

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3583-2015 (O&M)

Date of Decision: September 24, 2015

Balbir Chand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Arun Dogra, Advocate,
for the petitioner.

NARESH KUMAR SANGHI, J (Oral)

Challenge in the present criminal revision petition is to the judgment dated 1.8.2015, passed by learned Additional Sessions Judge, Pathankot, whereby the appeal filed by the petitioner, Balbir Chand, challenging his conviction and sentence for the offence punishable under Section 304-A, IPC, recorded by learned Chief Judicial Magistrate, Pathankot, was dismissed.

Learned counsel for the petitioner submits that the prosecution has failed to examine the registered owner of the offending vehicle to which the petitioner was a driver and, as such, it utterly failed to substantiate that at the time of the accident, the petitioner was on the wheels of the said vehicle; no test identification parade was got conducted, therefore, it could not be substantiated that the petitioner was driving the offending vehicle

at the time of alleged accident; and that there was no cogent evidence to prove rash or negligent act on the part of the petitioner while driving the offending vehicle.

Notice of motion.

At the asking of the Court, Mr. P.S. Ghuman, learned Additional Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State of Punjab.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Brief facts of the case are that on 9.2.2009, at about 11:00 p.m., Larish Kumar (PW-2), informant/complainant, his father Krishan Lal, and cousin Sohan Lal (PW3), on their respective bicycles, were coming towards their house. Krishan Lal on his bicycle was going ahead while the informant, Larish Kumar, and Sohan Lal were following him (Krishan Lal). When the trio reached near Ram Sharnam Colony, Pathankot, then the vehicle bearing Registration No. PB-06-H-4223, being driven by the petitioner in a rash or negligent manner, without blowing horn and at a fast speed, came from Pathankot side and struck against the bicycle of Krishan Lal. As a result thereof, Krishan Lal received fatal injuries and died at the spot. The petitioner after causing the accident, fled away from the spot. The occurrence was witnessed by Larish

Kumar (PW-2) and Sohan Lal (PW3).

The matter was reported to the police by Larish Kumar (PW2), on the basis of which FIR No. 11, dated 10.2.2009, for the offences punishable under Sections 279, 304-A and 427, IPC, was registered at Police Station, Division No. 1, Pathankot. During investigation, the petitioner was arrested. The offending vehicle was taken into possession by the police and after completion of the investigation, the charge-sheet (challan) was presented before learned Chief Judicial Magistrate, Pathankot.

After completing the formalities enshrined in Section 207, Cr.P.C., the arguments on the point of framing of charges were heard and finding a *prima-facie* case, the charges for the offences punishable under Sections 279 and 304-A, IPC, were framed, to which the petitioner pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined Dr. J.C. Kunda, as PW1; Larish Kumar as PW2; Sohan Lal as PW3; ASI Vijay Kumar as PW4; PHC Raghbir Singh as PW5; ASI Surinder Kumar as PW6; Gurnam Kumar, a clerk from DTO Office, Gurdaspur, as PW7; and SI Lalit Kumar as PW8.

After closure of the prosecution evidence, statement of the petitioner in terms of Section 313, Cr.P.C., was recorded, in which all the incriminating evidence appearing against the petitioner was put, to which the petitioner pleaded false

implication. No evidence was led in defence.

After hearing counsel for the State as well as counsel representing the petitioner, learned Trial Court held the petitioner guilty for the offence punishable under Section 304-A, IPC, and ordered him to undergo rigorous imprisonment for a period of two years.

Against the judgment of conviction and sentence, the petitioner preferred an appeal, which was dismissed by learned Additional Sessions Judge, Pathankot, vide judgment dated 1.8.2015, and still dis-satisfied, the petitioner has approached this Court by way of present criminal revision petition.

The material available on record would reveal that Larish Kumar (PW2) and Sohan Lal (PW3) were very specific in their depositions before learned Trial Court that at the time of accident, the petitioner, Balbir Chand, was driving the offending vehicle, i.e. Scorpio, bearing Registration No. PB-06-H-4223, rashly or negligently, at a very high speed and without blowing horn. In the accident, Krishan Lal received injuries and died at the spot. There is nothing on record on the basis of which it can be said that Larish Kumar (PW2) and Sohan Lal (PW3) had not witnessed the occurrence. It is undisputed that Krishan Lal had died on account of the injuries received in a motor vehicular accident. The prosecution has been able to prove from the testimony of its

witnesses that the petitioner was driving the offending vehicle at the time of the accident.

The submission of learned counsel for the petitioner that the registered owner of the offending vehicle was not examined, would not affect the prosecution case since Larish Kumar (PW2) and Sohan Lal (PW3) were very clear in their depositions that the petitioner was driving the offending vehicle at the time of the accident and, as such, there was no necessity for the prosecution to have examined the registered owner of the offending vehicle to show that the petitioner was engaged by him to drive the said vehicle.

The arguments raised by learned counsel for the petitioner, which have already been appraised and rejected by learned Trial Court as well as learned Appellate Court, have no legs to stand before this Court and, as such, this Court finds no merit so far as the conviction of the petitioner for the offence punishable under section 304-A, IPC, is concerned.

Though learned counsel for the petitioner has not uttered a single word with regard to the sentence awarded to the petitioner, yet this Court is of the opinion that the petitioner has already suffered the agony of trial and appeal for more than six years; during said period, he was released on bail, but he did not misuse the said concession; the petitioner is neither required nor

involved in any other case; he is a first offender; and that in the facts and circumstances of the case, this Court is of the considered view that extreme sentence of rigorous imprisonment of two years awarded to the petitioner is on higher side.

In view of above discussion, the sentence awarded to the petitioner by learned Trial Court for the offence punishable under Section 304-A, IPC, is modified and the same is reduced from rigorous imprisonment for two years to rigorous imprisonment for one year.

Except for the above modification in the order of sentence, there is no merit in the present criminal revision petition and the same is dismissed.

(NARESH KUMAR SANGHI)
JUDGE

September 24, 2015
Pkapoor