

State Vs. Gagandeep Singh

CNR No. 121

Dated of institution: 25.04.2017

C.I.S. Filing No. CHI 1292/15

Date of Decision: 29.05.2018

State

.....Versus.....

Gagandeep Singh, S/o Baldev Singh,
Village Khaba Dogra,P.S Sadar, Tehsil
Tarn Taran, Amritsar.

.....Accused.

F.I.R. No.411/29.11.2014

U/S 279,337,338 of IPC

Police Station: Chehhrata, Amritsar.

Present:- Sh. Aman Mahendru, APP for the State.
Accused on bail with counsel Sh. A.S Siali, Adv.

Judgment

1. The accused named above has been sent up before the Court to face trial U/S 279,337,338 of IPC by the SHO, PS. Chehharta, Amritsar.

2. Brief facts of this case is that on 29.11.2014 ASI Sahib Singh incharge Chownki Town Chehhrata along with HC Narinder Singh 270, HC Tarsem Singh 3255, HC Gurmit Singh 3389 and PS Joginder Singh 9873 were present at Chownk Dwayinan Wala in search of bad elements. Where complainant Rohit Sharma came present and recorded his statement that on 27.11.2014 in the evening he was buying some vegetables near Time Japani Mill from Sabji Mandi Shops where his maternal uncle Ashok Sharma S/o Harbans Sharma R/o Gali no. 3 Kartar Nagar Chheharta present resident of Azad Nagar, Azad Road Chheharta came there after completing his duty from Best Western hotel from the side of Amritsar City on Splendor Motorcycle bearing no. PB02-BZ-6591 and after seeing the complainant Ashok Sharma stopped there. On asking by the complainant that his father have some work with Ashok Sharma and wants to meet him at complainant's home. Thereafter, they both departure from there towards the house of complainant on their respective vehicles and when they reached Reliance Fresh and the complainant uncle turned right from Chowk divider near Chehharta.

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One truck bearing no. PB11-AU-9280 was coming so rashly without blowing horn and hit the motorcycle of the Ashok Sharma. The driver ran away from the spot with his truck in the direction of Attari. After hitting with truck Ashok Kumar fell into his right side on the road divider and suffered injury in his right arm, right leg, on head along with several body injuries. The complainant with his Uncle admitted to the Amandeep Hospital through help of some other persons vehicle. After interrogation they found out truck driver name Gagandeep Singh S/o Late Baldev Singh R/o Pind Khabe Dogra district Tarn Taran Amritsar. After completion of the investigation, statement of witnesses were recorded, challan was prepared by Inspector ASI Sahib Singh and has presented in the court.

3. After presentation of challan, copies of Challan and copies of documents attached therewith were supplied to the accused free of costs as required under Section 207 of Cr.P.C and vide his separately recorded statement to that effect.

4. After hearing Ld. APP for the State and Ld. Counsel for the accused, a prima facie case was made out against the accused punishable U/s 279, 337, 338 of IPC, to which he pleaded not guilty and claimed trial.

5. To prove charge leveled against the accused, prosecution examined PW1 Rohit Sharma, PW2 HC Parveen Kumar, PW3 ASI Sahib Singh, PW4 SI Lakhbir Singh, PW5 HC Gurmit Singh, PW6 Ashok Kumar, PW7 Sawinder Kaur, PW9 Harjit Singh and PW10 Dr. Avatar Singh, and thereafter prosecution closed its evidence.

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 was 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 innocence.

7. I have heard learned APP for the State as well as the Ld. Counsel for the accused and gone through record and documents carefully.

8. From the above said discussion, the point of determination is that:

“ Whether accused drove Truck bearing no PB11 AU 9280 so rashly and negligently and thereby endangered the human life

and personal safety of others and committed an offence under section 279 IPC ?”

“ Whether accused driving said Motor Truck bearing no PB11 AU 9280 so rashly and negligently on the public way thereby caused simple injuries to Ashok Kumar and committed an offence under Section 337 IPC?”

“ Whether accused driving said bearing no PB11-AU -9280 so rashly and negligently on the public way and caused grievous injury on Ashok Kumar and committed an offence under section 338 of IPC?”

