

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

**Crl. Revision No. 1919 of 2015 (O&M)
Date of decision : 02.09.2015**

Vinod Kumar

..... Petitioner

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rakesh Kumar Sharma, Advocate
for the petitioner.

Mr. Deepak K. Grewal, DAG, Haryana.

ANITA CHAUDHRY, J.

This revision challenges the findings recorded by the Courts below as the petitioner has been tried and convicted for causing the death of Sher Singh in FIR No.273 dated 28.07.2007, registered under Sections 279 & 304-A IPC, Police Station City Palwal.

The factual matrix required to be exposited, On 28.07.2007 at about 10:00/10:30 A.M, Dharampal was proceeding from Palwal to village Puthli on his motorcycle. On the way, Sher Singh asked for the lift and sat on the motorcycle. They were half a kilometer away from Palwal when a Mahindra Tractor driven by Vinod came in a rash and negligent manner. The driver lost control and the tractor hit the motorcycle. The tractor did not have any registration number as it was a new tractor. Dharampal fell on the kacha side while the pillion rider Sher Singh sustained multiple

injuries. The matter was reported to the police the same afternoon. Subsequently, the driver was arrested.

On completion of investigation, challan was presented. Charge was framed. The prosecution examined five witnesses including the author of the FIR. The trial Court found the charges proved and sentenced the petitioner to undergo rigorous imprisonment for a period of six months for commission of offence under Section 279 IPC. Petitioner was further sentenced to undergo rigorous imprisonment for a period of six months along with a fine of Rs.500/- for commission of offence under Section 304-A IPC. Both the sentences were to run concurrently.

The appeal filed by the petitioner was dismissed by the lower Appellate Court.

Dis-satisfied with both the verdicts, the petitioner has preferred this revision on the ground that both the Courts below had mis-appreciated the evidence. The submissions on behalf of the petitioner broadly were:-

(i) That the FIR was against an unknown vehicle.

(ii) There were discrepancies in the statement of the witnesses.

(iii) The driver was arrested after 5 days and identification was for the first time in the Court.

The prosecution, in order to prove its case had examined Dharampal PW-3 who had given a lift to Sher Singh. He had deposed that the tractor came on the wrong side and hit the motorcycle and he fell on the kacha portion. He had stated that Sher Singh suffered grievous injuries on his neck and he took the injured to the General Hospital where he was declared dead. He

stated that he did not remember seeing any registration number of the vehicle but it was a Mahindra make tractor and the accident had occurred on account of negligence of the tractor driver. He stated that the name of the driver was revealed by a boy who was present and knew the accused. He denied that identification was for the first time in the Court. He stated that the front right wheel had hit his motorcycle from the front side.

Besides this, the prosecution had examined Dr. Sushil Kumar who had conducted the postmortem examination. He stated that Sher Singh was 15 years old.

Satbir Singh, Motor Mechanic PW-4 had mechanically examined the motorcycle and had given his report Ex.PW4/A.

A.C. Lal, SI PW5 had investigated the case. He had stated that Ruka was received and he had gone to the hospital and had recorded the statement of Dharampal. He spoke about the steps taken during investigation. He had disclosed that the motorcycle found on the spot was broken and the front wheel was completely broken. He stated that the eye-witness had given the name of the driver.

The record reveals that the accused himself had surrendered in the Court. The police had taken into possession the driving licence and also the insurance policy.

The accident had taken place at 10:30 AM. The injured had reached the hospital at 11:30 A.M. Dharampal had made his statement Ex.PW3/A to the police around 1:00 P.M. A perusal of the police proceeding show that the formalities were completed by 2:00 PM. There was no delay in the FIR. The record also reveals

that the registration number of the vehicle is not mentioned in the report under Section 173 Cr.P.C. It was a new tractor. The number had been applied for. The insurance was taken on 28.05.2007. The vehicle was registered with the registering authority on 30.08.2007. It is on that account that the registration number of the tractor does not find a place in the First Information Report.

I find that there is no delay in lodging the FIR. The matter was reported at the earliest. The injured had also reached the hospital well in time but the injuries were greivous. Before the treatment could start, the deceased had succumbed to the injuries.

So far as the first submission is concerned, the registration number of the tractor is not mentioned in the FIR. It is not in dispute that the registration number of the tractor had been obtained subsequently after the accident. It is also apparent from perusal of the registration certificate available on record. The petitioner had been named in the FIR. His name had been disclosed by a person who was present at the scene of the accident and was conveyed to the complainant. The complainant had categorically deposed that he had seen the driver on the spot. It is not a case of identification for the first time in the Court. The argument raised by the petitioner is without substance.

So far as the discrepancies are concerned, there are hardly any discrepancies. The counsel for the petitioner had urged that the complainant had firstly disclosed that the tractor had come from the fields but in his statement in the Court, he had stated that the tractor had come from the front side. A perusal of the site plan indicates that there are fields by the side of the road. The tractor

was on the wrong side of the road and had come from the front side and had hit the motorcycle. I find that the statement made by the complainant gets support from documentary evidence. There are minor discrepancies which are trivial in nature and must not prompt the Court to reject the evidence which is proved in its entirety.

The police had investigated the matter and it was looking out for the petitioner and he himself came forward and surrendered and was identified in the Court.

The Medical Officer had conducted the postmortem examination and had found grievous injuries on the upper portion of the body. There was fracture on the skull and the medical evidence supports the ocular version given by the complainant.

The Court below had minutely examined and analyzed the evidence. There is no reason to differ with the findings recorded by the Courts below. It cannot also be forgotten that the scope of interference in the exercise of revisional jurisdiction are limited. A perusal of the judgment passed by the Courts below leaves no manner of doubt that the accident took place as an outcome of rash and negligent driving of the petitioner which resulted in the death of an innocent person.

So far as the sentence is concerned, the petitioner has been sentenced to undergo rigorous imprisonment for a period of only six months. The sentence should commensurate with the seriousness of the crime. The Court below has taken a very lenient view in the matter. In a recent judgment titled as ***State of Punjab Vs. Saurabh Bakshi 2015 Cri.L.R. 522***, the Hon'ble Apex Court had observed:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign mistress” and “queen of virtue” as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.”

Bearing in mind, the galloping trend in road accidents and devastating consequences visiting the victims and their families, no benevolence can be shown to the petitioner and no interference is called for.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

02.09.2015

'Sunil'