

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 1539 of 2006 (O&M)
Date of Decision: 28.10.2015

Rakesh Kumar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

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

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

Present:- Mr. R.K. Trikha, Advocate
for the petitioner (s).

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J.(Oral)

Petitioner - Rakesh Kumar has filed the present revision petition against the judgment dated 5.7.2006 passed by learned Additional Sessions Judge, Jalandhar, whereby appeal filed by the petitioner against the judgment of conviction and order of sentence dated 22.3.2005 passed by Sub Divisional Judicial Magistrate, Phillaur has been dismissed. Learned Sub Divisional Judicial

Magistrate, Phillaur has convicted and sentenced the petitioner as under:-

	R.I.	Fine	In default, R.I.
U/s 279 IPC	6 months	Rs.500/-	15 days
U/s 304-A IPC	1 year	Rs.1000/-	1 month

Briefly stated, on 31.12.1999, complainant Ram Pal made a statement to the police that he drove his car bearing No.PB-08-Y-3993 to Ludhiana and when he reached near Guru Nanak Enterprises, Goraya, one Nirmal Chand son of Lehmbhar Dass resident of Paddi Jagir also boarded the car. When the car driven by the complainant was at a distance of 3/4 kms. short from Phillaur, one PRTC bus bearing No.PB-11-E-9664 along with other vehicles was standing due to accident. In the meantime, Brij Mohan cousin of the complainant while driving his Maruti car bearing No.DL-IC-3881 also came from the side of Goraya and he applied the brakes of his car. In the meantime, another vehicle i.e. Tata Sumo bearing registration No.HR-08-B-7405 being driven by the petitioner came in a rash and negligent manner. The said Tata Sumo of the petitioner was being chased by one Trola bearing No.HR-38-D-0905 on which tractors were loaded. The said Trola was being driven by Jagdish Singh son of Puran Mal in a rash and negligent manner. The Tata Sumo driven by the petitioner rammed into the Maruti car of the brother of the complainant from the rear side and due to this impact, the Maruti car dashed into the rear side of the bus of PRTC. The

front glass of the Maruti car of Brij Mohan was broken and the iron *patti* thrust into the neck and other parts of the body of Brij Mohan, due to which, he died on the spot. The body of Brij Mohan was extricated. Thus, the accident occurred due to rash and negligent driving of Tata Sumo bearing No.HR-08-B-7405 being driven by Rakesh Kumar as well as Trola being driven by Jagdish Singh in a rash and negligent manner.

The trial Court vide judgment dated 22.3.2005 held the petitioner guilty and convicted him under Sections 279, 304-A of the Indian Penal Code, 1860 and vide separate order of even date, sentenced him to undergo rigorous imprisonment for maximum period of one year along with fine, as indicated above.

The petitioner preferred appeal against the aforesaid judgment dated 22.3.2005. However, the said appeal was dismissed by learned Additional Sessions Judge, Jalandhar vide judgment dated 5.7.2006.

It is against the aforesaid judgments of the Courts below, the petitioner has preferred the instant revision petition.

Learned counsel for the petitioner has argued that the accident has occurred because of the reason beyond the control of the petitioner, as an accident involving one PRTC bus had already occurred and resultantly, the said PRTC bus was standing on the road side. Seeing the bus, Brij Mohan, deceased, applied the brakes of the Maruti car, due to which, the Tata Sumo being driven by the petitioner, who was following the Maruti car being driven by

deceased Brij Mohan, applied the brakes and it rammed into the Maruti car. Interestingly, the Tata Sumo which was being followed by the Trola loaded with tractors was dashed into the Tata Sumo from the rear side and due to this impact, the Maruti car was also dashed into from the rear side of the PRTC bus, which led to death of Brij Mohan and therefore, there was no rash and negligent driving on the part of the petitioner. Rather, the accident has occurred on account of sudden applying of brakes by the Maruti car while noticing the stranded PRTC bus and thereby, the Tata Sumo dashed into the Maruti car and the Trola dashed into the Tata Sumo. He further argued that there was a dent in the bumper from the driver side of the Trola and there was little dent in the body of Tata Sumo from behind and opposite to driver side. Thus, the Trola hit the Tata Sumo from the rear side, on account of which, the Tata Sumo dashed into the Maruti car and resultantly, the Maruti car dashed into the rear side of the PRTC bus and therefore, the petitioner was not at fault.

On the other hand, learned State counsel has filed custody certificate of the petitioner which is taken on record. As per the custody certificate, as against the awarded maximum sentence of one year, the petitioner was in custody for 1 month and 18 days. Learned State counsel has defended the impugned judgments and prayed for dismissal of the revision petition. He argued that the petitioner has not taken due care, as it was incumbent upon him to

take extraordinary care while driving the vehicle in such like situations.

I have heard learned counsel for the parties and perused the impugned judgments.

PW-2 Ram Pal, complainant, who was examined as a star witness has stated that when the car driven by the complainant was at a short distance of 3/4 kms. from Phillaur, one PRTC bus was found stranded on GT Road due to accident. The deceased Brij Mohan who was driving his car bearing No.DL-IC-3881 came from the side of Goraya and while noticing the bus, he applied the brakes of his car. The said car was further being chased by Tata Sumo being driven by the petitioner and the said Tata Sumo was further being chased by a Trolly being driven by Jagdish Singh. Thus, the aforesaid vehicles left no scope for the vehicle of the petitioner to stop.

Admittedly, the Tata Sumo driven by the petitioner was followed by a Trolly in which tractors were loaded and thus, the impact of the trolly loaded with tractors can certainly be so high that even best efforts of the driver of the Tata Sumo could not stop the further impact on the other Maruti car of deceased Brij Mohan. Thus, taking into consideration the fact that number of vehicles were involved in the accident and the fact that the vehicle driven by the petitioner was sandwiched between the Trolly loaded with tractors and the car of the deceased, it is not conclusive that it is the petitioner who was driving his vehicle in a rash and negligent

manner. The impact of the Trola, which is otherwise a very heavy vehicle and was further loaded with tractors, on the Tata Sumo was bound to further push the Maruti car driven by the deceased Brij Mohan. Thus, the findings recorded by the Courts below are not probable, rather, it was the driver of the Trola who had to be more careful, because it is due to the impact of the Trola on the Tata Sumo, the Maruti car of the deceased Brij Mohan was further pushed into the PRTC bus. Therefore, taking consideration the fact that the vehicle owned by the petitioner was sandwiched between two vehicles and the fact that the vehicle following the Tata Sumo of the petitioner was not only a heavy vehicle but was also loaded with tractors, its impact is bound to be on higher side.

In view of the above, the present revision petition is allowed and the findings of conviction and sentence, as recorded by the trial Court vide judgment/order dated 22.3.2005, as affirmed by learned Appellate Court vide dated 28.3.2005, are set aside and the petitioner is acquitted of the offences of which he has been charged and convicted. The petitioner is on bail. His bail bonds are discharged. The amount of fine, if already deposited by the petitioner, shall be refunded to him, as per the procedure known to law.

October 28, 2015
AK

(HARI PAL VERMA)
JUDGE