

accused was formally arrested and joined in investigation on 28.10.2020. Site plan of the place of occurrence was prepared and statement of witnesses were recorded. After completion of investigation, challan against accused was presented in the court.

2. On presentation of challan, copies of report under section 173 Cr.P.C. as well as copies of other documents relied upon by the prosecution, were supplied to the accused free of costs, in compliance of section 207 Cr.P.C.

3. After hearing ld. A.P.P. for the State, ld. counsel for accused and after going through the record, a prima-facie case under Sections 304-A, 279, 337, 338, 427 of Indian Penal Code was made out against the accused. He was accordingly formally charge-sheeted, to which he did not plead guilty and claimed trial. Prosecution was directed to adduce its evidence.

4. To prove its case, prosecution examined ASI Vijay Kumar as PW1, ASI Krishan Gopal as PW2, Lokesh Sharma Data Entry Operator as PW3, ASI Mahinder Pal Singh as PW4, Dalbir Masih, eyewitness as PW5 and ASI Harjit Singh, Investigating Officer as PW6. Thereafter, the prosecution evidence was closed by order as prosecution has failed to conclude its evidence despite availing numerous opportunities including last opportunity, but failed to conclude the same, moreover, summons issued to PW Gian Masih complainant received back with report that he has gone abroad duly with the report of his brother Dalbir Masih, who is also one of the eyewitness in the present case being brother of the deceased.

5. Statement of accused, as enumerated in Section 313 Cr.P.C. were recorded, wherein all the incriminating evidence which has come on record, was put to him to which he pleaded that he is innocent and has been falsely implicated in the present case. Accused opted to lead defence evidence, but did not examine any witness in defence and closed his defence evidence.

6. I have heard ld. APP, ld. counsel for accused and have gone through the oral as well as documentary evidence brought on record.

Arguments of Ld. APP

7. Ld. APP has argued that prosecution has examined six witnesses namely, ASI Vijay Kumar as PW1, ASI Krishan Gopal as PW2, Lokesh Sharma Data Entry Operator as PW3, ASI Mahinder Pal Singh as PW4, Dalbir Masih, eyewitness as PW5 and ASI Harjit Singh, Investigating Officer as PW6, who have duly proved on record the manner in which accident had taken place on 25.10.2020, investigation was conducted by the Investigating Officer. Summing up his arguments, ld. APP submitted that all the witnesses have duly proved the case of prosecution to the effect that on 25.10.2020 at about 7.30 P.M in the area of village Thanewal, accused while driving Crane bearing registration No. PB-12-AF-8033 in a rash and negligent manner hit the bicycle of Deepa Masih and caused the death of Deepa Masih and finally prayed that he be convicted.

Arguments of ld.counsel for defence

8. Ld. counsel for accused on the other hand argued that accused was not arrested on the spot, no identification parade of the accused was got conducted by the Investigating Officer from the complainant or eyewitness, which fact is admitted by PW6 ASI Harjit Singh, Investigating Officer. There is no evidence on the part of the prosecution to establish that accused facing trial was having any connection with Crane bearing No. PB-12-AF-8033, which is allegedly involved in the accident as neither any owner of the Crane was cited as witness nor examined to establish the connection of the accused with the Crane on alleged occurrence dated 25.10.2020. Real brother of deceased Deepa Masih, namely Dalbir Masih, who as per prosecution case is eyewitness, while stepping into witness box as PW5 has categorically denied the identity of the accused to connect the accused with the alleged occurrence. Summoning up his arguments, counsel prayed that accused be acquitted.

Appreciation of evidence and findings of Court.

9. I have considered rival contention and have gone through oral as well as documentary evidence brought on record by prosecution as well as defence in support of their case.

10. Bare perusal of prosecution evidence reveals that prosecution has examined six witnesses out of which eyewitness Dalbir Masih, brother of complainant Gian Masih as well as deceased Deepa Masih, who stepped into witness box as PW5 and has categorically deposed that on 25.10.2020, he along with his brothers Deepa Masih and Gian Masih was coming from Gurdaspur to their village on separate bicycles. On the way, his brother Deepa Masih met with an accident with an unknown vehicle. When he reached near him, he was already dead. He did not notice any vehicle on the spot. He did not know the accused present in the Court. He did not see him causing accident with bicycle of his brother nor he made any statement to the police. He has specifically denied the presence and identity of the accused on the spot of alleged accident dated 25.10.2020, in which his real brother Deepa Masih had died. This witness was declared hostile at the request of Id. APP and was cross-examined by Id. APP at length but nothing came out of the same to establish that it was accused facing trial who on 25.10.2020 at about 7.30 P.M in the area of village Thanewal was driving Crane bearing registration No. PB-12-AF-8033 in a rash and negligent manner hit the bicycle and caused the death of Deepa Masih. Complainant Gian Masih another brother of deceased never stepped into witness box inspite summoned again and again as he had gone abroad, meaning thereby, identity and presence of accused facing trial on the spot is not proved at all by the prosecution. Investigating Officer PW6 ASI Harjit Singh has also categorically admitted in his cross examination that he never got accused identified from complainant Gian Masih or eyewitness Dalbir Masih. There is no evidence on the record as to whom the Crane bearing No. PB-12-AF-8033 belongs so as to connect the accused with the offending vehicle. Bare perusal of the report under Section 173 Cr.P.C, evidence of PW6 Investigating Officer, who has taken into possession the registration certificate of vehicle bearing registration No.PB-12-AF-8033 clearly reveals that the Crane was registered in the name of Jatinderpal Singh, who is even not cited as witness in the list of witnesses what to talk of joining him in the investigation by the IO. He was the best witness being owner of the Crane and can throw light as to who was driving his Crane on 25.10.2020, so as to connect the accused with the offending vehicle,

Rajesh Ahluwalia, Chief Judicial Magistrate, Gurdaspur.

which in the light of evidence brought on record prosecution has miserably failed to establish.

11. Remaining witnesses ASI Vijay Kumar being member of police party headed by ASI Harjit Singh Investigating Officer has simply deposed that on 28.10.2020, he was member of police party headed by ASI Harjit Singh, who arrested Varinderpal Singh vide memo Ex. P1, taken into possession Crane and its RC vide memo Ex. P2 and Ex. P3, duly witnessed by him. PW2 ASI Krishan Gopal has simply deposed regarding the mechanical test done by him on 29.10.2020 on Crane bearing No. PB-12-AF-8033 and proved his report Ex. PW2/A. PW3 Kamlesh Sharma has proved the license of the accused as Ex. P4. PW4 ASI Mohinder Pal simply deposed that on 26.10.2020 after getting the postmortem of the dead body of Deepa Masih, the body was handed over to his relative and damaged bicycle was taken into possession by IO vide memo Ex. P5, witnessed by him. PW6 ASI Harjit Singh has simply proved the manner in which he conducted the investigation after recording statement of Gian Masih on 26.10.2020 placed on record Ex. PW6/A, when he was present at Bus Stand Babehali. He has placed on record documents Endorsement on statement of complainant Ex. PW6/B, FIR Ex. PW6/C, Endorsement on FIR Ex. PW6/D, site plan Ex. PW6/E, inquest report Ex. PW6/F, arrest-cum-intimation memo of accused Ex. P1, taking into possession Crane bearing registration No. PB-12-AF-8033 along with RC vide memo Ex. P2, taking into possession driving licence of accused vide memo Ex. P3, driving license Ex. P4, taking into possession bicycle vide memo Ex. P5, RC Ex. P6, application moved to DTO Ex. PW6/G, report of office Ex. PW6/H, application dated 28.10.2020 moved to MTO Gurdaspur Ex. PW2/A, test report Ex. PW2/B, but in his cross examination has categorically admitted the fact that he never got identified the accused facing trial from complainant Gian Masih or Dalbir Masih (both brothers of deceased Deepa Masih), being complainant and eyewitness. This admission on his part clearly establishes that identity and presence of the accused is not proved on record beyond shadow of doubt. Official witnesses examined by the prosecution nowhere establishes the identity and presence of the accused at the spot, so as to connect him with

the Crane bearing No. PB-12-AF-8033 and the accident dated 25.10.2020 occurred in the area of village Thanewal, benefit of which must go to him.

12. In view of my observation on the foregoing paras, I am of the considered view that the prosecution has failed to bring cogent and convincing evidence against the accused Varinderpal Singh to bring home the charge against him. Accordingly, while affording benefit of doubt, accused Varinderpal Singh is acquitted of the charge framed against him. His bail bonds and surety bonds stand also discharged. Case property be disposed of as per law after awaiting the result of appeal or revision, if any. File be consigned to the record room, after due compliance.

Note: Certified that all the 6 pages of
this judgment are signed by me, which
have been dictated by me and typed by
judgment writer directly on computer.

Pronounced in open court on :
17th day of July, 2024

(Rajesh Ahluwalia)
Additional Chief Judicial Magistrate,
Gurdaspur (UID No.PB0281)

Rajeev Gupta, Stenographer