

**IN THE COURT OF MS. NIRMALA DEVI, PCS,
JUDICIAL MAGISTRATE, IST CLASS, AMRITSAR
(UID NO. PB0411)**

**CNR NO. PBAS03-010322-2020
CIS NO. CHI-1159-2020**

Case No. : 64
Date of Institution : 25.08.2020
Date of Decision : 14.01.2022

STATE

Versus

Harinder Singh @ Jinda son of Jagir Singh,
resident of Chahal, District Faridkot, at present
resident of Village Gore Nangal, P.S Ramdas.

....Accused.

FIR No. 189 dated 04.09.2018
Under Sections: 304-A, 279, 337, 427 of IPC.
Police Station: Jandiala, Amritsar.

Present: Sh. Rupinder Singh, APP for the state
Accused Harinder Singh @ Jinda on bail represented by
Sh. D.S Gill, Advocate.

JUDGMENT :-

1. The accused named above, has been sent up by the SHO of Police Station, Jandiala, Amritsar to face trial for the commission of an offence punishable Under Sections 304-A, 279, 337 and 427 of IPC.
2. In nutshell, facts of the prosecution case are that on 04.09.2018 SI Gurwinder Singh No. 639 alongwith HC Sukhdev Singh No. 232, HC Major Singh no. 1289, HC Mahinder Singh no. 1343 were on patrolling on private vehicles and were present at Pull Sua, Meera Chakk, G.T Road, where Prem Singh son of Sawinder Singh, caste Jatt, resident of Chogawa Sadhpur alongwith Gurwinder singh son of Sardool Singh, caste Jatt, resident of Chogawa Sadhpur came and recorded his

statement that he is resident of above said address and working as a driver with guru Nanak Senior Secondary School. Today at about 3 PM he parked his school bus near Gurudwara Sahib Tarsikka and went to Amritsar for personal work where his brother Gurmej Singh met him and he alongwith his brother went towards his Village Sadhpur from Amritsar and his brother was driving Tipper bearing No. PB02-CR-7435 and he was sitting near to him and at about 7:30 PM when they reached near ROYAL RASOI, Village Akalgarh Dhapia then one Hydra Colour Yellow without number coming from front side in a very rash and negligent manner and without blowing any horn and hit their Tipper and due to which their Tipper damaged from the driver side and his brother received injuries on his head and other parts of body. He arranged the vehicle and took his brother at Guru Nanak Dev Hospital, where his brother got treated and doctors declared him dead. The death of his brother was occurred due to rash and negligence driving of the accused person. Investigation was conducted. After investigation, challan was presented against the accused Harinder Singh @ Jinda, under section 304-A, 279, 337 and 427 of IPC.

3. Upon appearance, copies of challan were supplied to the accused free of cost as provided u/s 207 Cr.PC and his statement in this regard was also recorded.

4. After hearing the learned counsel for accused as well as learned APP for State and after perusing the Police Report and documents appended with it, a prima facie case under sections 304-A, 279 and 427 of IPC was made out against accused and accordingly accused was charge sheeted. The charge was then read over and explained to accused in

simple language, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution got examined PW1 PW2 Sukhjinder Singh, PW3 Mangal Singh and PW4 Prem Singh and thereafter remaining prosecution evidence closed by order.

6. The statement of accused under section 313 Cr.P.C was got recorded in which all the incriminating evidence appearing on record against him were put to him, to which he denied all the allegations leveled against him and termed the case to be false and deposition of witnesses to be false against him and pleaded his innocence.

7. No defence evidence is present and thereafter defence evidence closed by order.

8. I have heard the learned APP for the State and learned counsel for the accused and have gone through the case file carefully. The following are points for determination:-

- 1. Whether on 04.09.2018, in the area of near Hotel royal Rasoi Dhapayia, accused drove a vehicle i.e. Hydra without number in rash and negligent manner as to endanger the human life and thereby you committed an offence punishable under section 279 IPC? If so, its effect.***
- 2. Whether on the same date, time and place, accused caused the death of gurmej Singh not amounting to culpable homicide and thereby you committed an offence punishable under section 304-A of IPC? If so, its effect.***
- 3. Whether on the same date, time and place, accused committed mischief by causing wrongful loss or damage to the property i.e. Tipper valued more than Rs. 50/- and thereby you committed an offence***

punishable under section 427 of IPC? If so, its effect.

9. In order to prove its contentions firstly the prosecution has examined PW1 Sukhjinder Singh during his examination in chief deposed that on 04.09.2018, accident was took place and due to which Gurmej Singh son of Sawinder Singh had died. On 05.09.2018, he went to the Hospital and identified the dead body of Gurmej Singh and his statement was recorded by police, which is Ex.P1 and he identified his signature at point A and after conducting postmortem of Gurmej Singh, his dead body was handed over to relatives. The receipt of dead body is Ex.P2. PW2 Mangal Singh also reiterated the version of PW1 and he also identified the dead body of Gurmej Singh. Thereafter, an opportunity was given to defence counsel to cross examine the said witnesses, but Learned Counsel for accused not opted to cross examine the said witnesses, hence their cross examination was treated as nil. Thereafter, PW3 Prem Singh (complainant) has been examined and during his evidence he deposed that on 04.09.2018 at about 3:00 PM, he parked his School Bus near Gurudwara Sahib Tarsikka and went to Amritsar for personal work where his brother Gurmej Singh met him and he alongwith his brother who was driving Tipper bearing no. PB02-CR-7435 and he was sitting beside him and they went to the Village Chogawa and when they reached near Hotel Royal Rasoi, near Village Akalgarh Dhapayia, then one Hydra colour Yellow without number plate came in a rash and negligent manner and without blowing horn and hit their Tipper, due to which Tipper got damaged and his brother received injuries on his head and other parts of his body. He arranged the vehicle and his brother was took to Guru Nanak Dev Hospital, where his brother got treated and doctor declared him dead.

He alongwith Gurwinder Singh went to the Police Station where his statement Ex.P4 was recorded and he identified his signature at point A. Police took into possession Tipper bearing no. PB02-CR-7435 vide memo Ex.P5 and he identified his signature at Point A. He did not identify the accused in the court. So, as he did not identify the accused in the Court and even he has been declared hostile by the learned APP for the State and cross examined by him in detail but nothing fruitful has come on record to support the prosecution case.

10. Thereafter, PW4 Surjit Singh (who identified the accused) during his examination in chief stated that neither he has any knowledge about the present case nor he has recorded any statement before the police. He was cross examined by learned APP for the State after obtaining permission of the Court, but he has specifically denied all the suggestions put by learned APP for the State. Thereafter, he was cross examined by Learned APP for the State and during his cross examination he declared as hostile as he resiled from his statement given to the police.

11. So in this way none of the witnesses has been able to prove on record the identity of the accused and once the presence of the accused has not been proved on record then benefit of the doubt goes to the accused and he cannot be convicted. Further, prosecution has also examined PW1 and PW2 but they are not the eyewitness of the occurrence nor they have seen the accused while committing crime. Clearly, it has not been proved that the accused present in the court has caused the accident. Needless to mention that statements under Section 161 Cr.P.C of the witnesses is a very weak type of evidence which cannot be relied upon until and unless same is corroborated by some other cogent

evidence. In the instant case there is no independent corroboration of the version as given in the statements under Sec. 161 Cr.P.C, as such, the statements of the witnesses under Sec. 161 Cr.P.C are not in itself sufficient to associate the accused in the present case.

11. No doubt, statement of witnesses should not be thrown overboard and so much part of the statement of witnesses and hostile witness which is consistent with the prosecution story can still be taken help to convict the accused persons. Certainly evidence of a hostile witness would not be totally rejected if submitted in favour of the prosecution or accused but it can be subject to close scrutiny and that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted. I have gone through the statements of PW3 and PW4 from that angle also, but I have found him totally worthless.

12. Keeping in view the above said points prosecution has failed to prove its case. Accordingly, accused Harinder Singh @ Jinda is acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged. Case property be disposed of as per rules after awaiting result of appeal/revision if any. File be consigned to record room after due completion.

PRONOUNCED IN OPEN COURT
DATED: 14.01.2022

(NIRMALA DEVI)
JUDICIAL MAGISTRATE Ist CLASS,
AMRITSAR/UID No.PB0411

Neetu Jassal, Stenographer Gr-III