

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

Criminal Revision No.1761 of 2015.
Decided on:-December 07, 2015.

Kashmir Singh.

.....Petitioner.

Versus

State of Punjab.

.....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. A.S. Manaise, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

Petitioner Kashmir Singh son of Shri Daria Singh, resident of village Mandi Hazoor Wala, Tehsil and District Fazilka has filed the present revision petition challenging judgment dated 31.3.2015 passed by learned Additional Sessions Judge, Fazilka, vide which the appeal (criminal) preferred by the petitioner against the judgment of conviction and order of

sentence dated 6.9.2014 passed by learned Judicial Magistrate 1st Class, Fazilka, was dismissed.

Learned Magistrate vide judgment dated 6.9.2014 convicted the petitioner for offence punishable under Sections 279 and 304-A IPC and vide separate order of that date sentence him as under:

<u>Under Section</u>	<u>Sentence</u>
304-A IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.2,500/-. In default of fine, to further undergo rigorous imprisonment for six months.
279 IPC	Rigorous imprisonment for a period of six months and to pay fine of Rs.500/-. In default of fine, to further undergo rigorous imprisonment for one month.

However, both the sentences were ordered to run concurrently.

Briefly stated, the case of the prosecution is that on 22.10.2009 on receipt of Ruqa at Police Station Sadar Fazilka, ASI Raminder Singh along with other police officials visited Civil Hospital, Fazilka where the concerned doctor reported that injured Jagdeep Singh had been referred to D.M.C., Ludhiana. Threafter, ASI Raminder Singh reached D.M.C., Ludhiana and recorded the statement of Jagseer Singh i.e. the father of injured Jagdeep Singh. In his statement, said Jagseer Singh got recorded that on 22.10.2009 at about 6/7.00 p.m., he along with his younger son Jagdeep Singh, servant Ravi Bangali and nephew Hardeep Singh were returning

towards their house. He along with his nephew were on a motorcycle whereas another motorcycle was being driven by his son Jagdeep Singh, who was about 20/25 Karams ahead of them. When Jagdeep Singh reached near Poultry Farm of village Suresh Wala Senia, a tractor-trolley was also going ahead having no reflector or indicator attached with the trolley. His son tried to pass said tractor-trolley, but its driver, namely, Kashmir Singh, who's name he came to know afterwards, tried to cross the tractor-trolley and struck the same with the motorcycle of Jagdeep Singh in a rash and negligent manner. Due to the impact, Jagdeep Singh and his labourer fell down and received injuries. Complainant Jagseer Singh and his nephew arranged a vehicle and got them admitted in the Civil Hospital, Fazilka. However, Jagdeep Singh was referred to DMC, Ludhiana, where he succumbed to his injuries.

On the basis of the statement of complainant Jagseer Singh, FIR was registered. Statements of witnesses were recorded. Site plan was prepared and post-mortem of the dead body of Jagdeep Singh was got conducted. After completion of investigation, challan was presented 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 did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined as

many as 7 witnesses including complainant Jagseer Singh as PW2 and his nephew Hardeep Singh 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 and order dated 6.9.2004 had convicted and sentenced the petitioner in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Fazilka. However, the appellate Court vide judgment dated 31.3.2015 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 submitted that apart from the fact that the prosecution has failed to prove any cogent and convincing evidence to prove guilt of the petitioner-accused beyond shadow of reasonable doubt, even the trial Court did not appreciate the evidence available on record and wrongly convicted the petitioner for the offence punishable under Sections 279 and 304-A IPC. There is unexplained delay in registration of the FIR. Admittedly, the occurrence had taken place on 22.10.2009 at about 6/7.00 p.m. Whereas statement of the complainant was recorded on the next day i.e. 23.10.2009 at 10.30 p.m., which creates doubt

in the version of the prosecution. Even the eye witnesses i.e. complainant Jagseer Singh (PW2) and Hardeep Singh (PW3), who were allegedly following the deceased on their motorcycle, cannot be relied upon as they were interested witnesses and no independent witness was examined by the prosecution. Complainant Jagseer Singh (PW2) is the father of deceased whereas Hardeep Singh (PW3) is cousin of the deceased and, therefore, both of them are interested persons.

Learned counsel for the petitioner has further contended that the identity of the petitioner-accused has not been established as per law as the prosecution did not conduct any test identification parade in this regard. There are material discrepancies in the statements of prosecution witnesses which has caused a serious dent in the prosecution case.

On the other hand, learned counsel for the State 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. The offence under Section

304-A IPC should not be taken lightly.

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 the last about seven months. He has further contended that the FIR in question was registered on 23.10.2009 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 and has five children to support. One of his son who is about 24 years of age is polio-affected and handicapped. The petitioner was merely working as driver on the tractor-trolley. 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. He has also submitted that the fine has already been paid by the petitioner-accused.

Learned counsel for the petitioner has further submitted that the legal heirs of deceased Jagdeep Singh 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 accused while driving the tractor-trolley in a rash and negligent manner had struck the same with the motorcycle of deceased Jagdeep Singh due to which he fell down and succumbed to his injuries later on.

However, considering the restricted arguments qua the quantum of sentence and coupled with the fact that the petitioner is suffering the agony of trial since 23.10.2009 when the FIR in question was registered and further as against the total sentence of two years, he has suffered incarceration for a period of about seven months 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.25,000/- to the complainant.

The petitioner be released from custody forthwith, if not required in any other case, subject to his depositing of Rs.25,000/- with the

trial Court. The trial Court shall disburse the amount of compensation to the complainant. It is made clear that in case the petitioner fails to deposit the amount of compensation with the trial Court, 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 stands dismissed.

December 07, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE