

In the High Court of Punjab and Haryana at Chandigarh

**CRR No. 747 of 2015 (O&M)
Date of Decision: March 02, 2015**

Sunil Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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. Mahesh Gupta, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant criminal revision has been preferred by the petitioner against judgment dated 18.02.2015 passed by learned Sessions Judge, Rupnagar dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 06.01.2014 passed by learned Sub Divisional Judicial Magistrate, Anandpur Sahib vide which the petitioner has been convicted for offences punishable under Sections 279, 337 and 304-A of the Indian Penal Code (hereinafter referred to as the "IPC") and sentenced as under:-

<i>Section</i>	<i>Sentence</i>
279 IPC	Six months rigorous Imprisonment
337 IPC	Six months rigorous Imprisonment
304-A IPC	Two years rigorous Imprisonment

All the sentences were ordered to run concurrently.

The prosecution version emerges from the statement of complainant, who made a statement that on 06.08.2007, he along with Bikramjit Singh on their motor cycle No. PB-43-B-7895 and Gupreet Singh and Garpinder Singh on their separate motor cycle No. PB-43-B-1086 had started from Samrala to visit Gurdwara Anandpur Sahib and Temple of Naina Devi. On the day of accident, Gurpreet Singh and Garpinder Singh were going on their motor cycle ahead of them and the said vehicle was plied by Gurpeet Singh and Garpinder Singh was pillion rider. At about 10.30 pm, when they had gone ahead of Kiratpur Sahib in the area of Village Dolowal near Khurana Petrol Pump, a truck came from their opposite side at a very high speed and struck against the motor cycle of Gurpreet Singh by coming on wrong side of the road. Both Gurpreet Singh and Garpinder Singh fell down on the road. The driver of the truck stopped his vehicle and came towards them. He was looking after Gurpreet Singh and Garpinder Singh, who were in injured condition and blood was coming out from their wounds. The motor cycle was also badly damaged. He enquired about his name, who disclosed his name as Sunil Kumar son of Mast Ram. He along with Bikramjit Singh were arranging the private

vehicle to take the injured to Civil Hospital, Anandpur Sahib. In the meantime, Sunil Kumar escaped from there. Gurbinder Singh was declared dead in the hospital, whereas Gurpreet Singh was referred to Civil Hospital, Ropar.

After investigation, challan was presented against the petitioner. Charge was framed under Sections 279, 337 and 304-A IPC. Petitioner pleaded not guilty and claimed trial.

To prove its case, prosecution examined PW-1 Jaswinder Singh complainant, PW-2-A Bikramjit Singh, eye witness, PW-2 Satnam Singh, Clerk of SDM Office, PW-3 Jagroop Singh, License Clerk, PW-4 Dr. Swaranjit Singh, PW-5 Balbir Singh, PW-6 HC Satnam Singh, Mechanic, PW-7 ASI Jaswant Singh, Investigating Officer and the remaining evidence of the prosecution was closed by order of the Court.

Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded not guilty and claimed trial. Opportunity to lead defence was afforded but no defence evidence was lead.

Ultimately, the trial Court after hearing the parties and appreciating the evidence on record, held the petitioner guilty and convicted and sentenced him as aforesaid. Feeling aggrieved against that, petitioner preferred an appeal before the Sessions Judge, who, after hearing the parties, dismissed the appeal and upheld the conviction and sentence. Hence, this criminal revision.

I have heard learned counsel for the petitioner and perused the record.

Learned Counsel for the petitioner raised a plea that this is a case of non-identification of the accused. Learned Counsel for the petitioner contended that there is no proper identification of the accused, i.e., the petitioner.

A perusal of the judgments of the trial court as well as the learned Additional Sessions Judge clearly shows that PW1 complainant Jaswinder Singh during his cross examination has specifically stated that he is seeing the accused in the Court for the second time which means that the accused was seen by the complainant on the day of occurrence.

Testimony of PW1 Jaswinder Singh has to be considered to be trustworthy unless the defence is able to cause a dent in the prosecution version. It is stated that after the accident, petitioner got down and thereafter ran away from the spot. The eye-witness has identified the accused. It is not the case of the accused that he had been shown to the witness prior to his being identified in Court. Court identification, itself, is a good identification in the eyes of law. It is not always necessary that it must be proceeded by test identification parade. It always depends upon the facts and circumstances of a given case. No straight-jacket formula can be stated in this regard. In my considered opinion, it was not necessary to hold test identification parade of the petitioner for the reasons that he was

duly seen, though for a short reasonable period, when after accident he got down and ran away from the spot. So, the contention with regard to non-identification parade of the petitioner is rejected.

Learned Counsel for the petitioner further argued that single testimony of PW1 Jaswinder Singh is not corroborated and as such cannot be relied upon. On the sole testimony of PW1, petitioner cannot be convicted.

I have considered this contention of learned Counsel for the petitioner. It has no substance. The defence has led no evidence to discard the presence of this witness at the spot. The testimony of PW1 has to be taken to be creditworthy unless it is proved that he was a planted witness. He being the actual eye witness to the occurrence, cannot be disbelieved and both the courts below have rightly believed the version of PWs. It is settled principle of law that it is quality of the evidence which is material and not the quantity.

In order to establish the guilt against the petitioner prosecution is required to prove the essential ingredients of the offence beyond all shadows of doubt and in case of offence punishable under Section 304A of the Indian Penal Code prosecution is required to establish the following ingredients:-

- (i) Death of person in question.
- (ii) Accused has caused such death.

- (iii) The act of accused was rash and negligent not amounting to culpable homicide.

In case of death by rash and negligent act, maxim *res ipsa loquitur* is applicable for offence under Section 304-A of the Indian Penal Code. In the matter of **Thakur Singh v. State of Punjab, 2003(9) SCC 208**, the Hon'ble Supreme Court has held that in the facts of the case the doctrine of *res ipsa loquitur* came into the play and the onus of proof shifted to the person who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. Since the accused had not succeeded in showing that the accident happened due to causes other than negligence on his part, his conviction cannot be faulted.

The evidence of prosecution witnesses in this case clearly establishes that petitioner was driving the offending vehicle. The petitioner was required to take complete precaution to save the innocent lives. Had the petitioner driven the vehicle with aforesaid precaution, then there would have been no occasion of this accident, so the maxim *res ipsa loquitur* would apply in the present case. These circumstances are sufficient for drawing an inference that petitioner was not cautious but was rather negligent while driving the vehicle and by his negligent act he has caused death of Gurbinder Singh deceased.

As regards the question of sentence is concerned, theory of

deterrence (Penology) was dealt with by the Apex Court in the matter of **Dalbir Singh v. State of Haryana 2000(2) RCR (Cr) 816**, in which it has been held that while considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. Para 13 of the said judgment reads as under:

“13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being

due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

While dealing with the question of sentence in case of rash and negligent driving, the Hon'ble Supreme Court in the matter of **State of Karnataka v. Sharanappa Basanagouda Aregoudar, 2002(2) RCR (Cr) 271**, has held that the sentence imposed by the Courts below should have a deterrent effect on potential wrongdoers and it should be commensurate with the seriousness of the offence. Para 7 of the said judgment reads as under:-

“7. In the facts and circumstances of the case, we are inclined to interfere with the judgment of the learned Single Judge and hold that the respondent is liable to undergo the sentence imposed by the trial Magistrate and affirmed by the appellate Court. Consequently, we direct that for the offence punishable under Section 304-A, the respondent be taken into custody to undergo simple imprisonment for six months. As regards the offences under Sections 279, 337 and 338 IPC, no separate sentence has been awarded by the trial Magistrate. The direction of the trial Magistrate is maintained.”

On close scrutiny of the evidence, it appears petitioner does not deserve leniency in sentence. I do not find any illegality or impropriety

in the impugned judgments. Consequently, this criminal revision is dismissed in limine.

March 02, 2015
vkd

[Paramjeet Singh]
Judge