

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

Criminal Revision 790 of 2008
Date of Decision : September 19, 2016

Rajender Singh	VERSUS	Petitioner
State of Haryana		Respondent

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

Present : Ms. Pushpa Dharwal, Advocate for
Mr. Sanjay Vashisht, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

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

The petitioner was tried for committing offences punishable under Sections 279, 338 and 304-A IPC. Vide judgment and order dated 7/8.6.2005, learned Sub-Divisional Judicial Magistrate, Bahadurgarh acquitted him of the charge under Section 304-A IPC. However, he was convicted for the remaining offences and sentenced as follows:-

- (i) Rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- under Section 279; and
- (ii) Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- under Section 338 IPC.

Both the substantive sentences of imprisonment were ordered to run concurrently. In default of payment of fine, he was ordered to undergo further rigorous imprisonment for two months.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 16.4.2008, learned Additional Sessions Judge, Jhajjar while finding no merit in the appeal, dismissed the same. Still not satisfied, the petitioner preferred the present revision, which was admitted on 8.7.2008 and he was also granted the concession of bail during its pendency.

The case of the prosecution, in nutshell, is that on 6.5.1999, complainant Mahabir Parshad along with Shiv Kumar (since deceased) and his wife Luxmi Devi started from village Brahmanvas, District Rohtak in Tata 407 vehicle bearing registration No. HR-45-1665 owned by Rohtash and loaded with wheat. While Luxmi Devi and Shiv Kumar sat on the wheat bags, complainant sat on the front seat by the side of the petitioner, who was driving the vehicle. At about 6.00 p.m., when they reached near Parkash Tube Factory, Bahadurgarh, the petitioner, who was driving the vehicle at a very high speed while taking a turn, lost its balance. He applied brakes abruptly and as a result Tata 407 overturned. Shiv Kumar and his wife Luxmi Devi received injuries in the process and so did the complainant. The complainant took Shiv Kumar and his wife Luxmi Devi to Aggarsain Hospital and got them admitted. Subsequently, on the statement made by complainant Mahabir Parshad, FIR No. 232

dated 7.5.1999 under Sections 279 and 337 IPC was registered against the petitioner at Police Station City, Bahadurgarh.

It is also the case of the prosecution that during the investigation of the case, Head Constable Raghubir Singh arrested the petitioner and later on released him on bail. Subsequently, on 9.10.1999 Shiv Kumar succumbed to his injuries. Accordingly, offence under Section 304-A IPC was added to the FIR.

At the trial of the case, the prosecution examined Luxmi Devi as PW1, K.D.Sharma as PW2, Bal Kishan as PW3, Manoj as PW4, Head Constable Sultan Singh as PW5, complainant Mahabir as PW6 and Dr. Ved Parkash as PW7.

When examined under Section 313 Cr.P.C., the petitioner claimed that he had been falsely implicated in the case. In his defence, he examined Krishan as DW1.

The trial Court, after hearing learned counsel for the parties and going through the evidence, convicted and sentenced the petitioner, as mentioned above.

This Court has heard learned counsel for the parties and perused the judgments passed by the learned Courts below while convicting and sentencing the petitioner.

PW1 Luxmi Devi and PW6 Mahabir, who were travelling in the vehicle in question have stated in one voice that it was the petitioner, who was driving the offending vehicle in a rash and negligent manner and while taking turn, he lost its balance and when

he applied brakes, the vehicle overturned. As a result, both of them besides Shiv Kumar had received injuries. From the testimony of PW7 Dr. Ved Parkash, it is made out that Shiv Kumar after being hospitalized on account of receiving of injuries was not able to follow his ordinary pursuits for a period of more than twenty days and, as such, the petitioner has rightly been convicted for committing offences under Sections 279 and 338 IPC.

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. When he was examined by the learned trial Court on the quantum of sentence, he had stated that he was not a previous convict. He was a poor person and required to look-after his old and aged mother.

As per the custody certificate produced by the learned State counsel, the petitioner has already undergone total sentence of three months and twelve days.

After hearing learned counsel for the parties and taking into consideration the fact that the petitioner stands convicted under Sections 279 and 338 IPC and that he is not a previous convict, as is clear from the custody certificate, a case is made out for extending the benefit of probation to him.

Resultantly, the conviction of the petitioner under Sections 279 and 338 IPC is upheld. His substantive sentences of imprisonment are set-aside. Instead, he is ordered to be released on

probation subject to his furnishing bonds to the satisfaction of the trial Court within three months from today to keep peace and be of good behaviour for a period of one year and to receive sentence as and when called upon to do so. The fine amount already deposited by the petitioner with the trial Court shall be adjusted towards the cost of proceedings.

The revision is, accordingly, disposed of.

September 19, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No