

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

**CRR No.1044 of 2016 (O&M)
Date of Decision: December 12, 2016**

Ram Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arjun Sheoran, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Ram Singh against respondent State of Haryana, challenging the impugned judgment of conviction and order of sentence dated 06.05.2015 passed by learned Addl. Chief Judicial Magistrate, Jhajjar, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year under Sections 279 and 337 IPC each and further to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1000/- and in default of payment, to undergo simple imprisonment for a period of two months under Sections 338 and 304-A IPC each and also challenging the judgment dated 11.02.2016 passed by learned Addl. Sessions Judge, Jhajjar, vide which appeal filed by petitioner was dismissed.

Notice of motion was issued and learned State counsel

appeared and contested the petition.

From the record, I find that the challan was presented against petitioner in case FIR No.219 dated 04.10.2009. The brief facts of the case as noted down in the judgment passed by learned ACJM, Jhajjar, are as under:-

“This criminal prosecution for commission of offences punishable under sections 279,337,338 & 304A of IPC has been launched against the present accused, on the facts that in the night of 3/4.10.2009 a telephonic information was received by Sub Inspector Om Parkash, from the Police control-room, Jhajjar that an accident between a car and a Dumper has taken place between Chhuchhakwas and Jahajgarh villages. Upon this, SI Om Parkash visited the place of occurrence and found a dead body lying on the road and two vehicles lying crashed in the side-lanes of the road. After sometime, the complainant Gian Chand arrived and got recorded a statement to SI Om Parkash that his son Sombir was employed as a driver on the maruti car bearing registration No.DL-2CG-7806, belonging to Niranjn son of Sube Singh. In that night, he (Gian Chand) and his nephew Sunil were returning from village Chhuchhakwas, on a motorcycle. When they reached near the drain No.8, a Dumper full of stones, being driven in a rash and negligent manner, came from behind and started overtaking another Dumper travelling ahead of the motorcycle of the complainant. During this effort, the offending Dumper rammed into a maruti car coming from the opposite side. The maruti car was thrown into the ditches and after some distance, the Dumper also turned turtle. When the complainant looked after the injured, he found his son on the driving seat. The other three boys were identified as Pawan son of Umed Singh, resident of Beri Gate, Jhajjar, Ajit Dalal son of Shri Bhagwan, resident of Chhara and Ajit son of Ran Singh, resident of Chhavla, Delhi, who were badly stuck into the car. The three boys were brought out of the car with great difficulty. Ajit Dalal succumbed to the injuries on the spot. In the meantime, the driver of offending Dumper seen bearing registration no.HR38P-8397, fled away from the place of occurrence and could not be intercepted by the complainant etc. The complainant and his nephew Sunil carried the injured Sombir, Pawan and Ajit son of Ran Singh to GH, Jhajjar. However, the son of complainant, viz. Sombir also expired in the hospital. The two surviving injured (Pawan and Ajit) were referred to PGIMS, Rohtak. Legal action was called against the offending driver bearing registration No.HR-38P-8397. 2. Upon this, a ruqa was sent for registration of FIR . Investigation proceeded. The place of occurrence was

inspected and a site-plan with correct marginal notes was prepared. The accidental vehicles were taken into police custody. The inquest reports regarding the dead bodies of Ajit Dalal and Sombir were prepared. Post-mortem examinations of the dead bodies were also got conducted. Statements of witnesses were recorded under Section 161 of Cr.P.C. The accused was arrested. After completion of the necessary formalities, the final report under section 173 of Cr.P.C was presented before the court for initiation of trial.”

The prosecution examined 20 witnesses and thereafter closed its evidence. Statement of the accused under Section 313 Cr.P.C. was recorded. He denied the correctness of the evidence and pleaded himself as innocent. No witness was examined by the accused in defence.

Learned ACJM, Jhajjar, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Jhajjar, vide judgment dated 11.02.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner has not pointed out as to how the concurrent findings given by both the courts below regarding conviction, are perverse or illegal. Nothing has been pointed out as to how the findings given by the Courts below are against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. Learned counsel for the petitioner only argued on two points; firstly, identity of the present petitioner-accused has not been established and secondly rash or negligent driving by him has not been proved.

The perusal of the evidence on record itself shows that the

present petitioner was driving the dumper. As per the evidence, he tried to overtake another dumper and hit the car coming from the front side. When any driver of a vehicle overtake another vehicle, it was the duty of that driver to see whether any vehicle is coming from the front side or not and this fact that while overtaking another vehicle, the petitioner hit the car coming from front side, shows his rash and negligent act.

I have gone through the lower Court record. PW-2 Gian Chand, has specifically stated that after the accident the dumper also turned turtle there and he has identified the accused in the Court and stated that the present petitioner was driving the offending vehicle. Other PWs have also deposed like this. Again, the owner of the vehicle has been examined in this case namely Jasbir. He admitted his statement given to the police. In cross-examination by learned APP, he also admitted that he is the owner of the offending vehicle. He further admitted that he has given the driving licence, Registration Certificate of the dumper and the insurance policy to the police and he has signed the memo in this regard. He also admitted that he gave affidavit regarding the registration number of the dumper.

I have perused the cross-examination of the owner by the accused. There is no suggestion to the owner of the dumper that present petitioner was not driving said vehicle on that day or someone else was driving. There is also no suggestion that he was not employed on that truck. It is settled law that if a witness turns hostile, the Court can rely upon that part of the statement, which part supports the accused or the prosecution.

The perusal of the evidence on record shows that the findings given by both the Courts below regarding conviction of the present petitioner, are correct, as per evidence and law. Nothing has been pointed

out as to how the findings are perverse or against the law. The identity of the accused-petitioner as well as rash or negligent driving of the accused have been duly proved by the PWs.

Therefore, the judgment of conviction dated 06.05.2015 passed by learned ACJM, Jhajjar is correct, as per law and does not require any interference from this Court.

As regarding the sentence, I find that maximum sentence under Sections 279 IPC and 337 IPC is six months, therefore, the sentence imposed by learned Courts below of one year each under Sections 279 and 337 IPC, is not as per law and the same is reduced and petitioner is directed to undergo rigorous imprisonment for a period of six months each under Sections 279 and 337 IPC. Keeping in view the facts and circumstances of the present case, the sentence imposed upon the petitioner under Section 338 IPC is also reduced and he is directed to undergo rigorous imprisonment for a period of one year under Section 338 IPC instead of two years. However, the sentence of fine and in default thereof under each Section and sentence under Section 304- IPC shall remain the same. All the sentences shall run concurrently.

With the above-said modification in the sentence, the present revision petition stands dismissed.

December 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No