

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

CRR No.466 of 2010

Date of decision: 26th July, 2016

Mahabir

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

This is a criminal revision whereby convict has sought to invoke powers of this Court in the exercise of statutory provisions of Section 401 Cr.P.C. In the revision petitioner is seeking setting aside of the orders of his conviction initially passed by learned Judicial Magistrate 1st Class, Hisar who vide judgment dated 04.02.2008 has convicted the petitioner Mahabir in case got registered by way of FIR No.404 dated 01.08.2002 under Sections 279/304A IPC pertaining to Police Station Civil Lines, Hisar and sentenced to undergo rigorous imprisonment for six months under Section 279 IPC with a fine of ₹1000, in default of payment of fine to further undergo simple imprisonment for three months and he was further awarded sentence to

undergo rigorous imprisonment for two years under Section 304A IPC with fine of ₹1500 and in default thereof to further undergo simple imprisonment for four months. The same having been upheld by the Court of learned Additional Sessions Judge, Hisar through judgment dated 09.02.2010 thereby modifying the sentence of imprisonment reducing the maximum sentence so awarded to six months.

The brief allegations that necessitates to be brought forth are that on 31.07.2002 an accident had taken place caused by rash and negligent driving of TATA vehicle 407 bearing registration No.HR-39-4211 driven by the petitioner Mahabir thus hitting a cyclist resulting in hospitalization and resultant death of Ram Nath. Upon completion of investigation and submission of challan prosecution examined Dr.BS Khatri PW1 to prove MLR Ex.PA, his medical ruqa Ex.PB. Puran Mal PW2 proved the FIR Ex.PC. Mohinder Singh PW3 proved memos Ex.PD, Ex.PE and thereafter Prema Lal PW4 detailed events leading to the accident proving his statement Ex.PF and Reeta Devi eye-witness as PW5. Through Dr.Subashni Gupta PW6 prosecution proved the post mortem report of the deceased Ex.PG pictorial diagram Ex.PH and thereafter Investigating Officer ASI Satbir Singh PW7 proved documents Ex.PF, PC, PE, PD, PJ, PK, PL and through Dr.Umesh Kalra PW-8 prosecution brought about the bed head ticket Ex.PM, ruqa Ex.PN application Ex.PD and ruqa Ex.PP and the prosecution evidence was

closed. Accused did not lead any evidence in defence leading to the judgment of conviction.

Heard Mr. R.A. Sheoran, Advocate for the petitioner; Mr. Deepak Sabharwal, Addl. Advocate General, Haryana for the respondent/State and perused the records.

At the very onset learned counsel for the petitioner has made a humble prayer that the very manner of the accident as spelled out by the eye-witness account and as is detailed in the FIR Ex.PC and is even corroborated by the site plan Ex.PK establishes beyond any doubt that when the cyclist was coming out of the Industrial Area road on to the main Hansi road, suddenly it came in front of the offending vehicle which has led to this accident and thus, cannot be entirely held responsible and submitting further that he has been given the maximum prescribed sentence when the very culpability is not solely attributable to him.

Though learned State counsel has stoutly opposed the prayer of the petitioner's counsel for lessening of the sentence but has conceded the manner of the accident however raking up plea that it was due to rash and negligent act of driving of the petitioner has led to this accident and thus he cannot be given this concession.

Appreciating the submissions, it is own stand of the prosecution brought about in the statement of the eye witness as well as the complainant that when the deceased Ram Nath was going on his

cycle from Industrial Area road and entered the main road Hansi the accident has taken place. It is stand of the defence that the petitioner was driving his vehicle from Hansi towards Jindal Clock Tower and thus as this eye-witness account is being corroborated by the site plan Ex.PK it was sudden coming on to the main road from the side road which has led to this accident. It is the case of the prosecution which is also taken note of in the judgment of the trial Court that at that very juncture when Perma Lal at the asking of the wife of the deceased had called the deceased and it was at this juncture the accident has taken place, adds to the negligence of the cyclist as well. It is the case of the eye-witness that due to this collision the cyclist had fallen on the road striking his head on the road and evidently he became unconscious and it was on account of this head injury after hospitalization he had passed away and that it was belatedly FIR has been got registered on 01.08.2002, are matters which certainly undermines to some extent the case of the prosecution. Having regard to the manner of the accident the petitioner cannot be entirely blamed of this accident thus deceased Ram Nath who was on cycle has contributed to this accident which is not entirely on account of the fault of the driver of the TATA 407.

The learned trial court below has failed to take notice of this vital evidence and the stand of the prosecution. Thus, in the totality of this evidence, the very heinousness of the criminal act attributed to the deceased certainly is lessened. It is well admitted that the petitioner is

aged around 24 years with a family to upkeep and maintain and having faced the prosecution all these years for almost 14 years which must have caused its own repercussions on his life and as well as to his family and certainly having already undergone detention of more than one month and ten days in-between must have suffered for this incarceration. Thus, in the totality of these discussions and as an outcome of the same the case of the petitioner calls for showing leniency and which has been well taken note of by the first appellate Court which has reduced the sentence under Section 279 IPC from 6 months to 3 months and under Section 304 IPC from 2 years to 6 months rigorous imprisonment and therefore, does not calls for any further leniency.

In the light of the same and the fact that there has been due appreciation of this by the court in the impugned judgment and there being no illegality or perversity in the findings of the same the revision being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 26, 2016
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No