

In the High Court of Punjab and Haryana at Chandigarh

**CRR No. 775 of 2015 (O&M)
Date of Decision: March 04, 2015**

Asha Ram

... Petitioner

Versus

State of Haryana

... 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. Keshav Pratap Singh, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant criminal revision has been preferred by the petitioner against judgment dated 24.02.2015 passed by learned Addl. Sessions Judge, Palwal, dismissing the appeal filed by the petitioner against the judgment of conviction dated 11.09.2013 and order of sentence dated 12.09.2013 passed by learned Additional Chief Judicial Magistrate, Palwal 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	Six months rigorous Imprisonment and to pay fine of Rs.500/-. In default to undergo further imprisonment for 3 months.

All the sentences were ordered to run concurrently.

Brief facts of the prosecution case are that on 15.05.2010, ASI Vinod Kumar along with Constable Sukhbir, Constable Lukman were present at Dev Nagar, Palwal in connection with investigation of case FIR No. 170/2010. They received information regarding accident at Alawalpur Chowk from Police Post, Bus Stand. On this information, IO along with police officials reached at the spot from where Investigating Officer came to know that injured has been shifted to Om Hospital. Investigating Officer alongwith police officials reached at Om Hospital, Palwal and moved an application seeking opinion of the doctor. Doctor opined the injured unfit to make the statement. Ajay Kumar Gupta, eye witness was present, whose statement was recorded to the effect that he is businessman and married; on that day i.e. 15.5.2010 at 11.00, they left in a Taxi bearing registration No. UP85X-9408 from Mathura to Delhi along with his father Rameshwar Dayal, wife Nisha Gupta, daughter Aditi Gupta, his niece Ayushri and driver Vinod Kumar. At 1.30 p.m., they were crossing Palwal City and when they were ahead of Alawalpur Chowk, one tractor trolley was standing still in the middle of road and there was no reflector on the

tractor. Driver of the tractor all of a sudden turned his tractor towards left side. On account of it trolley hit the car from driver side and driver side of the car was damaged. His niece Ayushri expired at the spot. His wife, daughter and Vinod Kumar received grievous injuries and they were shifted to Om Hospital, Palwal. The registration number of tractor was UP81T-9013 make Swaraj. This accident was caused by the driver of the tractor as he moved his tractor towards left side all of a sudden. Dead body of Ayushri was lying at Government Hospital, Palwal.

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 Ajay Kumar Gupta, PW-2 Aditi Rani, PW-3 Nisha Gupta, PW-4 Sanjay Kumar, PW-5 Dr. Rajiv Om Parkash, PW-6 ASI Vinod Kumar, PW-7 Narender Arora, PW-8 Hoshiyar Singh, PW-9 Vinod Sharma, PW-10 Constable Lukman, PW-11 Chander Wati and thereafter, 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 Addl. 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. Learned counsel further submitted that neither PW1 – Ajay Kumar Gupta nor PW-9 Vinod Sharma have specifically deposed in their examination about the rash and negligent driving of the offending vehicle.

A perusal of the judgments of the trial court as well as the lower appellate Court clearly shows that PW1 Ajay Kumar Gupta during his examination has specifically stated that on 15.05.2010 when they reached 1 km ahead from Alawalpur Chowk, Palwal, one tractor was standing in the middle of the road and there was no reflector on it. The driver of the tractor had suddenly turned his tractor towards left without giving any indicator, due to which their vehicle and tractor struck against each other and their vehicle struck⁵ from the driver side. PW1 Ajay Kumar Gupta has specifically identified the petitioner by name before the

Court. Testimony of PW1 Ajay Kumar Gupta has to be considered to be trustworthy unless the defence is able to cause a dent in the prosecution version. 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 preceded by test identification parade. It always depends upon the facts and circumstances of a given case. No straight-jacket formula can be laid down 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. So, the contention with regard to non-identification parade of the petitioner is rejected. In so far as the second contention, as regards the rash and negligent driving, is concerned, the same has also to be discarded for the reason that the prosecution witnesses have been able to prove on record by cogent evidence that the petitioner was driving the offending vehicle in a rash and negligent manner.

Learned Counsel for the petitioner further argued that testimony of PW1 – Ajay Kumar Gupta and PW-9 Vinod Sharma is not corroborated and as such cannot be relied upon. On the testimony of PW1 and PW9, 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 the eye witnesses at the spot. The testimonies of PW1 and PW9 have to be taken to be creditworthy unless it is proved that they were planted witnesses. They being the actual eye witnesses 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 far as the quantum 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 that 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 04, 2015
vkd

[Paramjeet Singh]
Judge