

(244) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-375-2016
Date of Decision: 14.07.2022

Yusuf

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Karan Pathak, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 05.12.2015 passed by the learned Sessions Judge, Palwal, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 09.06.2015 passed by learned Chief Judicial Magistrate, Palwal, has been dismissed.

2. The case of the prosecution in brief is that the complainant is a barber. On 28.03.2011 at around 5.15 pm, the complainant alongwith his wife on his motorcycle bearing no. HR30E-1810 Make Hero Honda CD Dawn was going to the village Hasanpur. The complainant was also accompanied by his brother -in-law Narender Kumar who was on another motorcycle bearing no. UP13-1533 marka Hero Honda CD Deluxe. The brother-in-law of the complainant was riding in front of them and when they reached Chandhuth Police Station near Yamuna Bridge, a truck bearing no. RJ-02GA-2099, whose driver was driving in a rash and negligent manner, collided with the motorcycle of Narender Kumar due to which he fell on the road and received

injuries. The complainant drove his motorcycle off the road in order to save himself but the unknown driver drove his truck in a rash and negligent manner and struck Narender Kumar from behind and he succumbed to his injuries and died on the spot. The driver ran away from the spot leaving his truck there and at that time the complainant saw the driver. He prayed for action against the accused.

3. On the same day i.e 28.03.2011 after getting the intimation that an accident had occurred near the police station between a motorcycle and a truck, ASI Virender Singh along with HC Devender Kumar and Ct. Maan Singh reached the spot and met the complainant namely Kunwar Pal who got his statement recorded upon which formal FIR no. 57 was registered against the accused. Site plan Ex. PW7/D was prepared. The truck bearing no. RJ02 GA-2099 was taken into police possession vide recovery memo Ex. PW6/A. The report of the mechanical examination of the offending vehicle Ex. PW8/A was obtained. The driving license of the accused and RC of the offending vehicle were taken into police possession vide recovery memo Ex. PW6/B. The accused was arrested and on completion of investigation, challan against the accused was presented before the Court.

4. Finding a prima facie case against the accused under Sections 279 and 304-A of IPC, he was accordingly charge-sheeted, to which, he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined Hoshiyar @ Kunwar Pal as PW1, Suman as PW2, Dr. Udaideep as PW3, Ct. Man Singh as PW4, Balkishan as PW5, HC Devender Kumar as PW6, IO ASI Virender

Singh as PW7 and ASI Tejpal as PW8 and thereafter, the prosecution evidence was closed by court order VOD 04.05.2015 as the prosecution failed to conclude its entire evidence despite several effective opportunities. PW Raj, the photographer in the present case had died and could not be examined as a witness.

6. The statement of accused under section 313 of Cr.P.C. was recorded and the entire incriminating evidence was put to him to which the accused pleaded innocence and false implication. In his defence evidence the accused did not examine any witness and closed the same.

7. The details of the prosecution witnesses examined are as under:-

“To prove the offence punishable under Section 279 IPC the prosecution was to establish that the accused was driving the vehicle and riding on a public way and such driving or riding of the vehicle was in a manner so rash and negligent so as to endanger human life or to be likely to cause hurt or injury to any other person.

PW1 Hoshiyar @ Kunwar Pal who is the complainant in the present case, deposed in his examination-in-chief that the accused came from behind while driving the truck at a very fast speed, rashly and negligently and after crossing them, directly hit the motorcycle of his brother-in-law Narender Kumar, due to which he fell from his motorcycle and died on the spot. This witness was not cross-examined on the point whether the accused was driving his truck at a very fast speed or in a rash and negligent manner, therefore, it has been admitted by the accused that he was driving at a very fast speed and in a rash and negligent manner.

PW2 Suman also deposed in her examination -in-chief on the same lines that the accused crossed their motorcycle in a very fast speed and in a rash or negligent manner and directly hit the motorcycle of his brother Narender Kumar due to which he fell from the motorcycle and died at the spot. This witness was also not cross-examined on the point whether the accused driving his truck at a very fast speed and in a rash or negligent manner.

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Moreover, as per the mechanical report of the truck bearing no. RJ-02GA-2099 conducted by ASI Tej Pal, mechanic which was prepared on 29.10.11, it is clear that the head light, show bumper, grill and front portion of the mud guard were broken, which clearly establishes the fact that the accident took place and damage caused to the motorcycle shows that the driver of the truck was negligent in his driving, therefore, the prosecution completely proved the ingredients of Section 279 IPC and hence the accused is hereby held guilty for the commission of offence punishable under Section 279 IPC.”

8. To prove the offence under Section 304-A IPC, the following statements are relevant:-

“PW1 Hoshiyar @ Kunwar Singh is the complainant in the present case who deposed in his examination-in-chief that his brother-in-law was hit by the truck due to which he died on the spot. PW2 Suman also deposed on the same lines. Bal Kishan while appearing as PW5 has also identified the dead body of the deceased person.

PW7 ASI Virender Singh who is the I.O. in the present case got conducted the inquest proceedings of the deceased person as per provisions under Section 174 Cr.P.C. and sent the dead body of deceased person for post-mortem.

PW3 Dr. Udaydeep proved the MLR of the deceased person which is Ex. PW3/B, in which it has been clearly mentioned that the cause of the death is due to shock and heamorrhage as a result of ante-mortem injuries to vital organs which are sufficient to cause death in ordinary cause of nature, thus, corroborating the fact that death was caused due to the accident as alleged. Therefore, it is clearly proved on record that death of deceased person is caused by negligent driving of the accused Yusuf.”

9. Based on the evidence led by the prosecution, the accused came to be convicted and sentenced vide judgment and order of sentence dated 09.06.2015 as under:-

| Sections | Sentence | Fine imposed | In default |
|-------------------|-----------------|--------------|------------|
| Section 279 IPC | RI for months | -- | -- |
| Section 304-A IPC | RI for 02 years | Rs.1000/- | SI 07 days |

10. Aggrieved by the judgment and order of sentence dated 09.06.2015 passed by the learned Chief Judicial Magistrate, 1st Class, Palwal, the petitioner/accused preferred an appeal, where similar grounds were raised, which came to be dismissed by the Court of learned Sessions Judge, Palwal leading to the filing of the present revision petition.

11. The learned counsel for the petitioner has firstly argued that the prosecution could not establish that the accused/petitioner was driving in a rash and negligent manner. He contends that the entire case of the prosecution is based on the statements of PW1 and PW2, who are the brother-in-law and sister

of the deceased and being related to each other could not be believed and have falsely implicated the present petitioner. He further contends that the prosecution has miserably failed to prove on record the rashness and negligence of the petitioner and the learned Courts below are erred in basing the conviction solely on the uncorroborated testimony of the complainant.

12. On other hand, the learned State counsel contends that there is no infirmity in the judgments of conviction recorded by the Courts below. In fact, the offence is well-proved and the petitioner has been rightly convicted for having committed the offence in question.

13. I have heard the learned counsel for the parties at length.

14. The identity of the accused and vehicle in question have been duly established from the statements of the eye-witnesses namely, PW1-Hoshiyar @ Kunwar Pal Singh and PW2-Suman. Further, the mechanical report of the truck, which has been exhibited also clearly establishes the factum that the offending vehicle was being driven by the petitioner/accused.

15. The rashness and negligence on the part of the petitioner is also duly established from the statements of the witnesses. PW3-Dr.Udaydeep Singh who has clearly mentioned that the cause of death is due to shock and haemorrhage as a result of antemortem injuries to the vital organs of the deceased. Thus, it is clearly established that the occurrence took place due to the rash and negligent driving of the petitioner leading to the death of the deceased.

16. The arguments of the learned counsel for the petitioner that the eye-witnesses could not be believed as they were close relatives of the deceased does not carry much weight. It does not stand to reasons that the said eye-

witnesses would implicate the petitioner and exonerate the actual accused. Therefore, the offence in question is clearly established.

17. Keeping in view the aforesaid facts, it stands proved without any doubt whatsoever that the death of the deceased was on account of the rash and negligent driving of the petitioner and he has been duly and properly identified by the witnesses.

18. Thus, the offence having been clearly established from the version of the eye-witnesses as also the material on record, I find no reason to interfere with the well-reasoned judgments of the Trial court and learned Lower Appellate Court. Hence, this revision petition is hereby dismissed.

19. With regard to the imposition of sentence, the Hon'ble Supreme Court in **State of Punjab Versus Saurabh Bakshi, 2015(2) RCR (Criminal) 495**, held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of

notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

(Emphasis supplied)

Similarly, this Court in **Jaswant Singh Versus State of Punjab 2020(1) RCR (Criminal) 163**, held as under:-

"12. As noticed above, the petitioner has already undergone 4 months and 27 days out of the total substantive sentence imposed upon him. Though, there is a shortfall of one month and three days so as to make the said sentence as six months, yet keeping in view the fact that the deficient period is very short, I deem it appropriate to treat the same as six months.

13. In view of the above, while upholding the conviction of the petitioner under Sections 304-A and 283 IPC, the

substantive sentence imposed upon the petitioner is reduced to the one already undergone by him, but subject to payment of Rs.25,000/- as fine to be paid as compensation to the legal heirs of the deceased –Varinder Kumar. The said amount shall be deposited by the petitioner before the Chief Judicial Magistrate concerned within a period of two months from today, failing which the revision petition shall stand dismissed automatically. Once, such amount is deposited before the learned Chief Judicial Magistrate, the same shall be disbursed to the legal heirs of deceased-Varinder Kumar.”

(Emphasis supplied)

20. In the present case, the petitioner is a first-time offender and the occurrence is almost 11 years old, therefore, in view of the aforesaid judgments, I modify the sentence and reduce it to a period of 1 ½ years. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

14.07.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No