

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

**CRR No. 3162 of 2015 (O&M)
Date of Decision: 07.09.2016.**

Balhar Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

This revision petition is directed against the judgment and order dated 13.10.2014, passed by Judicial Magistrate First Class, Amritsar vide which the petitioner was convicted under Sections 279 and 304-A IPC and sentenced to undergo rigorous imprisonment for a period of two years under Section 304-A and to pay a fine of Rs. 5000/- with default stipulation and to undergo RI for six months and to pay fine of Rs.200/- with default stipulation under Section 279 IPC; and the judgment dated 29.07.2015, passed by Additional Sessions Judge, Amritsar vide which the appeal filed by the petitioner was dismissed.

The brief facts of the case as noticed in the judgment passed

by the Lower Appellate Court are as under:-

“On 13.10.2010, SI Iqbal Singh alongwith other police officials was present at counter no.45, Bus stand in connection of patrolling and search of bad elements. Roohi wife of Harjinder Kumar came there and got her statement recorded that she is a household lady and his husband is a labourer. At about 8.00 a.m., she and her husband was going to meet a relative and were present near bus stand in front of Suraj Chanda Cinema and were entering in the bus stand. Her husband was going ahead and she was following him. When her husband was entering into the Bus stand gate No. 1, one bus bearing registration no.PB-02-AC-9933 belonging to Baba Budha Transport came from backside in a high speed, without blowing horn and being driven in a rash and negligent manner and hit her husband Harjinder Kumar and he died at the spot. The occurrence took place at about 9.00 a.m. She came to know the name of driver as Balhar Singh son of Balwinder Singh resident of village Awan PS Fatehgarh Churian District Gurdaspur. The driver ran away from the spot leaving the bus there. Her statement was recorded. Ruqa was sent to the police station A-Division through HC Sarabjit Singh for registration of the case. The investigation was initiated. After the postmortem, the dead body was handed over to the heirs. On 14.10.2010, accused

Balhar Singh son of Balwinder Singh was arrested in this case. On 14.10.2010, the test report of Head Mechanic Lakhbir Singh with regard to bus No.PB-02-AC-9933 was received. On 15.11.2010, the report from DTO office, Amritsar, with regard to ownership of bus in question was sought. On completion of investigation, challan was presented in the Court against the accused.”

The copies of the documents as envisaged under Section 207 Cr.P.C were supplied to the accused free of cost. Charges under Sections 279 and 304-A IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined Roohi as PW-1, HC Sarabjit Singh as PW-2, Ashok Kumar as PW-3, HC Hira Singh as PW-4, HC Harwinder Singh as PW-5, HC Parshotam Singh as PW-6, HC Lakhbir Singh as PW-7, ASI Gurwinder Singh as PW-8, Inspector Iqbal Singh as PW-9 and thereafter the evidence of the prosecution was closed by order.

The statement of the accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances/material appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

After appraisal of evidence, the learned trial Court convicted and sentenced the accused vide which judgment and order dated 13.10.2014 and sentenced him to undergo imprisonment as narrated

above.

Feeling dis-satisfied, the accused preferred an appeal before Additional Sessions Judge, Amritsar which was dismissed vide judgment dated 29.07.2015.

By filing the present revision petition, both the judgments and order have been assailed before this Court.

It is contended by the learned counsel for the petitioner that the identity of the accused remains unsubstantiated. The accused was identified for the very first time in the Court. No test identification parade was conducted by the investigating agency. The Doctor who conducted the post mortem on the dead body of Harjinder Kumar has not been examined by the prosecution.

On the other hand, the learned State counsel states that the Courts below have rightly convicted and sentenced the accused. The identity of the accused was proved by the wife of the deceased. It is further contended that the accused has not led any evidence to prove that on the fateful day, he was not driving the vehicle in question.

I have heard the learned counsel for the parties and have gone through the case file.

The first argument raised by the learned counsel for the petitioner relates to identification of the accused. The wife of the deceased, namely, Smt. Roohi while appearing as PW-1 has unerringly identified the accused as the driver of the vehicle in question. In the face

of the substantive evidence in the Court, the factum of non-conducting

the test identification parade by the investigating agency does not affect the case of the prosecution.

As regards the second contention i.e. the non-examination of treating doctor, this Court finds that the factum of death has not been denied. The stand taken by the accused in his statement under Section 313 Cr. P.C is that of denial. He did not state that no death had taken place. The Post mortem examination report is on the file which is a per se admissible document. The factum of death is proved from the post mortem examination report. Consequently, both the contentions are rejected.

The judgments of conviction passed by the Courts below are upheld.

Now reverting to the quantum of sentence, the learned counsel for the petitioner contends that the petitioner has been facing the agony of protracted criminal proceedings since 2010. He is the sole bread earner of his family. Apart from the present case, no other case is pending against the petitioner.

Keeping in view the afore-mentioned mitigating circumstances, this Court feels that it would be in the interest of justice if the sentence of the petitioner is reduced from two years to the period already undergone by him subject to payment of Rs. 1 lac as compensation to the complainant, Smt. Roohi i.e wife of the deceased to be made within four months from today. It is ordered accordingly. The petitioner is in custody. He be released forthwith, if not required in any

other case. If the amount of Rs. 1 lac is not made within the stipulated period, the original sentence as passed by the trial Court shall revive.

07.09.2016
SN

(JITENDRA CHAUHAN)
JUDGE

Whether Speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No