

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1915 of 2005

Date of decision: 23.09.2015

Baljinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Aditi, Advocate/amicus curiae for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J.

By filing the present criminal revision, the petitioner has assailed the judgment dated 30.08.2005, vide which, the learned Addl. Sessions Judge, Muktsar, while reducing the sentence of the petitioner under Section 304-A of the Indian Penal Code, upheld the judgment dated 08.09.2004, passed by the learned Sub Divisional Judicial Magistrate, Muktsar, whereby, the petitioner was convicted under Section 279 and 304-A of the Indian Penal Code (for short 'IPC'). He was sentenced to undergo RI for a period of six months and to pay fine of Rs. 200/-; in default of payment of fine, to further

undergo RI for one month. He was further sentenced to undergo RI for a period of two years and to pay fine of Rs. 300/-; in default of payment of fine, to further undergo RI for two months. The fine under Section 304-A IPC, was maintained by the appellate Court.

The prosecution case as set out from the judgment of trial Court is as under:-

“On 12.07.2000, Raj Singh, PW made a statement before ASI Balbir Singh of Police Station Sadar, Muktsar, wherein he stated that he is a resident of village Jawahrewala and they are three brothers. His brother Gian Singh is working as a seeri with Gurmit Singh. On 11.07.2000, he along with his father was going with the meals of his brother Gian Singh. At about 9.30 am his father was going 5-6 arms ahead of him and he was following him. In the meantime, a scooter bearing No. PB-04-B-2476 driven by Baljinder Singh son of Balbir Singh came from the side of village Jawahrewala. Two boys were sitting on the pillion of the scooter. The scooter was being driven by Baljinder Singh at a high speed and in a negligent manner. The scooter hit his father from back side. His father fell down and the scooter passed over his body. He raised alarm. All the three riders of the scooter also fell down. Gurmel Singh who was working in the nearby field was attracted to the spot after hearing alarm. Baljinder Singh and his companions ran away from the spot after leaving the scooter. He and Gurmel Singh lifted his father and brought him to the house. After arranging conveyance, his father was taken to Madho Hospital, Muktsar and was got admitted there, but his father died due to the injuries received by him. The accident took

place due to the driving of the scooter by Baljinder Singh in a rash and negligent manner. After recording the statement of complainant Raj Singh, ASI Balbir Singh made his endorsement on it and sent the same to the Police Station on the basis of which formal FIR was recorded. ASI Balbir Singh gave an application to the doctor in the hospital to know if the injured was fit to make a statement. The doctor declared the injured unfit to make a statement. As such, statement of Raj Singh was recorded. After the death of injured, inquest report was prepared. Post mortem examination on the dead body was got done through HC Kulwant Chand. Rough site plan of the place of occurrence was prepared, the scooter was taken into possession from the place of occurrence and the accused was arrested. On 13.07.2000, mechanical report regarding the examination of the scooter was taken from the mechanic. The photographs of the place of occurrence were taken and after completion of the investigation, the accused was sent up for trial.”

The accused/petitioner was charged sheeted under Section 279 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 Raj Singh, complainant; PW-2 Gurmel Singh, an eye witness; PW-3 Dr. Balwinder Singh; PW-4 HC Sukhpal Singh; PW-5 Mit Singh, mechanic, PW-6 Dr. Sukhpal Singh and PW-7 ASI Balbir Singh, the Investigating Officer.

The statements of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, the petitioner examined DW1 Dharminder Singh and thereafter he closed his defence evidence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/petitioner, as stated hereinbefore.

Feeling aggrieved against the judgments of both the Courts below, the instant revision was filed by the accused/petitioner which was admitted on 19.12.2012. The sentence of the petitioner was suspended on 18.11.2005.

The learned amicus curiae has contended that the both the Courts below have erroneously passed the impugned judgments/orders, without properly appreciating the evidence on record. The prosecution story is a concocted one as the complainant Raj Singh is son of the deceased Lal Singh and the eye witness Gurmail Singh is friend of the complainant. The petitioner was neither the owner of the scooter nor he was driving the scooter in question at the time of alleged occurrence. In fact, there was enmity between the petitioner and the complainant due to party faction in the village.

The learned amicus curiae has further contended that the

statement of the complainant was not corroborated by the eye witness of the accident, who was nonetheless a made up witness. She further referred to the testimony of PW-2, Gurmail Singh, wherein he has specifically stated that he was working in the fields at 2/3 killas away from the place of occurrence and he came to place of occurrence after hearing the raula, therefore, his evidence cannot be believed.

Lastly, the learned amicus curiae has submitted that the petitioner is a young man of 32 years of age and is a sole bread winner of his family. The petitioner has never misused the concession of bail during the trial. He is a first offender and has already undergone 03 months out of substantive sentence of one year and six months. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of petitioner/accused and supported the judgment of conviction and order of sentence passed by the trial Court.

I have heard the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case is fully proved by the statements of the prosecution witnesses. There is no flaw in the impugned judgment of conviction.

There is, thus, no illegality in the impugned judgment

dated 30.08.2005, passed by the Addl. Sessions Judge, Muktsar, and judgment dated 08.09.2004, passed by the Sub Divisional Judicial Magistrate, Muktsar, and the same, are, hereby upheld and affirmed. There is no merit in the present revision petition which is hereby dismissed.

The petitioner has suffered agony of a protracted trial. It is one of the mitigating circumstance to treat him leniently. The petitioner is stated to be the first time offender. It was an accident. He has already undergone 03 months and 04 days, out of the substantive sentence of one year and six months. In view of the above, the prayer made on behalf of the petitioner is accepted. The sentence awarded to the petitioner under Section 304-A IPC, is ordered to be reduced from one year and six months to one year. However, the fine is further enhanced to ₹50,000/- to be paid to the legal heirs of the deceased, Lal Singh towards compensation within four months after the receipt of certified copy of the order. It is made clear that if the enhanced amount of fine is not paid with the Chief Judicial Magistrate, concerned within the stipulated period, the present appeal shall be deemed to be dismissed without any notice.

Ordered accordingly.

23.09.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE