

PBGDA10006452020



Presented on : 12-02-2020
Registered on : 12-02-2020
Decided on : 04-10-2021
Duration : 1 years, 7 months, 21 days

IN THE COURT OF
Judicial Magistrate - Ist Class
AT Batala, Gurdaspur
(Presided Over by Sh. Bikramdeep Singh)

CHI/112/2020

Case Type	Challan IPC
Case No.	130 of 2020
Registration Number	CHI-112-2020
CNR number	PBGDA10006452020
Date of Institution	12.02.2020
Date of Decision	04.10.2021

State Versus **Dharminder Singh s/o Piara Singh, r/o**
Village Teja Kalan, District Gurdaspur
.... Accused

FIR No. 111 dated 24.10.2019
Under Sections 304-A, 279, 427 IPC
Police Station- Dera Baba Nanak

Present: Sh. Aman Mohindru, A.P.P. for the State.
 Accused Dharminder Singh on bail with counsel Shri
 Paramjit Kumar, Advocate.

JUDGMENT

1. The brief facts that emerges from the FIR is that on 23.10.2019 ASI Baldev Singh was present in Police Station when he received a telephonic call from Avtar Masih son of Sammu Masih that Sabbi Masih son of Dalbir Masih is admitted in the Floriam Hospital on

account of accident. After receiving this fact, ASI Baldev Singh along-with ASI Jaswinder Singh visited the Folriam Hospital where Doctor declared Sabbi Masih unfit to make the statement. On the next day i.e. 24.10.2019, ASI Baldev Singh along-with ASI Sarif Masih, ASI Nirmal Singh and PHG William Masih were present at bus stop Dera Baba Nanak for checking purposes where complainant Avtar Masih along-with one Kewal Masih recorded his statement. The complainant stated that on 23.10.2019 he along-with his nephew Sabbi Masih were coming back from Fatehgarh Churian on their motor-cycles after meeting some relatives. The nephew of the complainant Sabbi Masih was going ahead of the complainant and when they reached village Nikkosarai at around 9.00 AM, one bus bearing No. PB-13-K9815 driven by a young person came from Dera Baba Nanak side and that too in a rash and negligent manner and hit the motor-cycle driven by Sabbi Maasih as a result of which Sabbi Masih fell on the road. It is further alleged by the complainant that after the said collusion, Sabbi Masih received head injury and thereafter, he was taken to Floriam Hospital. The Doctor referred Sabbi Masih to some other hospital on account of serious injury being suffered by Sabbi Masih. However, Sabbi Masih could not survive and he ultimately succumbed to the injuries. On these allegations the FIR under Sections 304-A,279,427 IPC was registered. The accused was arrested.

2. After completion of investigation, challan was presented . The accused was granted concession of regular bail vide order dated 12.02.2020.

3. On finding prima facie case, charge under Sections 304-A,279,427 IPC was framed to which accused pleaded not guilty and claimed trial..
4. During course of examination of prosecution evidence, prosecution examined following witnesses:-
5. **PW-1 Avtar Masih:-**

He is the complainant in the present FIR and on his statement the FIR was registered. However, he could not identify the accused present in the court and he deposed that the accused present in the court is not the same person who caused accident.

6. **PW2- Kewal Masih:-**

His testimony can be said to be hear say testimony as he deposed on oath that he heard that his nephew Sabbi Masih met with an accident with the bus. He is neither the eye witness to the accident nor he was present at the spot.

7. **PW-3 Heera Masih:-**

His testimony can be said to be hear say testimony as he deposed on oath that he heard that his nephew Sabbi Masih met with an accident with the bus. He is neither the eye witness to the accident nor he was present at the spot.

8. **PW-4 ASI Baldev Singh-**

He is just an official witness who received a telephonic call on 23.10.2019 that Sabbi Masih is admitted in the Floriam Hospital on account of accident. He proved the following documents:-

- i). Statement of the complainant **Ex- P1** on the basis of which FIR in

question was registered.

ii). Ruqa Ex- **PW4/A**

iii). FIR Ex- **PW4/B**

iv). Site plan **Ex- PW4/C**

v). Postmortem examination report **Ex- PW4/E**

vi). **Ex- PW4/D**- memo vide which the clothes of the deceased was taken into police possession.

Vii. Arrest memo of accused.

9. Thereafter, learned APP for State closed prosecution evidence followed by the statement of accused under Section 313 Cr.P.C. in which all the incriminating evidence was put to the accused and accused desired to lead defence evidence but accused closed the evidence without examining any witness.

10. I have heard Ld. APP for the State and Ld. defence counsel.

11. It is argued by learned APP for State that the accused drove the offending vehicle in a rash and negligent manner and thereby caused an accident resulting in the death of Sabbi Masih and therefore, the accused is liable to be convicted. On the other hand, it has been argued by learned defence counsel that the accused cannot be convicted solely on the basis of testimony of official witness when the material witnesses have resiled from the statements and did not support the prosecution story. Thus, learned defence counsel prayed for acquittal of the accused.

12. The FIR in question was registered on the statement of Avtar Masih that on 23.10.2019 he along-with deceased Sabbi Masih, on

their respective motor-cycles, were going back to their village from Fatehgarh Churian and on the way one bus bearing No . PB-13-K-9815 allegedly driven by accused, in a rash and negligent manner, hit the motor-cycle of the deceased Sabbi Masih from wrong side, as a result of which deceased Sabbi Masih received serious injuries and ultimately he succumbed to the injuries.

13. To prove the prosecution story, three material witnesses were examined by the prosecution which are PW1 Avtar Masih (complainant), PW2 Kewal Masih and PW 3 Heera Masih. As per the testimony of the complainant, he deposed on oath that the accused present in the court did not cause any accident and he was not present at the spot when the accident in question happened. Therefore, from this testimony of the complainant the guilt of the accused could not be established.

14. The evidence recorded by PW 2 Kewal Masih and PW 3 Heera Masih goes on to show that their evidences are hear say evidence. Both the witnesses had deposed in unison that they have heard that their nephew Sabbi Masih died because of an accident on account of the collision between the bus being driven by the accused and the motor-cycle being driven by the deceased. Both the witnesses are neither eye witnesses to the accident nor they were present at the spot which fact is evidence from the contents of their cross-examination. Therefore, the testimony of these two witnesses also cannot be relied upon so as to connect the accused with an accident in question.

15. PW 4 ASI Baldev Singh is merely an official witness and

conviction of the accused cannot be done merely on the testimony of official witness when the star witnesses of the prosecution did not support the prosecution story. This official witness has merely proved the official document which has got no connection in any manner so far as the guilt of the accused is concerned.

16. Therefore, from the evidence led by the prosecution it is proved on record that the prosecution has miserably failed in its bit to prove its case beyond shadow of reasonable doubt. Hence, this court is of the considered view that no ground of conviction is made out and accordingly, the accused **Dharminder Singh** stands acquitted from the charges. Bail bonds and Surety bonds stands discharged. File be consigned to Record Room, Batala.

Pronounced.
Dated: -04.10.2021
Purushottam Kumar
Stenographer II

(**Bikramdeep Singh**),PCS,
Judicial Magistrate (Ist Class),
Batala. (UID No.PB0396)

Present: Sh. Aman Mohindru, A.P.P. for the State.
Accused Dharminder Singh on bail with counsel Shri
Paramjit Kumar, Advocate.

Accused closed his defence evidence vide separate statement.

Argument heard. Vide my separate judgment of even date, the accused
Dharminder Singh stands acquitted from the charge framed. File be
consigned to the record room after due compliance.

Pronounced.
Dated: -04.10.2021
Purushottam Kumar
Stenographer II

**(Bikramdeep Singh),PCS,
Judicial Magistrate (Ist Class),
Batala. (UID No.PB0396)**