

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

Crl. Revn. No. 152 of 2004
DATE OF DECISION : 26.08.2016

Ramesh Kumar

.... PETITIONER

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vivek Goyal, Advocate, amicus curiae,
for the petitioner.

Mr. A.S. Klar, AAG, Punjab.

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RAMENDRA JAIN, J.

1. Petitioner Ramesh Kumar has filed this revision petition against the judgment dated 11.12.2003, passed by learned Additional Sessions Judge, Hoshiarpur, dismissing the appeal filed by the petitioner against the judgment of conviction and the order of sentence dated 16.10.2001 rendered by learned Judicial Magistrate Ist Class, Garhshankar, whereby the petitioner was convicted and sentenced to undergo rigorous imprisonment for 6 months under Section 279 IPC; and to undergo rigorous imprisonment for one year with a fine of ₹ 500/- under Section 304-A IPC. In default to make payment of fine, the petitioner was ordered to undergo simple imprisonment for two months. Both the sentences were ordered to run concurrently.

2. In brief, case of the prosecution is that Chaman Singh, younger brother of complainant Gurdev Singh (PW.1), died in a road accident, which took place around 8.30 PM on 29.07.2000 due to rash and negligent driving

of Maruti van No. DL-3C-2267 being driven by the petitioner. At the time of the accident, Chaman Singh (deceased) and his elder brother Gurdev Singh were going towards Garhshankar on foot from their village Bagwain. The van was being driven on the katcha track and it hit Chaman Singh from behind, who fell on the road and died at the spot. The offending vehicle stopped and the driver turned his face backward, upon which PW.1 Gurdev Singh identified him as Ramesh Kumar Sharma, to whom he already knew. In the meanwhile, one Gurmail Singh (PW.2), co-villager of the deceased, came on the spot on his scooter and by bringing his scooter in front of the offending vehicle, he stopped it, but the driver of the offending vehicle succeeded in fleeing away from the spot. Immediately thereafter at about 9.30 PM, the complainant Gurdev Singh made statement (Ex.PA) to ASI Ram Nath (PW.8), who making his endorsement (Ex.PW8A) thereon, sent the same to Police Station, on the basis of which FIR (Ex.PW8/B) was registered. Thereafter, ASI Ram Nath along with the complainant and Gurmail Singh visited the spot to investigate the matter. The offending vehicle was taken into police possession vide recovery memo Ex.PB. The Insurance policy as well as photo stat copy of RC of the vehicle were also taken into possession vide memo Ex.PC. Broken pieces of glass material of the vehicle and *Parna* (a piece of cloth used for covering the head) were recovered from the place of occurrence, which were taken into police possession vide memos Ex.PD and Ex.PE, respectively. The inquest report (Ex.PW8/C) and the rough site plan (Ex.PW8/D) of the place of occurrence were prepared. The dead body was sent to Civil Hospital, Garhshankar. Photographs of the place of occurrence were taken by Constable Gurminder Singh (PW.7).

3. On 30.7.2000 at 12.45 PM, Dr. S.P. Banga (PW.6) conducted post mortem examination and found five injuries on the body of deceased Chaman Singh. On 06.09.2000, HC Lehmbhar Ram (PW.4) mechanically tested the offending vehicle. Vide his report Ex.PW4/A, he found the entire mechanism of the vehicle in order, but found dent on the left front side of the vehicle and wind screen of the vehicle was also found broken.

4. On 09.09.2000, the petitioner surrendered before the Ilaqa Magistrate. On the same day, he was released on bail.

5. After completion of investigation, challan was presented against the petitioner. Copies of the documents, as required under Section 207 Cr.P.C., were supplied to the petitioner. Finding a prima facie case under Sections 279 and 304-A IPC to have been made out against the petitioner, charge was framed against him, to which he did not plead guilty and claimed trial.

6. In support of its case, the prosecution examined as many as ten witnesses. After closure of the prosecution evidence, incriminating evidence appearing against the petitioner was put to him, while recording his statement under Section 313 Cr.P.C. He denied all the allegations and pleaded false implication. He took the plea that he was not driving the offending vehicle, but by calling him to Police Station, a false case was registered against him. However, the petitioner did not lead any evidence in his defence.

7. After considering the evidence led by the prosecution and hearing learned Assistant Public Prosecutor as well as learned defence counsel, the trial court convicted and sentenced the petitioner, as indicated in the first paragraph of this judgment.

8. Feeling aggrieved by the judgment of conviction and the order of sentence, passed by the trial court, the petitioner filed appeal, which has been dismissed by learned Additional Sessions Judge, Hoshiarpur vide judgment dated 11.12.2003.

9. Hence, this revision petition has been filed by the petitioner.

10. On 19.01.2004, while observing that identification of the petitioner is debatable, this revision petition was admitted and the petitioner was ordered to be released on bail to the satisfaction of CJM/Duty Magistrate, Hoshiarpur.

11. Learned counsel for the petitioner argued that identity of the driver of the offending vehicle has not been proved in this case. In this regard, reference has been made to the cross-examination of PW.2 Gurmail Singh, wherein he stated that it had gone dark and when he stopped the vehicle by bringing his scooter in front of it, two persons were inside the vehicle, who fled away from the driver's side of the vehicle.

12. This aspect of the matter has been dealt with by the learned appellate court. In view of the fact that PW.2 Gurmail Singh, in his examination-in-chief, identified the petitioner to be the person driving the offending vehicle, while categorically stating that the accused present in the court was driving the vehicle, his cross-examination to the aforesaid effect is of no help to the petitioner. Even the complainant Gurdev Singh in his initial statement (Ex.PA) stated that after hitting the vehicle against Chaman Singh, the driver of the vehicle turned his face backward, to whom he identified as the present petitioner, who was already known to him. While appearing in the witness box as PW.1, complainant reiterated his aforesaid version regarding identity of the petitioner. This part of his statement was

not challenged by the petitioner in his cross-examination. Thus, identification of the petitioner has been duly established in this case.

12. The finding recorded by the trial court with regard to rash and negligent driving of the vehicle, resulting into the death of Chaman Singh, has not been challenged by learned counsel for the petitioner.

13. On the quantum of sentence, learned counsel for the petitioner submitted that the occurrence in this case took place as back as on 29.07.2000 and the petitioner has already faced the agony of protracted trial of more than 16 years. He is now aged about 50 years. Therefore, a lenient view may be taken.

14. After hearing learned counsel for the parties, keeping in view the manner in which the accident took place hitting an innocent person going on katcha track of the road, as well as the fact that after the accident the petitioner ran away from the spot, which reflects his severe negligence, coupled with the fact that the trial court has already taken a lenient view, while awarding sentence to the petitioner, I am not inclined to reduce the sentence.

15. Petition is, accordingly, dismissed.

16. The petitioner is on bail in this case, his bail/surety bonds shall stand cancelled, and he is directed to surrender himself before the jail authorities immediately for serving the remaining period of sentence, failing which the concerned Chief Judicial Magistrate shall proceed against him in accordance with law.

August 26, 2016

ndj

Whether speaking/reasoned

(RAMENDRA JAIN)

JUDGE

Yes/No

Whether Reportable

Yes/No