

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.64 of 2007 (O&M)
Date of decision: May 27, 2016.

Om Parkash

... **Petitioner**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Sumeet Sheokand, Advocate for the petitioner.

Mr. R.S. Randhawa, Additional Advocate General, Punjab.

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

A.B. Chaudhari, J. (Oral):

Being aggrieved by the judgment and order dated 1.6.2005 passed by Judicial Magistrate First Class, Phillaur in case No.232/1/2004 by which the revision petitioner-accused was convicted for offence punishable under Section 304-A and 279 IPC and was sentenced to undergo RI for one year and 3 months respectively and to pay fine in the sum of Rs.2,000/- and that judgment was confirmed in CrI. Appeal No.21 of 2005 by Additional Sessions Judge, Jalandhar on 10.1.2007, the present revision petition was filed by the petitioner.

In support of the revision petition, the learned counsel for the petitioner vehemently contended that except PW3 Varinder Kumar, the

alleged eye witness and the informant who lodged the FIR, the prosecution did not examine any other witness to prove its case. He then submitted that the courts below should not have believed the testimony of PW3 Varinder Kumar, the sole eye witness, for convicting the revision petitioner. As a matter of fact, in his cross examination he deposed that a car had intercepted in between the bus driver, i.e., the revision petitioner and in the process of avoiding dash to the car, the petitioner bus driver lost the control of the bus. The petitioner, therefore, could not be held responsible for the accident either as rash or negligent. But the car driver was to be blamed. It was, therefore, wrong to hold the petitioner guilty of rash and negligent driving. The counsel for the petitioner then pointed out the order made by this Court on 18.1.2007 while suspending the sentence for deposit of Rs.25,000/- which was accordingly deposited and also paid to the legal heirs of the deceased who had unfortunately come under the bus driven by the petitioner. The counsel further contended that the accident took place on 7.3.2000. The petitioner has already undergone 90 days of imprisonment during trial and he has also lost his job in PEPSU as driver. Finally, he prayed for leniency in the sentence.

Per contra, the Learned Counsel for the State supported the impugned judgment and orders made by the courts below and submitted that the sole testimony of PW3 Varinder Kumar eye witness has gone without any challenge in the cross examination. The courts below were, therefore, right in accepting his evidence, finding the petitioner guilty of rash and negligent driving. He, therefore, prayed for dismissal of the revision

petition.

I have heard learned counsel for the rival parties. I have perused the evidence so also the reasons given by the courts below for recording the order of conviction.

It cannot be forgotten that the revisional jurisdiction under Section 397 read with Section 401 Cr.P.C. is limited to find out whether there is any jurisdictional error committed by the courts below. The revisional jurisdiction cannot be extended to re-appreciate the evidence. I have perused the evidence of PW 3 Varinder Kumar, so also his cross examination. His evidence that the revision petitioner was driving the bus in high speed and he turned his bus towards left side where the truck of the father of the informant Varinder Kumar was parked for changing the tyre, has gone unchallenged. The evidence of the sole eye witness if found to be believable, the same can well be accepted to record the conviction. In the light of the above discussion, I think the finding of fact recorded by the courts below does not suffer from any error and, therefore, I confirm the finding of conviction of the petitioner under Sections 304-A and 279 IPC.

The next question is about the order of sentence for the offence for which the petitioner was convicted. The petitioner has already undergone 90 days sentence during trial and he also lost his employment as a driver. His age is 60 years and the accident took place on 7.3.2000, i.e., 16 years before. As per order, he has paid rs.25,000/- which was a pre-condition for suspension of sentence. The sentence awarded by the trial court is one year and three months. In my opinion, in the absence of any

criminal antecedents, it would not be desirable to push the petitioner in jail again he being of the age of 60 years. In the light of the above mitigating circumstances, I think he should be released on probation by recourse to Section 4(1) of the Probation of Offenders Act, 1958. As a result, I make the following order:-

ORDER

- (i) CRR No. 64 of 2007 is partly allowed.
- (ii) Judgments and orders dated 1.6.2005 passed by the Judicial Magistrate First Class, Phillaur as well as dated 10.1.2007 by learned Additional Sessions Judge, Jalandhar convicting the revision petitioner for offence under Sections 304-A and 279 IPC are confirmed.
- (iii) The judgment and order dated 1.6.2005 passed by the trial court awarding sentence is modified and the petitioner is sentenced to the sentence which he has already undergone with a further direction to him to furnish personal bonds for good behaviour for a period of two years in the sum of Rs.25,000/- before the trial Judge.

May 27, 2016.
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[**A.B. Chaudhari**]
Judge