

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1383-2016 (O&M)

Date of decision: August 04, 2016.

Sukhdev Singh

... **Petitioner**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Ranjan Lakhanpal, Advocate for the petitioner.

Shri K.S. Sidhu, Assistant Advocate General, Punjab.

A.B. Chaudhari, J. (Oral):

Being aggrieved by the judgment of conviction and the order of sentence dated 7.11.2015 and affirmed in appeal by the Sessions Judge, Gurdaspur vide order dated 11.3.2016, whereby the petitioner was convicted to undergo sentence of 6 months SI under Section 279 IPC, SI for 2 years under Section 304-A and fine of Rs.1,000/- under Section 427 IPC, present revision petition was preferred by him.

In support of the revision petition, learned Counsel for the petitioner vehemently argued that in the FIR, name of the petitioner was not mentioned but after a period of 20 days, his name was inserted by the prosecution as a person driving the tractor-trolley. According to him, what has been stated in the FIR is that the driver was a young person as against the petitioner who was aged about 65 years at the relevant time and

therefore, there was clear inconsistency. He further submitted that the identification parade was not held in the absence of which it was wholly wrong to rope in the petitioner for the offences in question. In the alternative, he submitted that the petitioner has already undergone sentence of about 5 months and also paid fine and looking to the lapse of time that has passed, namely from the year 2010, the petitioner should be left with the sentence which he has already undergone.

Per contra, learned Counsel for the petitioner has opposed the revision petition and submitted that the petitioner was rash and negligent in driving the tractor-trolley causing death of a person which has been concurrently found by both the courts below. There is no need to interfere with the concurrent finding of fact recorded by the courts below. He, therefore, prayed for dismissal of the revision petition.

I have heard Learned Counsel for the rival parties and have seen the impugned judgments and orders and reasons recorded by both the courts below. It is not in dispute that the petitioner was brought into picture after 20 days of the accident. Nevertheless, the petitioner was identified for the first time in the Court as a person who was driving the tractor trolley. There is a concurrent finding of fact recorded by the two courts that the petitioner was driving the vehicle in a rash and negligent manner. I have no reason to take a different view on the facts or the evidence. Having discussed the contentions on merits, I find that mere delay of 20 days in bringing the name of the petitioner on record by the prosecution would not itself wipe out the case of the prosecution particularly when he was

identified in the court at the time of his evidence. I therefore affirm the conviction of the revision petitioner recorded by the courts below.

The next question is about the sentence that was awarded to the petitioner. Perusal of the reasons as well as the evidence on record does not show the extent of rashness and negligence adopted by the petitioner while driving the tractor and therefore the degree of rash and negligent driving cannot be gauged with mathematical certainty. That apart, the petitioner is an aged person and has already undergone sentence of about 5 months. In that view of the matter, there is no point in pushing the petitioner in jail when he has already suffered sentence of five months.

In that view of the matter, I make the following order:-

ORDER

- i) CRR-1382-2016 is partly allowed;
- ii) conviction of the petitioner recorded vide the judgment of conviction is maintained and the order of sentence is set aside and modified to the extent of sentence which the petitioner has already undergone;
- iii) the petitioner has already paid the fine;
- iv) the petitioner be set at liberty forthwith.

August 04, 2016.
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[**A.B. Chaudhari**]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No