

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

CRR No.1287 of 2016 (O&M)

Date of decision: 03.12.2016

Manohari Lal

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present : Mr. Keshav P. Singh, Advocate for the petitioner (s).

Mr. Saurabh Mohunta, DAG, Haryana

Jitendra Chauhan, J.

This revision is against the judgment dated 13.10.2015 and order dated 16.10.2015 passed by Judicial Magistrate First Class, Palwal vide which the petitioner was convicted and sentenced under Sections 279 and 304-A of the Indian Penal Code (for short 'the IPC'); and judgment dated 04.03.2016 passed by learned Sessions Judge, Palwal, vide which the appeal was dismissed.

Brief facts of the instant case as noticed in the judgment passed by learned Sessions Judge, Palwal are set out as under:-

“Brief facts of the case relevant for the disposal of present appeal are that on 25.10.2011, a police party headed by ASI Ram Avtar was present at National Highway No.2 village Phulwari on G.T. Road in

connection with crime detection and patrolling duty when the complainant Om Parkash reached there along with Bir Singh, Ex.Sarpanch of Village Phulwari and submitted a written complaint alleging therein that his 10 years old daughter namely Kanchan was studying in Kishora Public School, Bamnikhera. In the morning of 21.10.2011, she along with other children was standing near bus stand village Phulwari and on the road going towards village Aurangabad while waiting for her school bus, PWs Inder and Bir Singh were also standing nearby, in the meanwhile a bus bearing registration No.HR-73-0563 which was owned by Greenwood Convent School, Rehrana came from Palwal side and it was being driven rashly, negligently and at a high speed by its driver, who without giving any horn reached there and at once turned it towards Aurangabad village thereby hitting his daughter Kanchan. She became unconscious due to the injuries sustained in the accident and the accused who was driver of the offending bus alighted from the bus and apologized for his act. On asking, he disclosed his name as Manohari Lal to the witnesses Bir Singh and Inder and had also disclosed his other particulars. Thereafter, on finding opportunity, he fled away from the spot. The injured was rushed to the hospital. She was discharged on the same day. At that time, the complainant was at Hardiwar in connection with performing last rite ceremonies of son of his cousin brother and received telephonic information that while taking his daughter back from hospital to her house, she succumbed to her injuries and had died. The family members of the complainant performed last rites of his daughter in his absence as the complainant and his family members were not aware that postmortem examination of the dead body of his daughter was required to be conducted. On the basis of this complaint, a case under Sections 279 and 304-A IPC was registered. Investigation proceedings were initiated. During investigation, accused was arrested and subsequently, he was released on bail. After completion of necessary investigation and usual formalities, challan was presented in the Court for trial of the appellant-accused.”

Copies of challan and other documents were supplied to the

accused free of costs.

Charges under Sections 279 and 304-A IPC were framed against the accused for which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW1-Bir Singh, PW2-Ram Avtar, PW3-Om Parkash, PW4-Indu, PW5-Chander, PW6-Kanta Chauhan, PW7-HC Raj Kumar, PW8-Constable Liyakat Ali and PW9-Dr. Chirag Sethi and closed the evidence.

Statement of accused was recorded under Section 313 of the Code Criminal Procedure (for short 'Cr.P.C') in which all the incriminating circumstance appearing in the prosecution evidence were put to the accused to which he denied and pleaded false implication. No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial Court vide judgment dated 13.10.2015, convicted the petitioner under Section 279 and 304-A IPC and vide order dated 16.10.2015 sentenced the petitioner to undergo SI for six months under Section 279 IPC and to undergo SI for one year under Section 304-A IPC. Both the sentences were ordered to run consecutively.

Feeling dis-satisfied the petitioner filed appeal against the judgment dated 13.10.2015 and order dated 16.10.2015 before learned Sessions Judge, Palwal. However, the appeal was dismissed on 04.03.2016 by learned Sessions Judge, Palwal.

By filing the instant petition, the impugned judgments and

orders dated 13.10.2015, 16.10.2015 and 04.03.2016 have been assailed before this Court.

The solitary argument raised by learned counsel for the petitioner is that in order to invoke the provisions of Section 304-A IPC, firstly death is required to be proved, secondly the death should be the result of rash or negligent act of the accused. In the instant case, the prosecution has failed to prove the factum of death as there is no post-mortem examination report on the record. In the absence of any proof qua death, the offence under Section 304-A IPC is not made out.

On the other hand, the learned State counsel submits that both the Courts below have rightly convicted and sentenced the accused. The prosecution has successfully proved its case against the accused. The identity of the accused has been sufficiently proved in the Court. The death took place on the same day. The deceased was rushed to the hospital. However, on the way the child died. He supports the judgments and orders passed by Courts below.

I have heard the learned counsel for the parties and have carefully perused the entire record.

The argument of learned counsel for the petitioner that the death has not been proved in the instant case, pales into insignificance in the face of medical evidence brought on the record. PW9-Dr. Chirag Sethi while appearing in the witness box has proved that the patient arrived in casualty on 21.10.2011 and was treated by him. He further deposed that

possibility of death of the victim due to injuries which had been sustained by her in a road side accident could not be ruled out. It has further come in the deposition that the patient complained of pain in left hip joint and thigh after road side accident, followed by restricted motion of hip joint along with pain and was advised orthopaedic surgeon opinion. Further, there is testimony of PW1 Bir Singh, an eye-witness of the accident to the extent that on 21.10.2011 at about 7.30 p.m. the petitioner who was the driver of bus of Greenwood Convent School was driving the bus in rash and negligent manner. The driver of the bus stopped the bus at some distance and came to apologize. The accident was caused by the petitioner. Further, PW4-Indu another eye-witness has proved on record that the accident has been caused by the petitioner. Thus, there is sufficient evidence on record to the effect that on the relevant date and time the offending vehicle was being driven by the petitioner and the deceased suffered injury on account of accident. Thereafter the deceased was taken to Government Hospital where she was treated and discharged after some time. The child expired while on way to home from the hospital. Accused in his statement under Section 313 Cr.P.C. has simply denied the allegation of the prosecution and has not taken any stand that the complainant had any enmity with him. However, he has not disputed the factum of accident. This being so, the argument of the learned counsel for the petitioner is rejected.

No other point has been urged. Consequently the judgments of conviction are upheld.

Now reverting to the quantum of sentence, the learned counsel for the petitioner states that the trial Court has ordered the sentences under Sections 279 and 304-A IPC to run consecutively i.e. one after another. He submits that since the offences have been committed in the same transaction, concurrent running of sentences ought to have been ordered by the trial Court. He further submits that the petitioner is the sole bread earner of his family and he has two children to maintain. The learned counsel further refers to order dated 16.10.2015, passed by trial Court on the quantum of sentence wherein a reference is made that the complainant, Om Parkash had also appeared before the trial Court and got recorded his statement that the act of the accused be condoned and a lenient view be taken against him.

Taking into consideration the fact that the father of the deceased had himself made statement before the trial Court and prayed for taking lenient view in the matter of sentence and the fact that the petitioner is the sole bread earner of the family, this Court feels that the ends of justice would be squarely met in case this Court orders the concurrent running of the sentences. Consequently, the prayer is accepted and it is ordered that both the sentences i.e. under Sections 279 and 304-A IPC shall run concurrently. However, the petitioner shall pay a sum of Rs.1 lakh as compensation to the complainant within three months from the date of his release. In case the amount of compensation is not paid within the stipulated period, the present petition would be deemed to be dismissed without any

notice.

The present revision is partly accepted in the manner indicated above.

03.12.2016
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No