

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

**Criminal Revision No.2401 of 2015
Date of Decision:-19.9.2015**

Satish

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Keshav Partap Singh, Advocate
for the petitioner.

Mr. Munish Bansal, Deputy A.G., Haryana.

HARI PAL VERMA J.(Oral)

Petitioner Satish son of Bachchu Singh, resident of Village Kanwarka, Police Station Kosi Kalan, District Mathura (U.P.) has filed the present revision petition challenging the judgment dated 1.6.2015 passed by learned Additional Sessions Judge, Palwal, whereby appeal preferred by the petitioner against the judgment of conviction dated 18.12.2012 and order of sentence dated 19.12.2012 passed by learned Sub Divisional Judicial Magistrate, Hodal was dismissed. FIR No.285 dated 19.10.2006, under Sections 279, 337, 338 and 304-A IPC was registered against the petitioner by Police Station Hodal, Palwal.

Learned trial Court vide judgment dated 19.12.2012 sentenced the petitioner to undergo simple imprisonment for three months for commission of offence under Section 279 IPC along with a fine of Rs.250/-. In default of payment of which, accused shall suffer simple imprisonment for a period of 15 days, whereas accused was also sentenced to one year simple imprisonment for commission of offence under Section 304-A IPC alongwith fine of Rs.250/- and in default of payment of which he was ordered to suffer simple imprisonment for a period of two months. However, the sentences were ordered to run concurrently.

Briefly stated the case set up by the prosecution is that on 18.10.2006 after receiving ruqa regarding injuries of Khemi son of Sri Ram in road accident, ASI Rohtash Kumar reached General Hospital, Palwal, where injured was declared unfit for making statement. Thereupon, Ranjit son of Khemi got his statement recorded to the effect that on 17.10.2006, he and Raj Kumar son of Rajpal took their old father Khemi to jungle outside their house towards the road. At about 5.30 p.m. when they reached at Anshop Chowk Sondh then from the side of Bahin one motor-cycle, registration number of which was applied for, of black colour driven by Satish came at a high speed. The motor-cycle struck against his father in negligent manner. Due to this collusion, his father fell down on the road and received injuries on his head, hands and both feet. The driver Satish after noticing the crowd, ran away from the scene after leaving his motor-cycle at the spot. On seeing Chasis number of the motor-cycle was found to be MD2-DDDU-ZZ-NEW-12635 and Engine

No.DUM-BNE-81317. The complainant and his brother got Khemi admitted in a private hospital i.e. Om Hospital Palwal. On his information, case was registered under Sections 279 and 337 IPC. However, after obtaining x-ray report, Section 338 IPC was added. When the injured died on 3.11.2006, Section 304-A IPC was also added.

The police conducted investigation, submitted challan and copy of the same supplied to the accused as provided under Section 207 Cr.P.C. Finding a prima facie case under Sections 279 and 304-A IPC, accused was charge-sheeted on 3.3.2007. Since the accused pleaded not guilty, the trial was conducted. On the basis of the evidence, the trial Court vide judgment dated 18.12.2012 convicted the petitioner and vide order dated 19.12.2012 sentenced him for the aforesaid offences.

The petitioner preferred appeal against the said judgment of conviction dated 18.12.2012 and sentence dated 19.12.2012 before the learned Sessions Judge. However, the learned Additional Sessions Judge, Palwal vide judgment dated 1.6.2015 dismissed the appeal. It is in these circumstances, the petitioner has filed the present revision petition challenging his conviction and the sentence.

Learned counsel for the petitioner contended that the learned Courts below have not appreciated the arguments and there are material contradictions in the statements of the witnesses. It is submitted that as per jamabandi for the year 1982-83 (Ex.D3) it is clear that Khemi had already been died, therefore, the petitioner has falsely been implicated in the case. However, the witnesses are interested persons being sons of the deceased Khemi and they are relatives of the deceased. Since no

independent witness has been examined to support the occurrence despite there being a crowd at the scene of occurrence, the petitioner is entitled to the benefit and such evidence cannot be read against him.

On the other hand, learned State counsel defended that the judgments passed by the Courts below are perfectly legal. He has submitted that the scope of interference in revision petition is very limited and the Courts below have clearly found that the petitioner is guilty of rash and negligent driving and there is no material contradiction in the statements of the witnesses.

I have heard learned counsel for the parties and perused the case file.

The deceased Khemi was aged about 65-70 years as stated by PW3 in his cross-examination. No doubt at this stage of age a person needs somebody to help him while going to attend the call of nature, particularly in the forest area of the village. Therefore presence of PW3 Ranjit Singh and PW4 Raj Kumar is in the natural course and cannot be doubted. Therefore, it has rightly been held that the witnesses were very much present at the place of occurrence and being eye witnesses their testimonies cannot be disbelieved merely because they are interested witnesses. The deceased had received injuries by fall on a hard surface. In the MLR (Ex.PW7/A) the alleged history of road traffic accident at Sondh Chowk at 4.15 pm when a motor-cycle hit him from the back is mentioned. As per MLR (Ex.PW7/A) the deceased sustained lacerated wound and punctured wound which are suggestive of being caused in a road side accident. In the Post Mortem Report the cause of death has

been mentioned as shock and haemorrhage associated with extensive brain injuries due to injuries No.1 to 6, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

After addressing the arguments, learned counsel for the petitioner has confined his argument qua the quantum of sentence. He has contended that as against the awarded sentence of one year for offence under Section 304-A IPC, the petitioner remained in custody for about 4 months and 20 days. He further contended that the FIR in question was registered on 19.10.2006 and since then the petitioner is consistently facing mental agony because of the pendency of the criminal case against him. He has further contended that the petitioner is a first time offender and prays for a lenient view in the light of long pendency of the proceedings as well as the fact that there is no other criminal case pending against him. He prayed that the sentence of the petitioner be reduced to the period already undergone by him as family of the deceased has been awarded compensation by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988 and has duly been compensated for an amount of Rs.2.5 lacs on account of death of Khemi, who was around 65 years of age.

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 reasonable 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***.

The Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has also considered the similar controversy and has observed in para Nos.13 and 14 of the judgment as under:

“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.”

Since the learned counsel for the petitioner has confined his arguments qua the quantum of sentence, and while taking into consideration the background that the petitioner is suffering the agony of trial for the last about 10 years as the FIR in question was registered way back in the year 2006, this Court modify the sentence. Further as against the total sentence of one year, he has suffered incarceration for about five months and there is no other criminal case pending against the petitioner, 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, however, subject to payment of compensation to the victim's family.

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.35,000/- to the legal heirs of deceased Khemi 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.

The petitioner shall deposit the compensation amount in the trial Court and the trial Court shall disburse the same to the legal heirs of the victim after issuing notice to the complainant side.

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

September 19, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE