

**(2005) 02 P&H CK 0173**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 455-DBA of 1992

State of Haryana

APPELLANT

Vs

Himmat Singh

RESPONDENT

**Date of Decision:** Feb. 15, 2005

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 304A

**Citation:** (2005) 14 CriminalCC 127

**Hon'ble Judges:** Nirmal Yadav, J

**Bench:** Single Bench

**Advocate:** Rajesh Bhardwaj, AAG, Haryana, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

Nirmal Yadav, J.

This appeal has been filed by the State against the judgment dated 2.7.1992 passed by the learned Additional Sessions Judge, Faridabad, vide which the conviction and sentence awarded to the respondent-accused by the trial Court was set aside.

2. The facts of the case, in brief, are that Mohammad Illyas, informant, met HC Nar Singh, who was present near Janta Hotel, on the old G.T. Road, on 23.11.1986 and made statement Ex.PA. He reported that he was an employee of Janta Hotel and on that day around 6.00 P.M. he was standing in front of the Hotel when a truck bearing registration No. HRR-7459, driven in a rash and negligent manner, came from the side of Agra Chowk, Palwal, and hit a cyclist, who fell down. The truck sped away after the accident though the passers-by tried to stop it. The injured was removed to Civil Hospital, Palwal, but he succumbed to the injuries on 24.11.1986. The investigation was taken in hand by the HC Nar Singh. During investigation he prepared rough site plan of the place of accident and took into possession the offending truck which was being driven by the respondent-accused. He got the truck mechanically examined and after completion of the necessary investigation, Himmat

Singh respondent was charged under Sections 279 and 304-A IPC to which he pleaded not guilty and claimed trial.

3. In order to prove its case the prosecution examined PW-1 Kehar Singh, PW-2 Chandgi Ram, PW-3 Kiran Pal, PW-4 HC Suraj Bhan, PW-5 Rajinder Singh, PW-6 Ravinder, PW-7 Mohammad Illyas complainant and PW-8 Dr. Anil Malik. The material accusations appearing against the respondent were put to him while recording his statement u/s 313 Cr.P.C, but he denied the same in to and pleaded innocence simplicitor.

4. The trial Court, after taking into consideration the evidence on record, held the respondent guilty under Sections 279 and 304-A IPC and sentenced him to undergo rigorous imprisonment for two years and a fine of Rs.2,000/- u/s 304-A IPC and in default of payment of fine to further undergo rigorous imprisonment for four months. For the offence u/s 279 IPC, he was awarded rigorous imprisonment of three months and a fine of Rs.500/- and in default to further undergo rigorous imprisonment for 15 days. However, all the sentences were ordered to run concurrently.

5. Aggrieved by the judgment of conviction dated 24.10.1991 and the order of sentence dated 25.10.1991, the respondent filed appeal. The learned Additional Sessions Judge, Faridabad, on taking into consideration the arguments of both the parties, acquitted the respondent of the charges framed against him. Aggrieved by the judgment of appellant Court, the State has come up with the present appeal.

6. Learned counsel for the State argued that the Appellate Court has failed to appreciate the credibility of four eye-witnesses i.e. PW-2 Chandgi Ram, PW-3 Kiran Pal, PW-6 Ravinder and PW-7 Mohammad Illyas. All these witnesses are independent and had no enmity or ill will against the respondent. It is further argued that PW-3 Kiran Pal along with PW-2 Chandgi Ram had chased the offending vehicle and nabbed the driver near Mission School, where the respondent had disclosed his name. He further argued that as per the report of PW-5 Rajinder Singh, who mechanically examined the truck on 25.11.1986, found scratches on the mud-guard and bumper of the truck.

7. After going through the testimony of the eye-witnesses, I do agree with the finding of the learned Appellate Court that versions of all the witnesses are contradictory to each other. As per Chandgi "Ram, they stopped the offending vehicle, but thereafter the respondent escaped taking advantage of large number of people assembled on the spot. On the other hand, PW-3 Kiran Pal stated that he along with Chandgi Ram had nabbed the driver and he was taken to the police station, whereas PW-7 Mohammad Illyas, the author of the FIR, stated that the driver of the vehicle sped away inspite of their asking him to stop the vehicle. As per the prosecution case the driver was arrested on 25.11.1986, whereas as per the witnesses he was arrested on the date of the accident. If the version of PWs Kiran

Pal and Chandgi Ram is to be believed, the driver was nabbed after the accident then the prosecution version that he was arrested on 25.11.1986 is falsified. There was no reason as to why his arrest was shown after two days if he was already nabbed by the witnesses at the spot. The author of the FIR did not mention the name of the driver and as per his version the driver had fled away from the spot. He does not mention the names of other witnesses being present at the place of occurrence and, therefore, the presence of the witnesses on the place of occurrence appears to be doubtful and based on suspicion only. It is well established that the suspicion, how-so-ever strong, cannot take the place of proof.

8. Consequently, I do not find any ground to interfere with the judgment of the learned Appellate Court. Therefore, finding no merit in the appeal, the same is hereby dismissed.