

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

Criminal Revision No.66 of 2006.
Decided on:-September 09, 2015.

Ram Avtar.

.....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. Ajit Sihag, Advocate
for the petitioner.

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

HARI PAL VERMA, J.

Petitioner Ram Avtar son of Shri Nathu Ram, resident of village Ward No.3, Loharu, District Bhiwani has filed the present revision petition challenging judgment dated 13.12.2005 passed by learned Sessions Judge, Bhiwani, whereby the appeal preferred by the petitioner against the judgment of conviction dated 29.7.2004 and order of sentence dated 30.7.2004 passed by learned Additional Chief Judicial Magistrate, Bhiwani in case FIR No.77 dated 5.3.2000 under Sections 279 and 304-A IPC, registered at Police Station Sadar Bhiwani, was dismissed.

The trial Court vide judgment dated 29.7.2004 had convicted the petitioner and vide order dated 30.7.2004 sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,500/- for the offence under Section 304-A IPC and in default of payment of fine, to further undergo imprisonment for a period of 20 days. The petitioner was also sentenced to undergo rigorous imprisonment for a period of three 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 10 days. However, both the sentences were ordered to run concurrently.

Briefly stated, the case of the prosecution is that on 5.3.2000 on receipt of information from General Hospital, Bhiwani regarding the death of Pardeep son of Ranbir Singh, ASI Dalip Singh along with other police officials reached there. He recorded the statement of Ranbir Singh to the effect that on that day at about 9.00 a.m., he along with his wife and two sons was going to their village Dinod from his in-laws house at village Golpura. When they were standing at Devsar curve, Bhiwani, a Tata-407 vehicle bearing registration No.HR-19-3183 came from Loharu side. The said vehicle was being driven by its driver in a rash and negligent manner and at a very high speed. The vehicle struck against his younger son Pardeep, aged about 9 years. As a result, Pardeep sustained injuries on his head and died at the spot. Later on, the complainant came to know that name

of the driver was Ram Avtar son of Nathu Ram i.e. the present petitioner.

On the basis of the statement of complainant Ranbir Singh, the aforesaid FIR was registered against the petitioner. After completion 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 the commission of offence under Sections 279 and 304-A IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 8 witnesses including complainant Ranbir Singh. He had appeared in the witness box as PW2 and his wife Smt. Panmeshwari Devi as PW3. Thereafter, the statement of accused under Section 313 Cr.PC was recorded wherein he denied the allegations levelled against him. However, he did not produce any evidence in his defence.

Considering the evidence so adduced, the trial Court vide its judgment dated 29.7.2004 had convicted the petitioner and vide order dated 30.7.2004 sentenced him to undergo the sentence as mentioned above.

The petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Bhiwani. Learned Sessions Judge, Bhiwani vide judgment dated 13.12.2005 dismissed his appeal. It is in these circumstances that the petitioner has filed the present revision petition challenging the verdicts of the courts below.

Learned counsel for the petitioner has contended that the learned Courts below have not considered the defence arguments. There is material contradiction in the statements of complainant Ranbir Singh (PW2) and his wife Panmeshwari Devi (PW3). He has further contended that PW2 Ranbir Singh has stated that they were sitting on the right side of the road, whereas PW3 Panmeshwari Devi has stated that they were sitting towards the left side of the road. He has further argued that PW3 Panmeshwari Devi has stated that the police had never recorded her statement and she never met the police, hence it creates a serious doubt in the prosecution story.

Learned counsel for the petitioner has further contended that as per the version of PW2 Ranbir Singh, he along with his wife and two sons was sitting at the time of accident, but no injury has been suffered by them except Pardeep and as such, the possibility of suddenly running on the road by deceased Pardeep cannot be ruled out.

Learned counsel for the State, on the other hand, has defended the judgment passed by the Courts below. He has submitted that the scope of interference in the revisional jurisdiction is very limited. He has further submitted that the courts below have clearly found and established that the petitioner was guilty of rash and negligent driving. There is no material contradiction in the statements of PW2 and PW3. He has further argued that in the case in hand, the accident had occurred due to rash and negligent driving of the vehicle driven by the petitioner. He further argued that the

cases of negligent driving are on high 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 one year, the petitioner has remained in custody for about 1 month and 11 days. He has further contended that the FIR in question was registered on 5.3.2000 and since then, the petitioner is consistently facing mental agony about the pendency of the criminal case against him. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender. He 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 Pardeep have already been awarded compensation by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988 and have suitably 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 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***.

Similarly, the Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has observed in para Nos.13 and 14 of the judgment as below:

“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.”

Considering the fact that the learned trial Court had convicted and sentenced the petitioner and the learned appellate Court had upheld the verdict of the trial Court, this Court, however, cannot ignore the fact that the

deceased was a child of about 9 years of age and the accident had occurred while the child was crossing the road suddenly. It has come on record that the parents of the child were sitting on the road. Therefore, it was incumbent upon the parents to take care of their child as children have a tendency to believe in mobility and they keep on moving from one place to other. Therefore, the parents of deceased Pardeep were equally required to take extraordinary care of their child. Therefore, considering the restricted arguments qua the quantum of sentence and coupled with the fact that the petitioner is suffering the agony of trial for the last more than 15 years as the FIR in question was registered way back in the year 2000 and further as against the total sentence of one year, he has suffered incarceration for a period of about one month and 11 days and there is no other criminal case pending against the petitioner, this Court feels that 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.

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.40,000/- to the legal heirs of deceased Pardeep 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.

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

September 09, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE