

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

**Crl. Revision No. 2059 of 2007
Date of decision : August 17, 2015**

Baisakhi Ram @ Dimpal

..... Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manish Dadwal, Advocate
for the petitioner

Mr. Deep Singh, AAG Punjab

ANITA CHAUDHRY, J.(ORAL)

This revision petition challenges the findings of the Courts below as the petitioner Baisakhi Ram @ Dimpal was convicted under section 279, 304-A and 337 IPC for causing death of Ajit and Lakha and injuries to Rajinder Kaur.

The accused was arrested and was charge-sheeted, he pleaded not guilty to the charge and claimed trial.

The prosecution had examined 7 witnesses.

The trial Court found the prosecution case established beyond reasonable doubt. Plea of the accused of false implication was rejected. The findings recorded by the trial Court were affirmed in appeal.

In this Court the accused had taken a stand that there was delay in lodging the FIR and the witnesses examined by the prosecution were related, the presence of the complainant on the

spot was doubtful, the statements of witnesses were contradictory.

The facts now, Surjit Singh, an ex-army personnel alongwith his brother-in-law Sarwan Singh were going on a scooter. Ahead of them, Rajinder Kaur alongwith her brother Ajit were going on a separate scooter. They were to attend the marriage of Ajit's daughter. At 7.45 p.m. they were ahead of the railway crossing, when an auto rickshaw bearing No. PAW – 8392 driven by Baisakhi Ram came from the wrong side in rash and negligent manner and stuck against the scooter driven by Ajit. He then struck against Lakha who was going on foot. Ajit and Rajinder Kaur fell down. Lakha also sustained injuries and fell on the road. Ajit and Lakha died on the way to the hospital.

The accident occurred at 7.45 p.m. on 08.04.2000. The FIR was registered on 09.04.2000 at 10. a.m.

The prosecution had examined Surjit Singh, the author of the FIR. He had disclosed that his wife was sitting on a separate scooter driven by her brother Ajit while he was on a separate scooter with Sarwan Singh. He gave a detailed account and the manner of the accident. He had disclosed that his scooter was 50 yards behind the other scooter. Rajinder Kaur PW-3 was also injured and she too supported the prosecution version.

Sarwan Singh PW-7 gave a vivid account of the accident. He has stated that he and his sister were going on a scooter and his brother Ajit and another sister Daljit were going on another scooter and Ajit's scooter was ahead of them.

Besides this the prosecution had examined the Medical

Officers, Investigating Officers, the photographer and the draftsman who had prepared the site plan.

In the defence the accused pleaded false implication but did not lead any evidence in defence.

The trial Court found the prosecution case proved beyond doubt and convicted the petitioner.

The accused has taken up a stand that both the Courts below had mis-appreciated the evidence. The submission on behalf of the appellant broadly were :-

- (i) That there was a delay in lodging the FIR.*
- (ii) The witnesses examined by the prosecution were related.*
- (iii) The complainant was not present on the spot.*
- (iv) Lastly the evidence led by the prosecution was full of contradictions.*

So far as the question of delay is concerned the accident took place at 7.45 p.m. on 08.04.2000. The FIR was registered the next day at 10.a.m. Both the vehicles were found on the spot. The driver was unable to control the three wheeler and it had turned turtle. Photographs were proved and they show the registration number of the vehicle. As regards delay the Courts are expected to be cautious when there is delay specially in injury cases. Courts expect early reports of the occurrence by the informant with all vivid details and the case of the prosecution can not be rejected only on account of delay.

Issue of delay was raised in ***Kanhaiya Lal vs. State of Rajasthan (Crl. Appeal No. 1108 of 2006) decided on 22.4.2013***

and it was held as under:-

15. Thus, whether the delay creates a dent in the prosecution story and ushers in suspicion has to be gathered by scrutinizing the explanation offered for the delay in the light of the totality of the facts and circumstances. Greater degree of care and caution is required on the part of the court to appreciate the evidence to satisfy itself relating to the explanation of the factum of delay. In Kilakkatha Parambath Sasi and others v. State of Kerala, it has been observed that when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened.

It is settled in law that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered, by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory. In this regard, reference can be made to ***State of H.P. vs. Gian Chand, 2001(6) SCC 71***, wherein a three-Judge Bench had expressed thus: -

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been

offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

The registration number of the vehicle is mentioned in the FIR. The injured were admitted in the hospital at 8.00 p.m. Ruqa was sent from Civil Hospital, Mukerian to the SHO on the same day. No complaint was made by the accused to any authority regarding his false implication. The three wheeler was not owned by the petitioner. He was only a driver. The owner of the three wheeler did not come forward to support the accused. The accused had the opportunity to lead evidence but he chose to remain silent.

So far as the submissions that the witnesses were related the testimony of the witnesses can not be rejected solely on that account. The family members were going on two separate scooters and they were the most natural witnesses. There was no reason for the prosecution witnesses to falsely implicate the petitioner. So far as the contradictions are concerned they are minor in nature and not material.

It has been proved by both the Courts below that the petitioner was driving the three wheeler and it came and hit the scooter and after hitting the scooter it hit Lakha which resulted in two deaths and one injured. The postmortem and the MLR have been proved.

Neither at the stage of bail nor at the initial stage of trial the question of identity of the driver was raised. No evidence was led to sustain the plea of false implication.

The first Appellate Court was in complete agreement with the findings of the trial Court. There is consistency in the ocular account which emerges from the statements of three eye witnesses. The evidence of the prosecution witness clearly establishes that the petitioner was driving the offending vehicle at the relevant time. There is no illegality or impropriety in the judgment which warrants interference regarding the findings of conviction.

So far as the question of sentence is concerned the petitioner was released on bail after undergoing sentence of three months and 25 days. As regard question of sentence, theory of deterrence has been dealt by the Apex Court in ***Dalbir Singh vs. State of Haryana, 2000(2) RCR(Criminal) 816***. Para 13 of the said judgment reads as under:-

“13. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be

convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

The sentence should commensurate with the seriousness of the offence. The Courts below had already taken a lenient view and I am not inclined to interfere with the sentence which is not on the higher side. There is no scope for reduction of sentence.

Consequently, the criminal revision is dismissed and judgment of both the Courts below as regards conviction and sentence are sustained. The petitioner was released on bail. He would surrender before CJM Hoshiarpur on 01.09.2015 to undergo the remaining sentence.

A copy of the order be sent to the Chief Judicial Magistrate, Hoshiarpur. In case the petitioner fails to surrender warrants of arrest shall be issued to procure his presence.

August 17, 2015

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**(ANITA CHAUDHRY)
JUDGE**