

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

**CRR No.1974 of 2005 (O&M)
Decided on : 01.04.2015**

Lachhman Singh

.... Petitioner(s)

Vs.

State of Haryana

.... Respondent

CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER

Present:- Mr. Bijender Dhankhar, Advocate
for the petitioner.

Mr. P.S.Chauhan, Addl. AG, Haryana.

MAHESH GROVER, J.(Oral)

This is a revision petition directed against the order of the learned trial Court and that of the appellate court awarding conviction to the petitioner under the provisions of Section 279, 337, 338 & 304-A IPC and sentencing him rigorous imprisonment for a period of one year and to pay a fine of Rs.1,500/-.

According to the prosecution case, one Satish Kumar, who was driving a three-wheeler on his extreme left hand-side of the road with passengers inside, was struck by a bus driven by the present petitioner, causing the death of Satish Kumar and injuring the passengers. In fact it was an accident involving multiple vehicles and another bus bearing registration No.DEF-4860, which was following the tempo, driven by one Surender, also got involved in the collision.

The petitioner is said to have run away from the spot.

A formal FIR was registered and upon investigation, the petitioner was challaned and charge-sheeted for committing an offence

under Sections 279, 337, 338 and 304-A IPC.

As many as 22 witnesses were examined by the prosecution while the petitioner in defence denied the allegations against him but did not lead any evidence.

Both the Courts below recorded the conviction of the petitioner under Sections 279, 337, 338 & 304-A IPC and sentenced him as per details noticed earlier.

It is contended by learned counsel for the petitioner that some of the injured witnesses failed to identify the petitioner, which would raise a serious dispute about his identity particularly when no identification parade was held. It was thus, stated that in the absence of any conclusive evidence in this regard the conviction cannot be sustained.

On the other hand, learned State counsel has pointed out the overwhelming evidence on the record indicating the fact that the petitioner was driving in a rash and negligent manner and absconded from the spot after causing the accident. It is thus, contended that there is absolutely no reason why the conviction and sentence awarded to the petitioner by the Courts below be not sustained.

I have heard learned counsel for the parties and with their assistance perused the record.

Even though the petitioner disputes his identity, he has not lead any evidence to show that he was not the driver of the bus particularly when the bus remained on the spot of the accident with only the driver absconding. It was the duty of the petitioner to produce evidence to show that he was not driving the bus in question by referring to the duty register maintained by the employer or even

producing his employer. Having not led any evidence to exonerate himself, this plea of false implication and lack of identity does not sound convincing particularly when the petitioner absconded from the spot. It would be extremely difficult for a person involved in a collision to acknowledge the identity of a person who has caused the accident. Therefore, the reasoning adopted by the Courts below, cannot be faulted.

That apart, this Court has gone through the photographs produced on record as Ex.P-21/A to P-21/Q, which also indicate clearly the collision with the tempo driven by the deceased, which was on his extreme left hand side while the bus has deviated from its own side to cross over to the path of the tempo driver. The site plan also establishes a similar fact. The principles of 'Res ipsa Loquitur' would suggest that there is no escape from the conclusion that the petitioner was negligent in driving the vehicle as he strayed from his own left hand side into the path of the tempo driver. There is thus, no redeeming feature in case of petitioner.

Confronted with the above-said, learned counsel for the petitioner would plea for leniency on the ground that the petitioner has already undergone two months out of the substantive sentence of one year awarded to him and the plight of his family.

I am afraid, these pleas cannot be accepted in the wake of a serious offence in which the petitioner is involved, which led to the death of a person besides injuries to numerous. The Hon'ble Supreme Court in ***State of Punjab vs. Saurabh Bakshi (CRA No.520 of 2015 decided on 30.03.2015)*** has observed as follows:

"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.

18. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challan attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. We say so with immense anguish."

Having no merit in the petition, the same is dismissed.

01.04.2015
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(Mahesh Grover)
Judge