

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 707 of 2015 (O&M)
Date of Decision : 19.05.2015

Chamkaur Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Mr. Dilpreet Singh, Advocate
for the petitioner.

Mr. Gazi Mohd., DAG, Punjab.

R.P. Nagrath, J.

The petitioner has filed the instant petition to challenge the concurrent findings of conviction recorded by the Courts below against him for offence under Section 304-A of Indian Penal Code (IPC). Learned trial Court held that since the graver offence is under Section 304-A IPC, there is no need to record separate conviction under Section 279 IPC. The trial Court awarded the petitioner sentence to undergo rigorous imprisonment for two years and to pay fine of ₹ 5000/-, in default of payment of fine to further undergo rigorous imprisonment for six months. The sentence awarded to the petitioner was also affirmed by the learned Appellate Court.

2. The facts of the case briefly are;

On 18.06.2001, complainant Kulwant Singh and his

nephew, namely; Jaspreet Singh @ Mintu (deceased) were coming from the fields towards their house on scooter make Bajaj Chetak No. PB-55-6805. The complainant was driving the scooter and Jaspreet Singh @ Mintu was the pillion rider. The complainant parked the scooter on the left side of the road leading to village Latala and himself went for urinating. Jaspreet Singh @ Mintu was standing with the scooter. In the meantime, at about 08.30 p.m. the offending truck No. PB-13F-4801 came from the side of village Chappar at a high speed which was being driven in a rash and negligent manner. The driver of the truck did not blow any horn and the victim was run over. After the accident truck entered into the fields and stopped. The occurrence was witnessed by Jarnail Singh and Habhajan Singh PWs, who reached the spot and apprehended the truck driver at the spot. Jaspreet Singh succumbed to the injuries on his person and died at the spot. The scooter was also badly damaged.

3. The police party reached the spot and recorded, Ex. PA, the statement of complainant on the same day at about 10.30 p.m. on the basis of which FIR Ex. PW-5/A was registered. Both the vehicles were also taken into possession from the spot vide different recovery memos. The site plan of the spot indicating the location of victim and the vehicle soon after the occurrence is Ex. PW-5/B. The accused was arrested at the spot. Postmortem examination of the dead body of Jaspreet Singh @ Mintu was conducted by PW-6 Dr. Ravinder Khara, Medical Officer who prepared the postmortem report. The doctor found that there was internal bleeding and cerebral injury due to the fracture on the left parietal temporal bone and shock and

haemorrhage due to injury no. 1, which was sufficient to cause death in the ordinary course of nature.

4. The eye-witness account of the version has been testified by the complainant himself as PW-1 and both the other eye-witnesses, namely; Jarnail Singh and Harbhajan Singh as PW-2 and PW-3, respectively, who have consistently supported the version. The witnesses were extensively cross-examined and learned trial Court held the evidence to be worthy of credit.

5. The site plan Ex. PW-5/B showing the location of dead body and the vehicles would itself speak of the gross and contumacious negligence on the part of driver. The truck was coming from the side of village Chappar and it went on the extreme right side of the road to hit the victim on *kachha* portion along the berm of the road. PW-1 Kulwant Singh stated that the petitioner tried to move the truck back with reverse gear but was not successful as it was stuck up in the mud in the fields. Same is the version of PW-3 Harbhajan Singh in the cross-examination. PW-2 Jarnail Singh stated that scooter was parked by the complainant on *kachha* portion along the road on the left side. According to him, the scooter was parked at a distance of 5 ft. from the berm of the road. PW-5 ASI Ashok Kumar, the investigating officer also stated that the place of occurrence was about 2 ft. away from the metalled road.

6. The evidence of the prosecution has been properly analyzed by both the courts below and there is nothing to suggest that any material on record has been ignored or the evidence was misread. So there is no scope of interference in the findings of guilt

concurrently recorded by both the courts below in exercise of the revisional jurisdiction.

7. When the revision was listed on 27.02.2015, it was observed by this Court that there is scope of interference in the quantum of sentence.

8. Learned counsel for the petitioner, vehemently, contended that as per custody certificate dated 08.05.2015, the petitioner has already undergone more than 1 year and 2 months of imprisonment by including the remissions and actual sentence undergone was 11 months and 14 days, which may be considered sufficient in the circumstances of the case.

9. In view of the gross negligence in driving the vehicle by the petitioner, he does not deserve so much of concession. It was, however, contended that the incident took place about 14 years ago and the petitioner has suffered agony of the trial for so many years. The petitioner is by now about 62 years old as per the date of birth mentioned on the driving licence taken into possession by the police.

10. It appears from record that so much of the delay in disposal of the trial occurred because originally the trial Court decided the matter on 18.07.2007 by holding the charges to be proved and awarded the sentence. However, learned Appellate Court in the order dated 06.09.2011 observed that a general story was put to the petitioner during his examination under Section 313 Cr.P.C. and not all the incriminating circumstances separately. Learned Appellate Court observed that as per the settled law it is the statutory requirement and duty of the court to put each and every incriminating circumstance to

the accused person and record his response. It was further observed that unless such incriminating evidence has been put to the accused that evidence cannot be used for decision of the case. The matter was then remitted to the trial Court with a direction to record the statement of petitioner afresh under Section 313 Cr.P.C.

11. The trial Court again examined the petitioner under Section 313 Cr.P.C. by putting each and every incriminating circumstance to him for eliciting his response and after hearing both the parties the judgment was passed by the trial Court now on 19.01.2012.

12. Looking into the aforesaid circumstances and present age of the petitioner, I find that sentence of imprisonment deserves to be reduced from 2 years to 1 ½ year of rigorous imprisonment under Section 304-A IPC, maintaining the imposition of fine and the default clause.

13. In view of the above, the instant petition is dismissed on merits and partly allowed qua the quantum of sentence in the terms indicated above.

May 19, 2015
jk

(R.P. NAGRATH)
JUDGE