

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

**CRR No.3054 of 2012
Date of Decision : 09.06.2016**

Sukesh Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

FATEH DEEP SINGH, J.

The revisionist/petitioner-Sukesh Kumar was tried in a case got registered by way of FIR No.400 dated 16th December, 2005 under Sections 304-A and 279 IPC, Police Station Sohna, Gurgaon. The allegations were that on 16th December, 2005 around 4.30 pm, the petitioner was driving a dumper bearing registration No.HR-46A-7273 (in short “the dumper”) in a rash and negligent manner and hit a car make Maruti Zen bearing registration No.HR-26F-7498 resulting in death of its driver Satyadev. Upon investigation, the accused was put to trial where the prosecution examined eye-witness of the accident PW1-Sachin Kumar, complainant-Roshan Lal PW2, Constable-Sunil Kumar PW3, Dr. Jai Bhagwan PW4, photographer- Kapil PW-5, Motor Mechanic-Ram Singh PW6, Inspector-

Rajiv Kumar PW7 and the Investigating Officer SI Varinder Singh PW8. The accused denied the allegations but did not examine any witness in his defence leading to judgment of conviction dated 04.11.2011 whereby the Court of learned Judicial Magistrate Ist Class, Gurgaon convicting and sentenced him to undergo simple imprisonment for a period of six month and to pay a fine of Rs.500/- for commission of offence punishable under Section 279 IPC and in default of payment of fine to further undergo simple imprisonment for a period of one month and in addition, simple imprisonment for a period of two years and to pay a fine of Rs.2,000/- for commission of offence punishable under Section 304-A IPC and in default of payment of fine to further undergo simple imprisonment for three months.

Against these findings, the petitioner had filed an appeal and vide judgment dated 20th September 2012, the Court of learned Additional Sessions Judge, Gurgaon upholding the judgment of conviction of the trial Court, dismissed his appeal. That is how, the petitioner-convict is before this Court in this criminal revision.

Heard Mr. Rajesh Lamba, Advocate for the petitioner-convict and Mr. Munish Sharma, Asstt. Advocate General, Haryana for the respondent-State and perused the records of the case.

The counsel for the petitioner/convict Mr. Rajesh Lamba had made a dual submission arguing that the very documents of the prosecution comprising of statement of complainant Ex.PW2/A on the basis of which FIR was registered, Ruqa PW7-A, which are the very first documents in

point of time, the site plan Ex.PW7/B and the photographs Exs.P1 to P3 clearly negate the stand of the prosecution of rashness and negligence of the petitioner and had taken a second line of defence submitting that the Courts below have failed to consider this vital evidence and therefore, has called for reducing the sentence so awarded.

On behalf of the respondent-State, a strong resistance has been put to these submissions of the petitioner's counsel arguing that having regard to the nature of the accident and resultant death and that such road accidents have attained notoriety in the country needs to be stringently dealt with.

Appreciating the arguments so raised the first document Ex.PW7/A Ruqa, clearly reflects that it is a head-on-collision as has been detailed by the complainant-Roshan Lal in this statement who has also been examined as PW-2 and which is further reiterated in the site-plan Ex. PW7/B depicting the accident which shows that point 'A' pertains to the position of the ill-fated car whereas point 'B' shows the place of the dumper immediately on accident which is certainly well reflected in the photographs Ex.P1 to P3 relied upon by the prosecution through PW5-Kapil photographer with their corresponding negatives Exs.P4 to P6. All these vital documents which substantially throw light on the manner of the accident in themselves suggests the mode of the accident. The learned State Counsel certainly was at a loss of words to counter these submissions and certainly by this irrefutable evidence it stands sufficiently established beyond any doubt that both the vehicles have struck each other head-on in

the middle of the road and therefore, element of contributory negligence stands established by both the drivers of the two vehicles.

The learned trial Court has awarded maximum sentence of two years for this accidental death and the offence of Section 304-A IPC as per the First Schedule of the Code of Criminal Procedure also prescribes maximum sentence of two years. Having regard to the proven element of contributory negligence and considering the same, the present case is certainly the one where a balance needs to be struck as even the deceased who was driving the car in question ought to be vigilant and careful enough to see what was coming in front of the car on the road and so is the duty of the driver of the dumper. Thus, in view of this, both the drivers have contributed towards this accident certainly calls for lessening of the culpability of the driver and thus, reduction in the sentence of imprisonment so awarded. Besides, the fact the occurrence having taken place in the month of January, 2006 and the petitioner-convict has suffered immensely by the trial and subsequent conviction for a period of almost more than 10 years and has also undergone incarceration for more than 08 months and 10 days which is reflected from the custody certificate placed on the file by the State Counsel and therefore, this Court deems it essential and imperative besides keeping in view that the petitioner has a family to support and the maximum sentence of imprisonment under Section 304-A IPC so awarded to him therefore, is reduced from two years to a period of one year. Rest of the sentences need not be disturbed.

In the light of the same finding no merit in the present revision

petition and with this modification the same stands dismissed.

Records of the trial Court be sent back.

June 09, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE