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**(2009) 02 P&H CK 0230**

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

**Case No:** Criminal Revision No. 1337 of 2002

Rampal Singh and Another

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision:** Feb. 25, 2009

**Acts Referred:**

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

**Citation:** (2009) 5 RCR(Criminal) 443

**Hon'ble Judges:** Sham Sunder, J

**Bench:** Single Bench

**Advocate:** Rabinder Bir, for the Appellant; J.S. Bhullar, Assistant Advocate General, Punjab, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Sham Sunder, J.

This revision petition is directed against the judgment dated 09.07.2002, rendered by the Court of Additional Sessions Judge, Bathinda, vide which it dismissed the appeal against the Judgment of conviction dated 31.01.2001 rendered by the Court of Sub Divisional Judicial Magistrate, Talwandi Sabo, convicting the accused for the offence, punishable under Sections 279, 304-A and 427 of the Indian Penal Code and awarding sentence to him for various terms of imprisonment.

2. The facts, in brief, are that on 14.03.2000, Amarjit Singh, complainant and Karam Singh were going on Talwandi Sabo road, on separate bicycles, and when they were at a distance of 1-1/2 kms. from village Jajjal, at about 6.15 PM, one Maruti car bearing registration No. P13 03F-8900, came at a very high speed, being driven in a zig-zag manner. The said car hit against the cycle of Karam Singh, as a result whereof, he fell down and received a number of injuries. The cycle was got broken. The driver of the said car stopped the same, at some distance. The name of the driver was Rampal Singh resident of Malkana. On seeing the condition of Karam

Singh, the accused fled from the spot. In the meanwhile, one jeep came from Talwandi Sabo side. The complainant sent Karam Singh to Civil Hospital, Raman, in that Jeep. He came to the village to inform the family members of Karam Singh, regarding the accident and collect money for his treatment. When Amarjit Singh, complainant, returned, he found that Karam Singh had been sent to Civil Hospital, Bathinda. However, Karam Singh succumbed to the injuries, on the way. He was brought back to Civil Hospital, Raman. It was stated that the accident took place, on account of the rash and negligent driving of the car by Rampal, accused.

3. Amarjit Singh, made a statement before the Police, on the basis whereof, the FIR was registered. Inquest report of the dead body of Karam Singh was prepared. Post mortem examination, on the dead body of Karam Singh, was conducted. The spot was inspected by the Investigating Officer. The statements of the witnesses were recorded. The accused was arrested. After the completion of investigation, the accused was challaned.

4. On his appearance, in the Court, the accused was supplied the copies of documents, relied upon by the prosecution. Charge under Sections 279, 427 and 304-A IPC, was framed against the accused, to which he pleaded not guilty, and claimed judicial trial.

5. The prosecution, in support of its case, examined Dr. S.S. Malik, EMO, (PW-1), who conducted the post-mortem, on the dead body of Karam Singh, deceased, Hans Raj, Head Constable, (PW-2), who prepared the report Ex.PC, after mechanically examining the car, Dhira Singh, Head Constable (PW-3), in whose presence, the statement of the complainant, was recorded, by Balwant Singh, Assistant Sub Inspector, Balwant Singh, Assistant Sub Inspector, (PW-4) the Investigating Officer, Satpal, Clerk, Office of the DTO, Bathinda, (PW-5), Amarjit Singh, Complainant, (PW-6) who could not identify the accused, as the driver of the car, which struck against the cycle of Karam Singh, Kuldeep Singh, (PW-7), who did not support the case of the prosecution and Balraj Singh, (PW-8), who identified the dead body of Karam Singh. Thereafter, the Assistant Public Prosecutor for the State closed the prosecution evidence.

6. The statement of the accused, u/s 313 of the Code of Criminal Procedure, was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. However, no defence evidence was led by the accused.

7. After hearing the counsel for the parties, the trial Court convicted and sentenced the accused, as stated above.

8. Feeling aggrieved, against the judgment of the trial Court, an appeal was preferred by the accused/appellant, which was dismissed vide order dated 09.07.2002, by the Court of Additional Sessions Judge, Bathinda.

9. Still dis-satisfied, the instant revision petition was filed.

10. I have heard the Counsel for the parties and have gone through the evidence, and record of the case, carefully.

11. The Counsel for the revision-petitioner submitted that, no doubt, while exercising the revisional jurisdiction, this Court cannot reevaluate and re- appreciate the evidence produced by the prosecution, until and unless it comes to the conclusion that there was complete mis-reading of evidence, resulting into recording of erroneous findings. He further submitted that in the instant case, the Courts below, completely mis-read the evidence of Amarjit Singh, complainant, resulting into recording of erroneous findings, regarding the identity of the revision-petitioner as driver of the car, which allegedly struck against the cycle of Karam Singh. He further submitted that the findings recorded by the Courts below, that the identity of the accused, as the driver of the car, at the relevant time, stood established, are, thus, completely illegal and perverse. He further submitted that the judgments of the Courts below, were, thus, liable to be set aside.

12. On the other hand, the Counsel for the respondent-State, admitted that Amarjit Singh, complainant and Kuldeep Singh, prosecution witnesses, did not support the case of the prosecution. He, however, supported the judgments of the Courts below.

13. After giving my thoughtful consideration, to the rival contentions, raised by the Counsel for the parties, in my considered opinion, it is a fit case, in which the revision-petition should be accepted, for the reasons to be recorded hereinafter. It is, no doubt, true that, in its revisional jurisdiction, the Court cannot re-appreciate and re-value the evidence led by the prosecution, until and unless it comes to the conclusion that the findings of guilt, recorded by the Courts below, are perverse and illegal, or completely erroneous. In the instant case, Amarjit Singh, the sole eye witness to the accident, appeared as PW-6. He, in clear-cut terms, stated that he tried to identify the driver of the car, which struck against the cycle of Karam Singh, but he could not identify him. He further stated that he got puzzled, after the accident and the driver of the car from the spot. He further stated, in his examination-in-chief, that he did not know, as to who was the driver of the car, at the relevant time. He was put such questions, as are put, during the course of cross-examination, by the Assistant Public Prosecutor, for the State, with the permission of the Court, as he was making a statement, contrary to the one, made by him, on the basis whereof, the FIR was recorded. However, even during the course of cross-examination, by the Assistant Public Prosecutor for the State, he denied that the accused was the same person, who was driving the car, at the relevant time, which struck against the cycle of Karam Singh, resulting into his death. There was no other evidence to prove that the accused was driving car, which struck against the cycle of Karam Singh, resulting into his death. Under these circumstances, the Courts below completely mis-read the evidence of Amarjit Singh, complainant, to come to the conclusion that the identity of the accused, as driver of

the car, which struck against the cycle of Karam Singh, resulting into his death, stood proved. The findings of the Courts below that it was the accused, who was the driver of the car, at the relevant time, and as such, he was perpetrator of crime, being illegal, perverse and completely erroneous, are liable to be set aside.

14. For the reasons, recorded above, the revision-petition is accepted. The judgment dated 30.01.2001, rendered by the Trial Court and the judgment dated 09.07.2002, rendered by the Appellate Court, affirming the judgment of the trial Court, are set aside. If the petitioner is on bail, he shall stand discharged of his bail bonds. If, he is in custody, he shall be set at liberty, at once, if not required, in any other case.