

CRR-2438 -2016

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

CRR-2438-2016

Date of Decision: October 24, 2016

Prehlad

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Johan Kumar, Advocate
for the petitioner.

Mr. Naveen Kaushik, AAG, Haryana.

JITENDRA CHAUHAN, J. (Oral):

This revision is directed against the judgment and order dated 04.09.2015 passed by Judicial Magistrate First Class, Palwal vide which the petitioner was convicted under Sections 279 and 304-A of the Indian Penal Code (for brevity 'the IPC') and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- under Section 279 IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- with default stipulation under Section 304-A IPC; and; the judgment dated 02.03.2016 passed by the Additional Sessions Judge, Palwal, whereby, 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:

“2. On 21.7.2012 Lala son of Karwa lodged a complaint to the police that earlier on this day he along with his friend Deepak were travelling on their motorcycle bearing No.HR-30G-2311, from their village Rabupura to village Firojpur for family purpose. Deepak was riding the vehicle and complainant Lala was a pillion rider. When they reached near village Alawalpur, Chirwari turn, a three-wheeler came from the opposite side driving at a fast speed and rashly and negligently. The said three wheeler hit the motorcycle of the complainant due to which Deepak fell down on the road whereas complainant Lala fell on the kaccha pavement besides the road. Deepak received serious head injuries and died on the spot. Complainant noted down registration of the three wheeler as 2349. He could not see the entire registration number of the three-wheeler as driver of the three wheeler fled away from the spot. On the basis of the said information, FIR No. 174 dated 21.7.2012 under sections 279,304A IPC was registered. During the course of investigation, site plan of place of occurrence was prepared on 20.8.2012. Accused surrendered to the investigating officer and was arrested. The offending three-wheeler bearing No.HR-73-2349 along with registration certificate, insurance and driving licence of the accused were taken into police custody.

Photographs of the accident were clicked. The final report under section 174 Cr.P.C was prepared after the post-mortem of deceased Deepak. Statement of witnesses recorded and challan was presented in the court.”

Copies of documents were supplied to the accused free of cost under Section 207 Cr.P.C. Charges under Sections 279 and 304A 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 ASI Raj Kumar (Investigating Officer) as PW-1, Dr. Mahesh Pal as PW-2, Suresh as PW-3, Man Singh (Photographer) as PW-4, Ct. Amit Kumar as PW-5 and Lal (complainant) as PW-6. Learned APP for the state gave up ASI Brahampal and SI/SHO Mangal Singh being unnecessary vide separately recorded statement dated 10.01.2013.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing against the accused were put to him 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 convicted and sentenced the accused as narrated above.

Feeling dis-satisfied with the judgment of conviction and order on sentence dated 04.09.2015 passed by Judicial Magistrate First Class, the accused preferred an appeal before Additional Sessions Judge, Palwal. However, the appeal was dismissed vide judgment dated 02.03.2016 by Additional Sessions Judge, Palwal.

Still aggrieved, the aforesaid judgments and orders dated 04.09.2015 and 02.03.2016 have been assailed in the present revision petition.

It is contended by the learned counsel for the petitioner that the identity of the petitioner as the driver of the offending vehicle has not been proved by the prosecution. The petitioner was not at fault in driving the offending vehicle. The prosecution has failed to prove its case against the petitioner.

In this case, the identity of the accused was not disputed by him during the course of trial. Rather the accused himself surrendered before the Investigating Officer along with the offending vehicle. Further, PW-6, the injured witness has deposed that at the relevant time the accused was driving the offending vehicle. This being so, the question of identity of the petitioner pales into insignificance.

As regards the question of negligence in driving the vehicle, the impact of the collision was such that deceased Deepak as well as injured Lala fell on the ground and the offending vehicle ran

over the face of deceased Deepak leading to his death. This conduct voluminously speaks a lot. This being so, this Court does not find any reason to interfere in the well reasoned judgment of conviction. Consequently, the same are upheld.

Now advertng to the quantum of sentence, it is to be noticed that the petitioner has been awarded sentence of one year under Section 304-A IPC. Out of the sentence of one year, the petitioner has already undergone 5 months and 10 days. Learned State counsel informs that the petitioner is involved in another FIR of death by rash and negligent driving. Moreover, after the accident, the petitioner fled away from the spot and did not give any help to the deceased or the injured. Thus, this Court finds no mitigating circumstances to reduce the sentence. Consequently, no interference in the matter of sentence is made out and the order of sentence is also upheld.

In view of above, the present revision petition is dismissed and the impugned judgments and orders are upheld. The accused is stated to be on bail. He be taken into custody to serve the remaining part of the sentence.

October 24, 2016

Nisha-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No