9. In order to prove its case prosecution examined PW1 Rohit Sharma who is the complainant in the present case and deposed that on 27.11.2014 at evening he was buying some vegetables near Time Japani Mill from Sabji Mandi Shops(vegetable shops) and complainant saw his Uncle Ashok Sharma S/o Harbans Sharma R/o Gali no. 3 Kartar Nagar Chheharta present resident of Azad Nagar, Azad Road Chheharta who was coming after completing his duty from Best Western Mall from the side of Amritsar City on Splendor Motorcycle bearing no. PB02-BZ-6591 and after watching the complainant Ashok Sharma stopped. On asking by the complainant that his father have some work with him and wants to meet him at complainant's home. Thereafter, they

departure from there towards the house of complainant on their respective vehicles and when they reached Reliance Fresh and the complainant uncle turned right from Chowk divider near Chehharta. One truck bearing no. PB11-AU-9280 was coming so rashly without blowing horn and hit the motorcycle of the Ashok Sharma. The driver ran away from the spot with his truck in the direction of Attari. After hitting with truck Ashok Kumar fell into his right side on the road divider and suffered multiple injuries. He specifically deposed that 10 foot from the site of occurrence driver of the truck saw backside from the window of the truck and he identify the accused present in the court he is the same person who was driving vehicle at that day. And also proved on record statement EXPW/A.

10. Thereafter, prosecution examined PW2 HC Parveen Kumar who deposed that he was member of police party in the present case who has investigated the case and proved on record handing over memo Ex. PW2/A.

11. Thereafter, prosecution examined PW3 ASI Sahib Singh who is the IO in the present case and also deposed on the same line of the facts of this case which is need not to be repeated for the sake of brevity and also proved on record application to Amandeep Hospital ExP1, doctor report Ex.P2, application Ex.P3,

application report Ex.P4, site plan Ex.P5, ruqa Ex.PW2/A, FIR Ex.PW2/B, handing over memo EX.PW1/B.

12. Thereafter, prosecution examined PW4 SI Lakhbir Singh who is head mechanic in MT Workshop and submitted report regarding truck bearing no PB11-AU-9280 and two wheller motorcycle bearing no PB 02 -BZ-2091 and proved on record report PW4/A and PW4/B.

13. Thereafter, prosecution examined PW5 Gurmeet Singh who is member of police party with IO who deposed that complainant Rohit Sharma came present and recorded his statement Ex.PW1 and proved on record handing over memo ExPW1/B and arrest and personal search Ex.PW5/A.

14. Thereafter, prosecution examined PW6 Ashok Sharma S/o Harbans Sharma R/o Gali no. 3 Kartar Nagar Chheharta present resident of Azad Nagar, Azad Road Chheharta who is the victim in the present case. He specifically deposed that on 27.11.2014 he was coming to home after completing his duty from Best Western hotel on Splendor Motorcycle bearing no. PB02-BZ-6591. On asking by the Rohit Sharma that his father have some work with him and wants to meet him at his home. Thereafter, he along with Rohit

Sharma left from there towards the house of Rohit Sharma on their respective vehicles and when they reached Reliance Fresh and when he was turning right from Chowk divider near Chehharta. One truck bearing no. PB11-AU-9280 was coming so rashly without blowing horn and hit his motorcycle and he fell down and suffered from multiple injuries. The driver ran away from the spot with his truck in the direction of Attari. Thereafter, Rohit Sharma took him to the Amandeep Hospital through help of some other persons vehicles and also proved on record motorcycle EX MO2.

15. Thereafter, prosecution examined PW7 Sawinder Kaur working as Junior Assistant Secretary who deposed that motorcycle bearing no PB02-BZ-6591 is in the name of Ashok Sharma and proved on record application which is Ex.PW7/A and snapshot Ex PW 7/B.

16. Thereafter, prosecution examined PW9 Harjit Singh who deposed that he is the owner of the truck bearing no. PB11-AU-9280 and he brought the above said case property which is Ex.MO1 which he had taken on Sapurdari and deposed that he has kept Gagandeep Singh S/o Baldev Singh as driver on my truck on 27.11.2014 had given truck to my driver for driving on the above said date.

17. Thereafter, prosecution examined PW10 Dr, Avtar Singh who deposed that he have brought original case sheet of Ashok Sharma S/o Sh Harbans Lal Sharma and deposed that Ashok Sharma was admitted in his hospital on 27.11.2014 with multiple injuries and he had crush injury right lower limb and fracture both bone forearm along with soft tissue injury left leg. His right leg was amputated on 04.12.2014. He was discharged on 12.12.2014 after multiple operation and also proved on record bed tickets Ex.PW8/A.

18. I have heard the submissions of Learned APP for the State and Learned defence counsel with reference to the evidence and material available on record and I have gone through the case file very carefully and minutely.

19. The Ld. APP for the State argued that the prosecution has successful in proving this case beyond reasonable shadow of doubt with the oral as well as documentary evidence led on the file by the prosecution. All the prosecution witnesses have fully supported the prosecution version while corroborating with each other. Therefore, the accused deserved to be convicted and punished as per law.

20. On the other hand Ld. Counsel for the accused contended that there are material discrepancies between the statement of witnesses and their testimonies are not sufficient to connect the guilt of accused with the commission of alleged offence and they have failed to stand the test of cross-examination. It is settled proposition of law that prosecution has to stand on its own legs and to prove the case against the accused beyond reasonable doubt but prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt. Ld. counsel for the accused further contended that the accused is innocent and he did not commit any offence and a false case has been planted upon him. He further contended that accused is innocence and he did not commit any offence and has been falsely implicated in this case. He also argued that there is delay of 2 days in lodging of FIR. Therefore, accused person deserve to be acquitted.

21. I have paid a considerable thought to the arguments advanced by the Ld. APP for the state as alleged Ld. defence counsel and have pursued the file with their kind assistance.

22. The case of the prosecution is that on 29.11.2014 ASI Sahib Singh incharge Chownki Town Chehhrata along with HC Narinder Singh 270, HC Tarsem Singh 3255, HC Gurmit Singh

3389 and PS Joginder Singh 9873 were present at Chownk Dwayinan Wala in search of bad elements. Where complainant Rohit Sharma came present and recorded his statement that on 27.11.2014 in the evening he was buying some vegetables near Time Japani Mill from Sabji Mandi Shops where his maternal uncle Ashok Sharma S/o Harbans Sharma R/o Gali no. 3 Kartar Nagar Chheharta present resident of Azad Nagar, Azad Road Chheharta came there after completing his duty from Best Western hotel from the side of Amritsar City on Splendor Motorcycle bearing no. PB02-BZ-6591 and after seeing the complainant Ashok Sharma stopped there. On asking by the complainant that his father have some work with Ashok Sharma and wants to meet him at complainant's home. Thereafter, they both departure from there towards the house of complainant on their respective vehicles and when they reached Reliance Fresh and the complainant uncle turned right from Chowk divider near Chehharta. One truck bearing no. PB11-AU-9280 was coming so rashly without blowing horn and hit the motorcycle of the Ashok Sharma. The driver ran away from the spot with his truck in the direction of Attari. After hitting with truck Ashok Kumar fell into his right side on the road divider and suffered from injury in his right arm, right leg, on head along with several body injuries. The complainant with his Uncle admitted to the Amandeep Hospital through help of some other persons vehicle.

First, second, third points of determination :

23. All points are taken up together in order to avoid repetition as they are interlinked and interconnected with each other.

“ Whether accused drove Truck bearing no PB11 AU 9280 so rashly and negligently and thereby endangered the human life and personal safety of others and committed an offence under section 279 IPC ?”

“ Whether accused driving said Motor Truck bearing no PB11 AU 9280 so rashly and negligently on the public way thereby caused simple injuries to Ashok Kumar and committed an offence under Section 337 IPC?”

“ Whether accused driving said bearing no PB11-AU -9280 so rashly and negligently on the public way and caused grievous injury on Ashok Kumar and committed an offence under section 338 of IPC?”

24. Before going into further discussion it would be necessary to reproduce section 279,337,338 of IPC.

As per section **279 of IPC** Rash driving or riding on a public way :-

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“Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both”

As per section **337 of IPC** :- Causing hurt by act endangering life or personal safety of others:-

“Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or fine which may extend to five Hundred rupees, or with both”

As per section **338 of IPC** causing grievous by act endangering life or personal safety of others:-

“Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with

both”

25. In order to prove the case prosecution has examined as many as 10 witnesses. In order to prove the guilt of the accused prosecution was firstly under obligation to prove that Truck bearing no. PB11-AU-9280 was in fit condition when accused was driving the said vehicle. In order to prove this fact prosecution has examined engineer Lakhbir Singh PW4 who is head mechanic in MT work shop Amritsar and is having experience of 22 years who proved that vehicle Tata Truck bearing no PB11-AU-9280 was in fit condition. In his report Ex.PW4/A he has specifically mentioned that engine, foot brake, steering, horn, front DXIL is in fit condition of the truck and also specifically mentioned at the end of his report that truck bearing no PB11-AU-9280 is in fit condition. He further submitted report regarding the motorcycle bearing no PB02-BZ-6591 which the victim was riding is also in fit condition. He was cross-examined by the counsel for the accused but nothing adverse has come out. Therefore, from the evidence of PW 4 one thing is crystal clear that both the vehicles were in fit condition on the date of occurrence.

26. Secondly burden was upon the prosecution to prove that the accused was driving rashly and negligently on a public place

and caused injuries to the victim Ashok Kumar. In order to prove this fact prosecution has examined Rohit Sharma who has specifically deposed that on 27.11.2014 he was purchasing vegetables from Sabji Mandi near Japani Mill when his maternal Uncle Ashok Sharma came there and then they left the place for their home on their respective vehicles and around the divider on Chheharta Road one truck bearing no PB11-AU-9280 which was coming from Chheharta to Attari was coming rashly without horn at very fast speed hit his uncle who fell down and suffered multiple injuries. Thereafter, prosecution examined victim Ashok Sharma as PW6 who also corroborated the version of PW1 Rohit Sharma and specifically deposed that truck bearing no PB11-AU 9280 was coming from Chheharta side towards Attari at very fast speed without horn and hit him to which he felt on the road and suffered injury of right leg, right arm, on head and on the body. Both the witnesses were examined at length but nothing has come out which creates any dent in the story of the prosecution. From the reliable and consistent testimonies both the witnesses prosecution has successfully proved that incident took place on Chheharta- Attari Road which is public way and driver was coming at very high speed and was driving rashly and negligently.

27. Prosecution has examined PW 10 Dr Avtar Singh who

has proved bed head tickets Ex.PW8/A and deposed that victim had crush injury right lower limb and fracture in both bones forearm and his right legs was amputated after the accident. He was cross examined at length by the counsel for the accused but in the cross-examination it has come that such injuries cannot be sustained by a fall from motorcycle and can only be sustained in severe accident. From the testimonies of PW1 Rohit Sharma and PW 6 Ashok Kumar, PW 10 Dr Avtar Singh prosecution has successfully proved that accused was driving rashly and negligently and caused hurt and grievous hurt to the victim.

28. Thirdly, prosecution was under the obligation to prove that present accused was driving the said vehicle. In order to prove this fact prosecution has examined complainant Rohit Sharma who has specifically deposed that from the 10 foot from the site of occurrence driver of the truck saw backside from the window of the truck and he identify the accused present in the court he is the same person who was driving vehicle at that day. Thereafter, prosecution examined PW9 Harjit Singh who is the owner of the said vehicle and has categorically deposed that he had kept Gagandeep Singh Son of Baldev Singh for driving of his truck on 27.11.2014. Both the witness have corroborated their version and prove the identity of accused. Both the witnesses were cross examined at length but

nothing regarding his identity has come out which adversely affect the story of the prosecution. Moreover, while giving statement under Section 313 of Cr.P.C no plea has been taken by the accused that he was not driving truck bearing no PB11-AV-9280 on 27.11.2014 which thereby means that he is admitting that he was driving truck bearing no PB11-AV-9280 on the day of occurrence.

29. Counsel for the complainant has placed on record judgment passed by Hon'ble Bombay High Court titled as **“State of Goa Vs. Prakash Gonnagar”** Criminal appeal no 30 of 2011 D/d 26.02.2014 in which it was held that

“ the statement given by the accused under section 313 of the Code is not an evidence itself but these answers can be looked into to find out what the accused wanted to say in respect of the evidence tendered against him in the Court and therefore the accused is always made aware before beginning of recording of statement under section 313 of Cr.P.C that he answers given by him are likely to be used against him”

30. In the present case the accused did not deny that he was driving the vehicle at the relevant time. From the reliable and consistent testimonies of PW 1 and PW9 and in absence of any plea

under statement recorded under Section 313 Cr.P.C this court comes to the conclusion that prosecution has successfully proved the identity of the accused Gagandeep Singh and that the accused was driving the vehicle on the said date.

31. Counsel for the accused further argued that there is delay of 2 days. No doubt delay in FIR may throttle the case of the prosecution but if that delay is explained then it does not effect the case of the prosecution. The very object of prompt lodging of FIR is to avoid any afterthought or any exaggeration. In the present case matter is with regard to the accident case and while recording the FIR complainant has stated that elders and owner of the truck and driver tried to compromise the matter but it was not compromised. Therefore, delay has been properly explained as complainant was trying to compromise the matter. Therefore, this contention of the counsel of the accused is also not maintainable.

32. The point of non-joining of the independent witness has been vehemently argued by the Ld. defence counsel. No doubt it is desirable to join independent witness as provided under the law but at the same time, the non-joining of independent witness is not

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always fatal to the prosecution, if the testimony of other witnesses inspire confidence and is trust-worthy. Therefore this contention is also not tenable.

33. From the evidence led by the prosecution, I am of the considered view that the prosecution is successful in proving the charge framed U/S 279,337,338 of IPC beyond reasonable doubt. Therefore, First, second, third point of determination is decided in favour of prosecution and against the accused.

34. As a result of my discussion above, the prosecution has succeeded in proving the charge U/S 279,337,338 IPC against the accused Gagandeep Singh present in the court beyond shadow of any reasonable doubt. Accordingly, he is convicted U/S 279, 337, 338 of IPC. Let he be heard on quantum of sentence.

Pronounced in open court.

Dated: 29.05.2018

Typed By

Nishant

(Directly typed)

Rajan Aneja, PCS

**Judicial Magistrate 1st Class,
Amritsar.**

UID No.PB0559

QUANTUM OF SENTENCE

Present: Sh. Aman Mohinderu, APP for the State.
Convict in person with Counsel Sh. A.S Siali, Adv.

1. Heard on the question of sentence Section 248 (2) of the Cr.P.C. The Ld. APP argued that the offence in question is of serious nature therefore maximum punishment should be awarded to the accused.

2. On the other side, vide separate statement the convict pleaded that he is the only bread earner of the family. The convicted accused has fervently prayed for leniency.

3. Therefore, taking into consideration of above observations and the gravity and the nature of the offence, I am reluctant to release the convicted accused on probation of good conduct or due admonition as per provision of section 3 or 4 of the Probation of Offenders Act.

4. With the increasing crime of such like offences and considering that right leg of the victim has been amputated by the act of the accused, the court does not seem any justification in giving any latitude to the accused/convict. Releasing them on probation or with less punishment will give a wrong message to the society. In today's scenario, where such offences are on hike and rash and negligent drivers do not care about the persons who are riding vehicles on the road carefully. The court deems fit to award the following punishment:

Name of accused	Section involved	Imprisonment and Fine	Imprisonment in default of Fine
Gagandeep Singh	279 IPC	6 months rigorous imprisonment and fine of Rs.1000/-	In default of fine 15 days simple imprisonment
	337 IPC	6 months rigorous imprisonment and fine of Rs. 500/-	In default of fine 15 days simple imprisonment
	338 IPC	2 years rigorous imprisonment and fine of Rs.1000/-	In default of fine 15 days simple imprisonment

5. Both the sentences shall run concurrently. However, in case of non-payment of Fine, the sentence of Fine shall run Consecutively.

6. The whole fine amount on realization be given to the victim/ complainant Ashok Sharma as compensation who has suffered loss caused by the offence as provided Under Section 357 (1) Cr.P.C after proper verification of document in due course of law.

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7. The period of detention already undergone by the accused in jail custody during the trial of the instant case, shall be set off as per provisions of section 428 of Cr. P.C let a free copy of the judgment be furnished to the convicted persons forthwith.

Pronounced in open Court.
Dated: 29.5.2018
Typed by
*** Nishant**

(Rajan Aneja), PCS,
Judicial Magistrate 1st Class,
Amritsar.
UID No.PB0559

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Present:- Sh. Aman Mohinderu, APP For the State.
Accused in custody represented by his counsel.

No DW is present today. Vide separate statement of even date, accused closed his defence evidence.

Arguments heard. Vide separate judgment of even date, accused is convicted and fined. Fine paid and receipt issued. The file complete in all respect. To be consigned to the record room.

Pronounced in open Court.

Dated: 29.5.2018

Typed by

*** Nishant**

(Rajan Aneja), PCS,

Judicial Magistrate 1st Class,

Amritsar.

UID No.PB0559