakimpur, PS
Mukandpur, Distt. Shaheed Bhagat Singh Nagar. Aged about 41 years.

..... . **Accused**

FIR No. 74 dated 04.12.2020
U/s – 279, 337, 338, 304-A, 427 IPC
Police Station Mukandpur

Present: Sh. Tejvir Singh, APP for the State.
Accused Jasvir Chand @ Lally on bail represented by
Ms. Seema Sangowal, Advocate.

JUDGMENT:

1. The above said accused person has been sent up to this Court to face trial under Sections 279, 337, 338, 304-A, 427 IPC by the SHO P.S. Mukandpur.

2. In brief, the facts of the present case are that 02.12.2020 ASI Jarnail Singh was present at police station as Duty Officer then he received a telephonic call from the control room that an accident occurred between one motorcycle and bicycle at Chakdana Road near petrol pump. Then, IO/ASI Jarnail Singh reached the spot and saw that one iron rod was crossed from the head of motorcycle rider and the rider of bicycle also got received injuries. On asking, the rider of motorcycle disclosed his name as Sukhdev Singh son of Joga Singh r/o Cheema Kalan, PS Gurayan, Distt. Jalandhar

and bicycle rider disclosed his name as Jasvir Chand @ Lally son of Pargan Ram r/o Hakimpur, PS Mukandpur. Photographs of the spot were also clicked. Then the relatives of motorcycle rider came there and after arranging a private vehicle, they got admitted Sukhdev Singh and Jasvir Chand @ Lally at Civil Hospital, Mukandpur, where doctor on duty referred them to higher Center as the condition of injured was serious. On reaching the police station, a rapat was entered in the proceeding register. Then IO came to know by a telephonic call from PS City Nawanshahr that injured Sukhdev Singh was admitted in Dhawan Hospital, Nawanshahr. On 03.12.2020, ASI Jarnail Singh along with the police party reached at Dhawan Hospital, Nawanshahr for recording the statement of injured Sukhdev Singh and the doctor declared him unfit for recording his statement. On 04.12.2020, ASI Jarnail Singh along with the police party again reached at Dhawan Hospital, Nawanshahr for recording the statement of injured and where the doctor again declared him unfit for recording the statement. The IO/ASI Jarnail Singh also met with the Balvir Kaur wife of Joga Singh, mother of injured Sukhdev Singh and then she got recorded her statement with IO to the effect that she is resident of abovesaid address and is doing domestic work. She had two sons namely Sukhdev Singh and Rajesh Kumar and two daughters Kiran Bala and Lovepreet Kaur. Her elder son was married, who was working as Bricklayer. On dated 02.12.2020, at about 06:30 PM, her son Sukhdev Singh was going from his village to Garhi Ajit Singh on his motorcycle bearing no. PB 37 J 1881 for his personal work. At about 08:30 PM, she received a telephonic call that her son met with an accident near Diamond Petrol Pump Mallo Mazara and an iron rod is

crossed in the head of his son. On this, the complainant along with his brother in law Joginder Ram, nephew Amanpreet Singh and Dilpreet Singh reached the spot and saw her son lying on the road side and an iron rod was penetrated across the head of her son. The front wheel of the bicycle was struck with the front wheel of motorcycle and about 10 feet of the motorcycle one person was lying who had also received injuries and on asking he disclosed his name as Jasvir Chand @ Lally son of Pargan Ram r/o Hakimpur, PS Mukandpur. Her son Sukhdev Singh told the complainant that the bicycle rider who was under the influence of alcohol was coming on the bicycle in a Jig-jag motion and then stuck his bicycle with his motorcycle and due to this, her son fell on the road and iron rod penetrated across his head. Then, the complainant arranged a vehicle and got admitted his son in Civil Hospital Mukandpur, where the doctor referred him to Dhawan Hospital, Nawanshahr, where doctor removed the iron rod from his head. On the basis of the statement, a ruqa was sent to the police station and the present FIR was registered. Then, IO/ASI Jarnail Singh received a telephonic call regarding the death of Sukhdev Singh and the IO reached at Dhawan Hospital Nawanshahr, where the dead-body of deceased Sukhdev Singh was lying on a bed. Postmortem of the dead-body was conducted. Iron rod in two pieces were taken into police possession. Rough site plan of the place of occurrence was prepared. Accidental motorcycle as well as offending bicycle were taken into police possession. An offence u/s 304-A was added vide DDR no. 30 dated 04.12.2020. On 14.12.2020, accused Jasvir Chand was arrested and released on bail being the offences are bailable. Medical record of deceased as well as other documents were taken

into police possession. Statements of witnesses were recorded. After completing all the necessary formalities of investigation, challan was presented against the accused in the court.

3. On appearance of accused in the court, the copies of police report under section 173 Cr.P.C. and documents appended therewith were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

4. After perusing the final report to find a prima-facie case punishable under Section 279, 337, 338, 304-A, 427 IPC, charge was framed against the accused, which was read over and explained to the accused in simple language to which he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined PW1 ASI Jarnail Singh, PW2 ASI Lakhvir Singh, PW3 Dr. Prince Janagill, PW-4 Dr. Ajay Dhawan, PW-5 Balvir Kaur, PW-6 HC Bobby Kumar, PW-7 Amanpreet Singh and PW-8 Dr. Tejinder Pal Singh. Thereafter, Ld. APP for the state closed his evidence.

6. After closure of evidence of the prosecution, statement of accused under Section 313 Cr.P.C was recorded, wherein all the incriminating material put to the accused was denied by him. The accused pleaded false implication in the present case at the instance of Joginder Ram, uncle of deceased who is posted in Punjab Police. Deceased was attacked by any other person. The alleged accident never took place between him and the deceased. The accused opted to lead defence evidence.

7. In defence, no evidence was brought on record by the accused and the accused closed his defence evidence.

8. I have heard the learned APP for the state, learned defence counsel and have gone through the judicial file very carefully, the following point arises for the decision of the present case:-

- i) *Whether on dated 02.12.2020 in the area of Chakdana Road near Petrol Pump village Retainda, accused drove his bicycle on a public way, so rash and negligent as to endanger human life and safety of others struck with the motorcycle of deceased Sukhdev Singh and thereby caused grievous and simple hurt to deceased Sukhdev Singh, which caused death of deceased Sukhdev Singh and mischief by damaging property i.e. motorcycle and thereby committed an offence punishable under Section 279, 338, 337, 304-A, 427 IPC? If so its effect.*
- ii) *Whether the prosecution has been able to prove its case against the accused beyond shadow of reasonable doubt?*

EVIDENCE:

9. In order to prove the above points of determination, prosecution examined **PW1 ASI Jarnail Singh**, is the investigating officer in the present case and reiterated the version of prosecution. He also proved on record photographs Ex. P1 to Ex. P8, application moved by the police regarding the fitness of injured Sukhdev Singh Ex. PW1/A, report of doctor Ex. PW1/B, second application regarding fitness of injured Ex. PW1/C, report of doctor on the same Ex. PW1/D, statement of the mother of injured Ex. PW1/E, ruqa Ex. PW1/F, form no. 25-35 Ex. PW1/I, FIR Ex. PW1/G, endorsement on ruqa Ex. PW1/H, application for conducting postmortem Ex. PW1/J, possession memo of parcel containing two pieces of iron rod Ex. PW1/K,

site plan Ex. PW1/L, possession memo of motorcycle as well as bicycle Ex. PW1/M, DDR No. 30 Ex. PW1/N, receipt of dead-body Ex. PW1/O, possession memo of clothes of deceased Sukhdev Singh Ex. PW1/P, arrest cum intimation memo of accused Ex. PW1/Q, personal search memo of accused Ex. PW1/R, application to prove the ownership of motorcycle Ex. PW1/S, report on the same Ex. PW1/T, mechanical report of damaged motorcycle Ex. PW1/U, mechanical report of bicycle Ex. PW1/V, application to receive medical record of deceased Sukhdev Singh Ex. PW1/W, application for affidavit Ex. PW1/X and case property i.e. parcel of clothes Ex. MO-1, parcel of iron rods (two pieces) Ex. MO-2 & accidental cycle of accused Ex. MO-3.

10. **PW2 ASI Lakhvir Singh**, who was the member of police party and deposed as per the story of prosecution and also corroborated the evidence of PW1 ASI Jarnail Singh. He also proved on record application for conducting postmortem of deceased Sukhdev Singh Ex. PW1/J and possession memo of clothes of deceased Sukhdev Singh Ex. PW1/P.

11. **PW-3 Dr. Prince Janagill, Medical Officer** deposed that on 02.12.2020, he was posted at Civil Hospital Mukandpur and on that day patient Sukhdev son of Jagga brought to him. Iron rod was penetrated through head and left orbit of the patient. First Aid was given to the patient and then he was referred to DMC Ludhiana for further examination. He also produced on record reference Ex. PW3/A. He further deposed that after some time patient namely Lally son of Pargan Ram brought to him and he examined the patient. Being possibility of fracture of right leg patient was given first aid and splint was applied on right leg. He was breath smells of

alcohol, conjunctiva congested, history of alcohol intake by patient. After that patient was referred for orthopedic opinion to higher center.

12. **PW-4 Dr. Ajay Dhawan, Neuro Surgeon** tendered into evidence his affidavit Ex. PW4/A in which he deposed that patient name Sukhdev Singh son of Joga Singh with alleged H/O road side accident/assault perforation of skull with iron rod from left lateral eye to right parietal region with patient was admitted on 02.12.2020 and died on 04.12.2020. Patient sustained following injuries:-

- i. Perforation of skull with iron rod from left lateral eye to right parietal region with bifrontal contusion with gross IVH with right parietal Bone compound comminuted fracture with brain matter Herniation. Fracture left orbit and fracture frontal bone.
- ii. Ruptured left eye Globe with hyphaema and completely shattered orbit.

13. He further deposed that injury no. 1 was dangerous to life and injury no. 2 grievous in nature. He also proved on record treatment record of patient Ex. PW4/B, injury report Ex. PW4/C, intimation regarding the death of patient Sukhdev Singh Ex. PW4/D, endorsement regarding unfit for recording statement Ex. PW1/B & Ex. PW1/D.

14. **PW-5 Balvir Kaur** is the complainant in the present case and deposed as per the story of prosecution verbatim and the same is not hereby repeated for the sake of brevity. She also proved on record her statement Ex. PW5/A.

15. **PW-6 HC Bobby Kumar** deposed that on dated 04.12.2020, he conducted the mechanical report of accidental vehicles i.e. motorcycle and

bicycle standing at parking PS Behram and after going through the mechanical report he submit the mechanical test reports Ex. PW1/U & Ex. PW1/V.

16. **PW7 Amanpreet Singh** is the eye witness and deposed as per the story of prosecution verbatim and corroborated the evidence of complainant PW5 Balvir Kaur. He also proved on record his statement Ex. PW7/A.

17. **PW8 Dr. Tejinder Pal Singh** tendered into evidence his affidavit Ex. PW8/A in which he deposed that on 05.12.2020, on the instructions of SMO Civil Hospital Banga, he conducted postmortem of dead body of Sukhdev Singh and found following injuries n his body:-

- i. Operated sutured wounds present all ove skull with compound fracture fracture Rt. Parietal bone.
- ii. Fracture left orbit and frontal bond.

18. He further deposed that the cause of death in this case in his opinion is head injury, leading to interventricular haemorrhage and shock, which is sufficient to cause death in ordinary course of nature.

ARGUMENTS:

19. Learned APP for the State has argued that the complainant and eye witnesses have fully deposed in accordance with the prosecution story and proved the guilt of accused in causing the accident in question. He further argued that the deceased Sukhdev Singh as well as the accused had received injuries on the spot and both were admitted in the Hospital as such, it stands proved that the accident had occurred due to negligence of the accused. Learned App for the state further argued that it has come in the

testimony of PW3 Dr. Princ Janagill that the accused was found smell of alcohol and it stands proved that the accused was in a drunken condition at the time of riding his bicycle. Learned APP further argued that the iron rod was penetrated through head and left orbit of the deceased Sukhdev Singh and the same was recovered by the doctor and it has also come in his testimony. Thus, he has prayed for conviction of the accused and then awarding maximum punishment to him.

20. On the other hand, learned defence counsel has argued and submitted that the identification of the accused was not duly proved as there was no eye witness present at the time of occurrence. Although the prosecution examined complainant Balvir kaur and one other independent witnesses namely PW7 Amanpreet Singh but they themselves admitted in their cross examination, they were not present at the time of occurrence. Learned counsel further argued that the iron rod as alleged by the prosecution was not recovered during investigation and even not produced during the trial. Learned counsel further argued that it is not believable that the accident can be occurred due to negligence of rider of bicycle with the motorcycle of deceased as bicycle is not a powerful vehicle. and a prayer has been made for acquittal of the accused by granting the benefit of doubt to him.

21. I have considered the submission of both the sides and have gone through the case file carefully.

22. Perusal of the file reveals that the present FIR was registered on the statement of complainant Balvir Kaur, who had been examined by the prosecution as PW-5 and she reiterated the prosecution version on the same

lines as given in her statement Ex.PW5/A before the I.O. for registration of the FIR. She testified that on dt 02.12.2020 at about 06:30 PM her son Sukhdev Singh had gone to Garhi Ajit singh on his splendor plus motorcycle bearing no. PB 37 J 1880 and at about 08:30 PM she received telephonic call that her son Sukhdev Singh had met with an accident near diamond petrolpump Mallo Mazara with a bicycle. She along with her brother in law Joginder Ram and nephews Amanpreet and Dilpreet had gone to the place of occurrence where her son Sukhdev Singh was lying on the road along with motorcycle and one iron saria was struck into the head of Sukhdev Singh. She further testified that the rider of cycle was also lying injured on the road near motorcycle of her son. Her son Sukhdev Singh told him on the spot that the accident took place due to rash and negligent act of rider of bicycle, who was in drunken state of condition and while his son tried to rescue the said rider of bicycle who was having one iron saria on his bicycle, then the rider of bicycle hit into the motorcycle of her son and iron saria was inserted into the head of her son. He had also seen the rider of bicycle who had hit his bicycle into the motorcycle of his son and she identified the accused in the court being Jasvir Chand. In the cross examination she testified that deceased was brought in the hospital by Dilpreet Singh and her son was on parole on 02.12.2020. The prosecution also examined PW7 Amanpreet Singh who had accompanied the complainant for the place of occurrence and corroborated the testimony of complainant but in the cross examination he testified that rod is easily available in the market and it is correct that no part of bicycle is made with rod. He had not seen any accident as alleged by the

prosecution. He had not received any telephonic call. It is only hearsay. He had never seen the accused prior to the accident.

23. The prosecution examined PW3 Dr. Prince Janagil, who testified that on dated 02.12.2020 at about 09:15 PM patient Sukhdev was brought to him for medical examination and one iron rod was penetrated through head and left orbit of the patient. First aid was given to the patient and then he was referred to DMC Ludhiana. He further testified that after some time patient namely Lally son of Pargan Ram came to him and he was breath smells of alcohol and thereafter he was referred for orthopedic opinion to higher center. In the cross examination he testified that he had no personal knowledge regarding the same and some unknown person admitted the deceased to CHC Mukandpur.

24. The prosecution also examined PW4 Dr. Ajay Dhawan, Neurosurgeon, who tendered into evidence his duly sworn affidavit Ex. PW4/A and testified that patient Sukhdev Singh was brought to him and he was declared unfit for giving statement on 03.12.2020 and 04.12.2020. In the cross examination he testified that patient did not disclose anything by giving any sign because he was not fit for giving the statement. The prosecution also examined PW8 Dr. Tejinder Pal Singh who had conducted the postmortem on the body of deceased and brought on record report Ex. PW8/B.

25. The prosecution examined investigating officer of the present FIR ASI Jarnail Singh as PW1 and he reiterated the prosecution version and also proved on record various documents collected during investigation and he testified that on dated 02.12.2020 he received telephonic call from the

control room regarding the incident occurred at Chakdana road pertains to motorcycle and bicycle. Thereafter he along with other police officials reached at the spot of accident near petrol pump village Retainda and he saw that one damaged motorcycle and one damaged bicycle was present there and the victim of motorcycle was also present with the iron rod which was crossed from one side of the head to other side of the head of the victim. The rider of the bicycle had also received injuries on his body. He inquired the name of both the persons. He further testified that he took into possession two pieces of iron rod and the same were sealed with the seal impression by Dr. Ajay Dharwan vide Ex. PW1/K. He also took into possession of the bicycle and motorcycle of the deceased vide possession memos. In the cross examination he testified that there is no eye witness in the present case. Deceased was unconscious in CHC Mukandpur and was not able to speak. The iron rod produced in the court is not part of cycle of the accused. No independent witness was joined in this case. He do not know whether the deceased was on parole in the murder case. The alleged occurrence is of 02.12.2020 and the FIR was registered on 04.12.2020 and volunteered stated that deceased was unfit to record his statement. It is correct that deceased did not make any sign about this case when he was admitted in the hospital.

