

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

Criminal Revision No.2071 of 2005.
Decided on:-September 09, 2015.

Virender Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

Petitioner Virender Singh son of Shri Jagmal Singh, resident of village Kothal Kalan, Tehsil and District Mahendergarh has filed the present revision petition challenging judgment dated 24.10.2005 passed by learned Sessions Judge, Narnaul, whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 10.7.2004 passed by learned Judicial Magistrate 1st Class, Mahendergarh in case FIR No.127 dated 16.5.1995 under Sections 279 and 304-A IPC, registered at Police Station Mahendergarh, was dismissed.

The trial Court vide judgment and order dated 10.7.2004 had convicted and sentenced the petitioner to undergo rigorous imprisonment for

a period of two years and to pay a fine of Rs.1,000/- for the offence under Section 304-A IPC and in default of payment of fine, to further undergo imprisonment for a period of three months. The petitioner was also sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- for the offence under Section 279 IPC and in default of payment of fine, to further undergo imprisonment for a period of 15 days. However, both the sentences were ordered to run concurrently.

Briefly stated, the case of the prosecution is that complainant Naurang Lal resident of village Nangal Siroi was working as an Assistant in D.C. Office, Narnaul had visited SDM Office, Mahendergarh on 16.5.1995 for some official work. At about 12.30 p.m., when he was coming back to Narnaul, his brother-in-law Yad Ram son of Umrav Singh met him in the bus. They proceeded for their home by a private bus bearing registration No.RJP-7486. When the bus reached near his field, the complainant asked the driver of the bus to stop it. When the complainant and his brother-in-law Yad Ram were in the process of alighting from the front door of the bus, the driver started the bus. As a result thereof, Yad Ram fell down and came under the rear tyre of the bus. The driver of the bus fled away from the scene leaving the bus at the scene. Thus, this accident had occurred due to rash and negligent driving of the bus driver, namely, Virender Singh, the present petitioner.

The aforesaid FIR was registered against the petitioner. On the

basis of investigation, challan was presented against him in the Court. Copy of challan was supplied to the petitioner-accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused was charge-sheeted by the trial Court for commission of the offences under Section 279 and 304-A IPC vide order dated 17.11.1995 to which he pleaded not guilty and claimed trial.

During the prosecution evidence, complainant Naurang Lal had appeared in the witness box as PW3 and testified that he was working as an Assistant in D.C. Office. He further deposed that when Yad Ram was alighting from the bus, the driver of the bus started the bus. As a result thereof, Yad Ram fell down under the rear tyre of the bus. This accident was seen by Mohar Singh, Om Parkash and Ramchander Ex-Sarpanch. He has further stated that after raising alarm, the bus was stopped, but Yad Ram had died. The accused/petitioner fled away from the spot leaving the bus there. This witness has further deposed that the accident had occurred due to rash and negligent driving of the accused. Thereafter, he visited the Police Station for the registration of the case and FIR was registered.

On the other hand, the counsel for the accused had contended that there is insufficient evidence to prove that the accused was driving the bus on a public way in a rash and negligent manner. He denied that death of Yad Ram was caused because of rash and negligent driving of the petitioner. He submitted that complainant Naurang Lal (PW3) was brother-in-law of the deceased and, therefore, no implicit reliance can be placed on his

statement being a closely related person. He further submitted that there are discrepancies in the statements of Mohar Singh (PW1) and Naurang Lal (PW3), which are sufficient to disbelieve the prosecution version.

Considering the evidence so adduced, the trial Court vide judgment and order dated 10.7.2004 had convicted the petitioner and sentenced him to undergo the sentence as mentioned above.

The petitioner had preferred an appeal against the said judgment of conviction and order of sentence dated 10.7.2004 before the learned Sessions Judge, Narnaul. However, learned Sessions Judge vide judgment dated 24.10.2005 dismissed the appeal. It is in these circumstances that the petitioner has filed the present revision petition challenging the verdict of the courts below.

Learned counsel for the petitioner has contended that the learned Courts below have not considered the arguments of the defence and there are material contradiction in the statements of Mohar Singh (PW1) and Naurang Lal (PW3). Mohar Singh (PW1) has stated in his cross-examination in the following manner:

“I recognize the accused. Naurang had alighted properly. There was great rush in the bus on that day. Naurang had alighted from the front door and the deceased had alighted from the rear door. There was great rush in the bus. It is correct that the deceased was alighting from the running bus.”

Learned counsel for the petitioner has further contended that

when it has come in the cross-examination of said witness that the driver was not driving the bus in the negligent manner as alleged. There was no evidence against the petitioner leading to his conviction by the Courts below. Similarly, complainant Naurang Lal (PW3) is a brother-in-law of the deceased Yad Ram and he has deposed that only the deceased had alighted from the bus and he did not alight. But in his cross-examination, he had admitted that when the bus had stopped in front of his field, his brother-in-law had to alight and the bus had stopped in the side by leaving the road. He admitted that speed of the bus was not fast. While filing appeal before the learned Sessions Judge, the petitioner has clearly mentioned in para No.4 of the grounds of appeal that the deceased was alighting from the running bus. He reiterated that there is clear contradiction in the statements of Mohar Singh (PW1) and Naurang Lal (PW3) and deposition of these witnesses is entirely different from each other. Even the prosecution has failed to examine the investigating officer as well as the doctor who conducted the post-mortem examination on the dead body of the deceased. By not producing the investigating officer and doctor who were the material witnesses, a very valuable right of the petitioner has been taken away.

Learned counsel for the State, on the other hand, has defended the judgment passed by the Courts below. He submitted that scope of interference in the revisional jurisdiction is very limited. He has further submitted that the courts below have clearly found that the petitioner was

guilty of rash and negligent driving and there is no material contradiction in the statements of PW1 and PW3. He has further argued that in the case in hand, the deceased was alighting from the bus which was stopped by the petitioner-driver. However, before the deceased could alight from the bus, the petitioner without waiting for a signal from the conductor, had started the bus causing the accident which led to death of Yad Ram. He has further contended that the driver was, thus, clearly negligent while driving the bus. He has vehemently argued that the cases of negligent driving are on the rise and in case, the petition is allowed, it will send a wrong signal to the society.

I have heard learned counsel for the parties.

After addressing the aforesaid arguments, learned counsel for the petitioner has confined his arguments qua the quantum of sentence. He has contended that as against the awarded sentence of two years, the petitioner has remained in custody for about five months. He has further contended that the FIR in question was registered on 16.5.1995 and since then, the petitioner is consistently facing mental agony with the pendency of the criminal case against him. He has further contended that the petitioner is a first time offender and prays for a lenient view by considering long pendency of the proceedings as well as the fact that there is no other criminal case pending against him. He has further prayed that the sentence of the petitioner be reduced to the period already undergone by him.

Learned counsel for the petitioner has further submitted that the

legal heirs of deceased Yad Ram have already been awarded compensation by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988 and have duly been compensated in terms of money.

The Hon'ble Supreme Court in a recent judgment in ***State of M.P. Versus Mehtaab 2015(1) RCR (Criminal) 1008*** has held that when the accused was found guilty of causing death by negligence, the High Court was not justified in reducing sentence of imprisonment to the period of 10 days without awarding any compensation to the legal heirs of the deceased. As such, the Apex Court while modifying the order passed by the High Court had held that the order of the High Court can be upheld only with the modification that the accused will pay reasonable compensation to the heirs of the deceased. This judgment was also followed by this Court in ***Criminal Revision No.429 of 2015 decided on August 05, 2015*** titled as ***Surinder Singh Versus State of Punjab***.

The Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has also considered the similar controversy and has observed in para Nos.13 and 14 of the judgment as under:

“13. It is evident from the facts and circumstances of the case that the respondent has not called in question his conviction. We have before us only challenge to the inadequacy of the sentence in the present appeal filed by the State. Moreover, in an appeal under Article 136 of the Constitution,

*this Court does not re-appreciate the evidence, in absence of perversity or patent legal error, merely because a different view was also possible. We are thus, not inclined to reopen the correctness of conviction of the respondent and proceed to consider the question of adequacy of the sentence. In our view, the sentence of mere fine of Rs.40,000/- imposed by the High Court is not adequate and proportionate to the offence. We have been informed that a sum of Rs.3,60,000/- has been awarded as compensation by the insurance company to the heirs of the deceased. We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. This Court has dealt with the issue in **Suresh vs. State of Haryana, 2015 (1) RCR (Criminal) 148**, **Manohar Singh vs. State of Rajasthan & Ors. 2015 (1) RCR (Criminal) 747** and **State of M.P. vs. Mehtaab 2015 (1) RCR (Criminal) 1008**. Having regard to totality of circumstances of the present case, we feel that ends of justice will be served if the accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs.*

14. *Accordingly, we modify the impugned order passed by the High Court and enhance the compensation to be paid by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation of Rs.3 lakhs. In case the respondent fails to pay any part of the*

compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.”

Since the learned counsel for the petitioner has confined his arguments qua the quantum of sentence, and while taking into consideration the background that the petitioner is suffering the agony of trial for the last about 20 years as the FIR in question was registered way back in the year 1995, this Court feels modification in the sentence. Further as against the total sentence of two years, he has suffered incarceration for about five months and there is no other criminal case pending against the petitioner, the ends of justice would be met in case the conviction of the petitioner-accused is upheld, but the sentence awarded to him is reduced to the period already undergone by him, however, subject to payment of compensation to the victim's family.

Accordingly, the conviction of the petitioner-accused is upheld but the sentence is reduced to the period already undergone by him. However, this Court, in the light of the judgments of Hon'ble Supreme Court in ***Mehtaab's case (supra)*** and ***Ram Pal's case (supra)*** directs the petitioner to pay compensation of Rs.25,000/- to the legal heirs of deceased Yad Ram within three months from today failing which he shall be liable to undergo imprisonment as awarded by the trial Court and affirmed by the lower appellate Court. The petitioner shall deposit the compensation amount

in the trial Court and the trial Court shall disburse the same to the legal heirs of the victim after issuing notice to the complainant side.

With the aforesaid modification, the present revision petition is disposed of.

September 09, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE