

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

Crl. Revision 1399 of 2008
Date of Decision : December 15, 2016

Gurcharan Singh @ Kala

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. J.S.Virk, Advocate
for the petitioner.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J. (Oral)

The petitioner was tried for committing the offences under Sections 279 and 304-A IPC. Vide judgment and order dated 5.5.2008, learned Chief Judicial Magistrate, Kurukshetra convicted him for the aforementioned offences and sentenced him as stated below:-

- i) Rigorous imprisonment for six months and to pay a fine of Rs. 400/- for the offence under Section 279 IPC; and
- ii) Rigorous imprisonment for one year and to pay a fine of Rs. 600/- for the offence under Section 304-A IPC.

In default of payment of fine, the petitioner was ordered to further undergo rigorous imprisonment for two months. Both the sentences were ordered to run concurrently. The period, if any, already spent by him during the trial of the case was ordered to be set off against the sentences of imprisonment. The fine imposed was deposited by him there and then.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal but remained unsuccessful as it came to be dismissed by learned Additional Sessions Judge, Kurukshetra vide judgment dated 18.7.2008. Still not satisfied, the petitioner preferred the present revision which was admitted on 10.9.2008 and his sentence of imprisonment was also suspended.

According to the prosecution, on 24.7.2009 at about 11.00 p.m. complainant-Ashok Kumar had come to the shop of deceased Manoj Kumar at Birla Mandir Chowk, Kurukshetra as they were to settle the accounts. At about 12.15 a.m., the deceased started for his house on Hero Honda motor cycle bearing registration No. HNL-4179 whereas complainant-Ashok Kumar started following him in his car bearing registration No.HR20-D-0098. When Manoj Kumar reached just ahead of Shambhu Petrol Pump, a truck bearing registration No.HR-29-2877 came from behind. It was being driven by its

driver in a rash and negligent manner. The truck struck against the motor cycle of Manoj Kumar from behind. As a result of the impact, Manoj Kumar fell on the ground and was crushed under the right rear wheel of the truck. Manoj Kumar was dragged to a distance of 100 feet and as a result thereof he died at the spot. The truck driver fled away from the spot after leaving the truck behind but the complainant had seen him in the headlights of his car.

After hearing learned counsel for the parties and on going through the impugned orders passed by the learned Courts below, this Court is of the view that the prosecution has been successful in establishing that it was the appellant, who was driving the truck in a rash and negligent manner and while doing so struck against the motor cycle of Manoj Kumar from behind. As a result, Manoj Kumar fell on the ground and was crushed under the right rear wheel of the truck. He was dragged to a distance of 100 feet and died at the spot. The testimony of PW4 Ashok Kumar, who had seen the occurrence as he was following the motor cycle of the deceased is duly corroborated by PW9 Virender Kumar, owner of the offending truck, who had testified that on the date of the accident it was the petitioner, who was driving his truck. It also stands established that PW4 Ashok Kumar had identified the petitioner, who after stopping the truck,

fled away from the spot and while doing so PW4 Ashok Kumar had seen him in the headlights of his car. Under these circumstances, no case is made out for any interference in the conviction of the petitioner.

As regards the question of sentence, it may be noticed that the petitioner is facing the agony of criminal prosecution for the last more than seventeen years. He claims himself to be a poor person and sole bread winner of his family. He also claims that he is not a previous convict. Further, out of the sentence of one year imposed upon him, he has already undergone a period of about two months. Prayer has, accordingly, been made for setting aside his remaining substantive sentence of imprisonment.

This plea is vehemently opposed by the learned State counsel by submitting that on account of rash and negligent driving of the petitioner, a valuable life has been lost.

As per the custody certificate produced by the learned State counsel, the petitioner has undergone an actual sentence of one month and twenty eight days. He is not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the petitioner behind the bars, once again,

for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if the same is reduced to the one already undergone by him. At the same time, the fine imposed upon him for the offence under Section 304-A IPC can be enhanced so as to compensate the legal heirs of deceased Manoj Kumar.

Resultantly, the conviction of the petitioner for the offences under Sections 279 and 304-A IPC is upheld and his substantive sentences of imprisonment are reduced to the one already undergone by him. The fine of Rs. 400/- imposed for the offence under Section 279 IPC is also upheld. However, the fine of Rs. 600/- imposed for the offence under Section 304-A IPC is enhanced to Rs. 40,000/-. The enhanced amount of fine i.e. Rs.39,400/-, be deposited by the petitioner with the trial Court within three months from today, failing which he shall undergo simple imprisonment for three months. The enhanced amount of fine, if deposited by him, be disbursed in favour of the legal heirs of deceased Manoj Kumar as compensation.

The revision is, accordingly, dismissed.

December 15, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No