26. The prosecution examined PW6 HC Bobby Kumar who had submitted the mechanical test report of both the vehicles as Ex. PW1/U and Ex. PW1/V and in the cross examination he testified that he had not seen any iron rod in the alleged accident and it is correct that any part of cycle is not manufacture of iron rod and saria.

27. So from the above discussion it has come on record that the complainant PW5 Balvir Kaur after receiving the phone call went to the spot where the accused was also lying injured on the road along with the deceased Sukhdev Singh i.e. son of the complainant and it has also come on record during the testimony of complainant that the deceased told her that the accident took place due to rash and negligent act of rider of the bicycle as he was in a drunken state of condition and also having one iron saria on his bicycle as a result the iron saria penetrated through head and left orbit of the deceased and the same has been corroborated by the testimony of PW3 Dr. Prince Janagill and he also further corroborated that the accused was having breath smell of alcohol. Further, the iron saria was recovered vide Ex. PW1/K by the investigating officer PW1 ASI Jarnail Singh. Although the complainant was not present at the spot when the accident occurred but her testimony is relevant as to the circumstantial evidence brought on record during investigation. It has also come on record that accused had also received injuries at the time of occurrence which shows that he was present at the spot.

28. The accused in his defense had not examined any other witness to falsify the story of the prosecution.

29. The arguments of learned counsel for the accused that the accused has been falsely implicated in this case carries no weight because the learned counsel for the accused failed to bring on the file that whether there was any enmity between accused and complainant due to which, the accused has been falsely implicated in this case.

30. In view of my above discussion, it is held that the prosecution has succeeded in proving that while driving the offending vehicle in rash and negligent manner on the road, the accused caused accident, in which deceased Sukhdev Singh had died. Accordingly, accused is held guilty under section 279, 337, 338, 304-A of IPC and is convicted thereunder. Since no evidence has been brought on record as to the damage of motorcycle as such the offence u/s 427 of IPC stands not proved and accused is acquitted of the charge u/s 427 IPC. Let the accused be taken into custody and heard on quantum of sentence.

Pronounced in open court:

Dated: 08.12.2022.

Dev Raj, Stenographer Gr. II

(Monika Chouhan)
Judicial Magistrate Ist Class,
Shaheed Bhagat Singh Nagar
(UID PB-0424)

QUANTUM OF SENTENCE:-

Present: Sh. Tejvir Singh, Ld. APP for the State.
Convict in custody assisted by Ms. Seema Sangowal, Advocate

31. I have heard convict, his counsel and learned APP for the State. Convict prayed that he is poor person and only bread earner of his family and prayed to take a lenient view. But, the plea of convict has been controverted by the learned APP for the State.

32. I have considered the submissions of both the sides. But keeping in view the gravity of the offence committed by the convict, this Court is of the considered view that convict is not entitled to any leniency and should be dealt with iron hand. The convict is sentenced as under:-

Under Section	Sentence
279 IPC	SI for six month and Fine of ₹250/-, in default of

337 IPC	making fine to further undergo SI for one week. SI for six month and Fine of ₹250/-, in default of making fine to further undergo SI for one week.
338 IPC	SI for six months and fine of ₹500/-, in default of making fine to further undergo SI for one week.
304-A IPC	SI for one year and Fine of ₹1000/-, in default of making fine to further undergo SI for one week.

33. The period of detention, if any, already undergone by the convict in this case, shall be set off against the term of imprisonment imposed upon the convict and his liability to undergone imprisonment shall be restricted to the remainder term, if any. Fine paid against proper receipt. Case property, if any, be disposed off /dealt after expiry of period of appeal, if any. Applications pending, if any, are disposed off being not pressed. File be consigned to the judicial record-room.

Pronounced in open court:

Dated: 08.12.2022.

Dev Raj, Stenographer Gr. II

(Monika Chouhan)
Judicial Magistrate Ist Class,
Shaheed Bhagat Singh Nagar
(UID PB-0424)

Note: Certified that all the pages of this order are signed by me, which have been dictated and typed directly on computer.