

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

**Criminal Revision No. 3106 of 2015(O&M)**

**Date of decision: September 17, 2015**

**Amrinder Singh**

**----Petitioner(s)**

V/s

**State of Punjab**

**-----Respondent(s)**

**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. H.S. Jalal, Advocate for the petitioner.

Mr. Sultan Singh Gill, DAG, Punjab.

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**HARI PAL VERMA, J. (Oral)**

Petitioner has filed the present revision petition challenging judgment dated 09.09.2014 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 25.05.2013 passed by the Court of Judicial Magistrate Ist Class, SAS, Nagar, Mohali in case FIR No. 14, dated 08.01.2008 under Sections 279 and 304-A IPC, registered at Police Station Mohali, was dismissed.

The trial Court vide judgment and order dated 25.05.2013 had convicted and sentenced the petitioner under Sections 279 and 304-A IPC as under:-

| <i><b>Under Section</b></i> | <i><b>Sentence</b></i>               | <i><b>Fine</b></i> | <i><b>In default</b></i> |
|-----------------------------|--------------------------------------|--------------------|--------------------------|
| 279                         | Rigorous imprisonment for six months | ---                | ---                      |
| 304-A                       | Rigorous imprisonment for two years  | ₹1000/-            | 1 month                  |

It was, however, ordered by the trial Court that all the substantive sentences shall run concurrently.

Briefly stated, on the basis of First Information Report recorded on the statement of complainant, namely, HC-Narinder Kumar, the aforesaid FIR No. 14 dated 08.01.2008 was registered.

As per version of the FIR, on 08.01.2008 at about 07:30 P.M., the complainant HC-Narinder Kumar along with CT Dharampal were on duty at Phase-1 and Phase-6, Mohali. When they were standing at Verka Chowk, a three wheeler bearing No. PB-65-E-2290 came from the Chandigarh side. It was being driven in a rash and negligent manner. The said three wheeler turned turtle on the footpath and one passenger, namely, Nikhil Dass, who was riding in the same three wheeler came underneath the said three wheeler and he received injuries. Thereafter, another three wheeler was arranged, so as to get the injured Nikhil Dass admitted in Civil Hospital, Phase-6, Mohali, where the doctor declared him brought dead.

The trial Court vide judgment dated 25.05.2013 had convicted the petitioner and sentenced him to undergo the aforesaid sentences. Aggrieved by the said judgment of conviction and sentence dated 25.05.2013, the petitioner preferred an appeal, which was

dismissed vide judgment dated 09.09.2014 and the petitioner was taken into custody. The petitioner is in custody since 09.09.2014.

Learned counsel for the petitioner has argued that as against the awarded sentence of two years for the offence punishable under Section 304-A IPC, he is in custody for about 01 year. He is facing the consistent agony of trial since 08.01.2008, when the case was registered against him. He further submits that the petitioner is a poor person aged about 68 years and suffering incarceration since 2008. Learned Courts below have not assigned any specific reasons to decline the benefit of Section 360 Cr.P.C. and Section 4 of the Probation of Offenders Act, 1958, as is mandatory under Section 361 Cr.P.C. The learned Courts below have relied upon uncorroborated testimony of official witnesses who are otherwise interested witnesses and the Courts below have wrongly ignored the testimony of defence witness DW-1, whose presence at the spot is fully established. There are enough material discrepancies in the statement of the prosecution witnesses and the prosecution witnesses are interested witnesses. Therefore, it was not safe for the Courts below to rely upon testimonies of their interested witnesses and to convict the petitioner. No independent witnesses have been examined. Learned counsel for the petitioner has further argued that petitioner is a first time offender.

Learned State counsel has justified the judgment passed by the Courts below and the sentence, so, awarded.

I have heard learned counsel for the parties and have gone through the paperbook.

A perusal of the judgment of conviction and order of sentence dated 25.05.2013 passed by learned Judicial Magistrate Ist Class, Mohali and order dated 09.09.2014 passed by learned Additional Session Judge, SAS Nagar, Mohali, shows that the petitioner was convicted for causing the death of the passenger. The cause of the death in this case was due to head injury leading to hemorrhage and shock, which were sufficient to cause death in the ordinary course of nature. The injuries were anti-mortem in nature. The doctor who is examined as PW-3 has clearly deposed that there was laceration of 4.3 CM on left side of forehead in temporo-parietal region. On dissection of under line skull bone shows depressed fracture. Underline dura ruptured and brain tissue ruptured. Cranial cavity contained 100 ML of blood.

The FIR was registered at the instance of the complainant, namely, Narinder Kumar, who suffered statement *Ex.PB* to the police. The complainant HC Narinder Kumar was examined as PW-4 and HC Dharampal was examined as PW-5 and have categorically stated that the accused/petitioner while driving the offending three wheeler in a rash and negligent manner, struck it against the footpath, due to which Nikhil Dass got crushed under the said auto/three wheeler and died. The accused/petitioner is stated to have not received any injury in the accident. However, it has been pleaded that on the relevant date, there was rain due to which three wheeler skidded off the road. Occurrence has taken place on 08.01.2008 at about 7:30 P.M. in the month of January when darkness falls early during the month of December and January and fog is also quite prevalent. PW-4-

complainant had also not disputed the aforesaid fact and deposed during cross-examination that at the time of occurrence there was darkness and fog. Therefore, in such an event, the accused while driving auto/three wheeler was required to exercise more care and caution than in ordinary course. But the accused/petitioner drove the offending auto/three wheeler in a rash and negligent manner.

This Court in *Criminal Revision No.429 of 2015* decided on August 05,2015 titled as **Surinder Singh Versus State of Punjab** while placing reliance on a recent judgment of Hon'ble Supreme Court in **State of M.P. Versus Mehtaab 2015(1) RCR (Criminal) 1008** has reduced the sentence to the period already undergone for the similar offences. The Apex Court in **Mehtaab's case (supra)** has modified the order passed by Hon'ble High Court of Madhya Pradesh whereby in a case where the accused was sentenced by the trial Court to undergo rigorous imprisonment for one year for the offence under Section 304-A IPC, but the High Court had reduced the sentence as already undergone and the accused was just in custody for ten days. However, the Apex Court while observing that the High Court was not justified in reducing the sentence for ten days without awarding the compensation to the heirs of the deceased, has awarded compensation to the heirs of the deceased.

The fact of rain and fog has not been disputed by learned State counsel, therefore, degree of negligence is bound to be different.

Therefore, considering the fact that the petitioner-accused is suffering the agony of trial since 08.01.2008 and as against the awarded

sentence of two years, he is in custody for about one year and there is no other case pending against him coupled with the fact, the conviction of the petitioner-accused is upheld, but the sentence awarded to the petitioner is reduced to the period already undergone by him. This Court cannot outrightly ignore the fact that on the relevant day, when accident took place, it was a rainy day coupled with fog.

With the aforesaid modification, the present revision petition is disposed of and the petitioner-accused is ordered to be released from custody, if not required in any other case.

**September 17 , 2015**  
Anjal

**( HARI PAL VERMA )**  
**JUDGE**