

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

Criminal Revision 2310 of 2014

Date of Decision : May 11, 2016

Naresh Kumar		Petitioner
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

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

The petitioner was tried for committing offences punishable under Sections 279, 337 and 304-A IPC. Vide judgment and order dated 10/11.8.2011, learned Judicial Magistrate 1st Class, Kurukshetra, convicted him for the aforementioned offences and sentenced him as mentioned below:-

Under Section 279 IPC To undergo simple imprisonment for
six months and to pay a fine of
Rs.1000/- and in default of payment of
fine, to further undergo simple

imprisonment for one month.

Under Section 337 IPC To undergo simple imprisonment for three months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for 15 days.

Under Section 304-A IPC To undergo simple imprisonment for two years and to pay a fine of Rs.1500/- and in default of payment of fine, to further undergo simple imprisonment for three months.

All the sentences were ordered to run concurrently. The period, if any of custody undergone by him was ordered to be set off against his substantive sentence. The total amount of fine of Rs.3,000/- was duly paid by the petitioner there and then.

In order to challenge his conviction and sentence, the petitioner filed an appeal. Vide judgment and order dated 7.7.2014, learned Sessions Judge, Kurukshetra, while upholding his conviction and sentence of imprisonment and fine, dismissed the appeal. Hence, the present revision, in which, he is on bail.

The case of the prosecution has been stated by the learned lower appellate Court in para 2 of its judgment, which is reproduced herebelow:-

“Prosecution case, in brief is that on 5.1.2009, having receiving telephonic message from Nau Gaja Peer regarding accident near Nau Gaja Peer, Sub Inspector Raghbir Singh along with other police sleuths reached the spot where Jagbir Singh met him and got recorded his statement (Ex.P-1), wherein he alleged that on that day, he was going to Kurukshetra on his motor-cycle whereas his nephew Ashish Kumar along with Shiv Kumar was going to Delhi on motor-cycle bearing No. DL-4S-BK-9424 and when they reached near Nau Gaja Peer, in the meantime a truck bearing No. HR-37D-5567 being driven by its driver at fast speed and in rash and negligent manner came from behind and struck against the motor-cycle, which was being driven by his nephew Ashish Kumar, as a result of which, Ashish Kumar fell in the middle of the road whereas pillion rider Shiv Kumar fell on front side. Injured Ashish Kumar was dragged to considerable distance by the speeding truck, due to which, he (Ashish Kumar) succumbed to injuries on the spot, whereas Shiv Kumar received multiple injuries on his person. Thereafter, driver of truck No. HR-37D-5567 after getting opportunity, fled away

from the spot. Complainant further alleged that accident in question was caused due to sole negligent driving of truck No. HR-37D-5567 by unknown driver. Injured Shiv Kumar was shifted to Civil Hospital, Shahabad in ambulance by the police. Thus, on these allegations, as mentioned in the statement (Ex.P-1) of complainant Jagbir Singh, FIR (Ex.PW-10/C) was recorded. Necessary investigation was conducted. Rough site plan (Ex.PW-10/D) of place of occurrence was prepared. Place of occurrence as well as dead body of Ashish Kumar were got photographed, vide photographs Ex.PW-6/A to Ex.PW6/15. Injured Shiv Kumar was medico-legally examined vide MLR Ex.PW-4/B, in terms of which, several injuries were detected on his person. Inquest proceedings qua deceased Ashish Kumar were carried out. Thereafter, having moved application (Ex.PW-10/E) at the instance of police, postmortem examination of dead body of Ashish Kumar was got conducted, vide postmortem report Ex.PW-7/B, in terms of which, cause of death was due to extensive injury to large vessels followed by massive haemorrhage and shock which were ante-

mortem in nature and sufficient to cause death in its natural course and thereafter dead body of Ashish Kumar was handed over to Om Parkash and Jagbir, vide receipt Ex.P-5. On 5.1.2009, offending truck as well as ill-fated motor-cycle were taken into possession, vide recovery memo Ex.P-2 whereas certificate of registration and insurance cover note of truck No. HR-37D-5567 as well as driving licence of accused Naresh Kumar were taken into police possession vide recovery memo Ex.P-4. On 6.1.2009, ill-fated motor-cycle as well as offending truck were got mechanically examined, vide mechanical reports Ex.PW-8/A and Ex.PW-8/B, respectively, in terms of which, motor-cycle was found in damaged condition. On 1.2.2009, driving licence and certificate of registration of ill-fated motor-cycle were taken into police possession vide recovery memo Ex.P-3. Statements of witnesses were recorded. Accused was arrested on 5.1.2009. After completion of investigation, challan was presented against accused in the Court.”

After hearing learned counsel for the parties and on going through the testimonies of PW1 Jagbir Singh, complainant

and PW9 Shiv Kumar, who had also received injuries in the occurrence, this Court is of the considered opinion that no case is made out for any interference in the conviction of the petitioner for the various offences.

Coming to the quantum of sentence, it may be noticed that the petitioner is facing the agony of criminal prosecution for the last more than seven years. When examined by the trial Court under Section 248 Cr.P.C. he had pleaded that he was a poor person and only one to look after his family. His family consists of his wife, one daughter aged twenty years and two sons aged fifteen and twelve years. It is also pleaded that he is not a previous convict. Further, out of the sentence of two years imposed upon him, he has already undergone a period of about four months. It is also submitted that subsequent to being granted concession of suspension of his sentence of imprisonment by this Court vide order dated 27.10.2014, the petitioner has not misused the concession in any manner. Prayer has, accordingly, been made for granting leniency to him in the matter of sentence of imprisonment.

Learned State counsel has opposed the prayer by submitting that the accident in question had taken place on account of rash and negligent driving of the truck by the petitioner and as a result thereof, Ashish Kumar had died whereas PW9

Shiv Kumar was injured. Learned State counsel has also submitted that after causing the accident, the petitioner took no steps to remove Shiv Kumar injured to the hospital. Learned State counsel has also produced the custody certificate, as per which, the petitioner has undergone a total sentence of three months and twenty four days.

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 remaining sentence of imprisonment imposed upon him. Ends of justice would be suitably met, if his sentences of imprisonment on all counts are reduced to the one already undergone by him. At the same time, the fine of Rs.1500/- imposed upon the petitioner for the offence under Section 304-A IPC can be suitably enhanced so as to compensate the legal heirs of deceased Ashish Kumar.

Resultantly, the conviction of the petitioner for the offences under Sections 279, 337 and 304-A IPC is upheld. His substantive sentences of imprisonment on all the counts shall stand reduced to the one already undergone by him. The sentences of fine for the offences under Sections 279 and 337 IPC along with their default clauses are maintained. However, the fine of Rs.1500/- imposed upon him for the offence under Section

304-A IPC is, however, enhanced **by** Rs.14,000/-. The enhanced amount of fine, i.e. Rs.14,000/- be deposited by the petitioner with the trial Court within three months from today, failing which, he shall undergo simple imprisonment for six months. The enhanced amount of fine, if deposited, be disbursed to the legal heirs of deceased Ashish Kumar, as compensation.

The revision is, accordingly, disposed of.

May 11, 2016
amit rana

(T.P.S. MANN)
JUDGE