

**399 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR No. 243 of 2010.**
Decided on 14.12.2015**Vinod Kumar****..... Petitioner****Versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present :- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
for the petitioner

Mr. Mehardeep Singh, DAG, Punjab

Mr. Hardeep Singh, Advocate for
Mr. John Kumar, Advocate,
for respondent No. 2.

JITENDRA CHAUHAN.J.

This revision petition is directed against the judgment dated 21.01.2010, passed by the Additional Sessions Judge (Adhoc), Patiala whereby the appeal filed by the accused was dismissed and the judgment of conviction and the order of sentence dated 27.01.2005 passed by the Judicial Magistrate, First Class, Rajpura were upheld. The accused-petitioner was convicted and sentenced as under :-

Offence	Sentence	Fine	In default
279 IPC	RI for 3 months	Rs. 200/-	SI for 15 days
304-A IPC	RI for 1 year	Rs. 200/-	SI for 1 month

The brief facts of the case as noticed in para no. 2 of

the judgment passed by the Additional Sessions Judge are as under :-

“The case of the prosecution in brief is that this case was registered on the basis of statement of Harbans Lal which he gave in Section 32 Hospital to ASI Charanjiv Lamba who reached there on receipt of a wireless message regarding the accident. He gave the statement that he is running a Dhabba on Lohgarh chowk. His younger brother Chander Bhan has also a Dhaba on Ambala Zirakpur Road in the area of Lohgarh. He and his younger brother Chander Bhan were standing on the kacha berm of the road. In the meanwhile a military truck bearing no. 96D10/1888L was seen coming from Ambala side. One Tata Chassis No. MH. 12/0694 which was being driven by its driver Vinod Kumar Accused/Appellant rashly and negligently tried to overtake the military truck, as a result of which the Tata Chassis swerved off and the back side of the chassis struck with his brother Chander Bhan and due to this impact his brother fell down. ASI then sent the ruqa to the police station on the basis of which the present case was registered and after its completion, the challan was presented against the accused/appellant.”

Charges under Sections 279 and 304-A IPC were

framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Harbans Lal complainant, PW-2 Bodh Raj Mechanic, PW-3 Rajinder Singh, Photographer, PW-4 ASI Charanjiv Lamba.

PW-1, Harbans Lal has stated that he was running a Dhaba at the Zirakpur chowk. His brother Chander Bhan was also running a Dhaba near his shop. On 20.05.1998 at about 4 p.m. his brother Chander Bhan visited his Dhaba. While they were standing on the road and talking, a military truck bearing no. 96D101888L came from Ambala side. It was on slow speed whereas, a Tata chassis bearing no. MH-12/0694, coming from behind was at a high speed, and the driver of the chassis tried to over-take the military truck from the wrong side. One side of the chassis struck to the military truck, due to which, the chassis swerved off. The rear side of the chassis struck his brother and threw him to a distance of a 40/50 feet away from the site of accident. He saw the driver at the site of accident who disclosed his name as Vinod Kumar.

PW-2, Bodh Raj, Mechanic, has stated that he conducted the mechanical examination of the chassis No. MH-12/0694 Telco at P.S. Dera Bassi. He proved the photographs of the site of accident which are Ex. P1 to Ex. P4 and the negatives Ex. P5 to Ex. P8.

PW-4, ASI Charanjiv Lamba has proved the statement of PW-1 Harbans Lal which is Ex. PA. He further proved

FIR Ex. PB, site plan Ex. PW4/A. Tata Chassis was taken into police possession vide recovery memo Ex. PW4/B. The documents of the military truck and driving licence of the driver of the military truck, Abhimanu, were taken into police possession vide recovery memo Ex. PW4/C. Documents of the Tata Chassis were also taken into police possession vide recovery memo Ex. PW-4/D. The accused was arrested. Photographs were taken into police possession vide recovery memo Ex. PW-3/A. Inquest report was prepared which is Ex. PW-4/F. Dead body was taken into police possession for post-mortem.

The statement of the accused was recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications.

No evidence in defence was led.

After appraisal of the evidence, the learned trial Court convicted and sentenced the accused, as narrated above.

Feeling dissatisfied with the judgment and order dated 27.01.2005, the accused preferred an appeal before the Additional Sessions Judge, Patiala which came to be dismissed on 21.01.2010.

Still feeling aggrieved by the judgments dated 27.01.2005 and 21.01.2010, the present revision petition has been filed, which was admitted on 24.02.2010 and sentence of the petitioner was suspended.

Learned counsel for the petitioner contends that both the Courts below have erred in convicting and sentencing the petitioner. He further contends that the statement of PW-1, Harbans Lal, complainant is not trustworthy. His testimony is not corroborated by any independent evidence. The statement of this witness deserves to be ignored as he being real brother of the deceased is an interested witness.

On the other hand, learned State Counsel supports the judgements and the order passed by the Courts below.

I have heard the learned counsel for the parties and have gone through the record of the case.

The proximity of the 'Dhaba', the eating joint of the deceased Chander Bhan is proved on record. There is a specific recital in the statement of the complainant that the deceased Chander Bhan had come to meet him. He has given the elaborate details of the accident resulting into death of his brother Chander Bhan on account of rash and negligent driving of the petitioner. He has specifically stated that the Tata Chassis driven by the petitioner, which was coming from behind, tried to overtake the military truck from the wrong side and in the process, struck against the same due to which, it lost balance and the rear side of the Chassis struck against the deceased and carried the deceased upto 40/50 feet away from the site of accident. The complainant identified the appellant who had disclosed his name as

Vinod Kumar. The presence of PW-1, Harbans Lal being Dhaba owner

in the vicinity of the accident is natural at the time of accident. Otherwise also, the deceased being the brother of this witness had a reason to go to him. The testimony of this witness which was subjected to lengthy cross-examination, cannot be ignored on the fact of his being brother of the deceased. From the statement of PW-4, ASI Charanjiv Lamba and the statement of PW-1, Harbans Lal, the case against the petitioner is fully established.

No other point is urged.

In view of the observations made above, this Court does not find any illegality or irregularity in the well reasoned judgments passed by the Courts below. Consequently, the revision petition is dismissed. The accused is on bail. He be taken into custody to serve the remaining part of the sentence.

14.12.2015
SN

(JITENDRA CHAUHAN)
JUDGE