

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 4084 of 2015

Date of decision : April 12, 2016

Jagtar Singh

....Petitioner

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. AGS Dhillon, Advocate, for the petitioner
Mr. C.S.Brar, DAG, Punjab, for the respondent

Fateh Deep Singh, J. (Oral)

This is revision petition preferred in terms of section 401 of the Code of Criminal Procedure (in short, Cr.P.C.) by the convict who is aggrieved firstly over his conviction for commission of offences under sections 279, 304-A IPC by the court of learned Judicial Magistrate Ist Class, Batala vide judgment dated 18.10.2011 whereby he has been sentenced to undergo maximum rigorous imprisonment for one year and which order has been subsequently upheld in appeal by the court of learned Additional Sessions Judge, Gurdaspur vide judgment dated 17.8.2015 upholding the findings of the trial court.

Heard Mr. AGS Dhillon, Advocate, for the petitioner and Mr. C.S.Brar, DAG, Punjab, for the respondent and perused the records.

From the respective submissions of the two sides, what permeates from the prosecution allegations are that the deceased Thuru Ram was driving Scooter No. PB-18-D-9253 on which Satnam Singh was riding the pillion. The scooter of the deceased was followed by another scooter being driven by Mittar Pal and in the area of village Kandial, a Punjab Roadways Bus No. PB-11R-1830 came from the opposite side being driven by the accused-convict petitioner Jagtar Singh and due to rash and negligent driving on the wrong side of the road hit scooter of the deceased resulting in his instantaneous death and injuries to the pillion rider. It was on the basis of statement of complainant Beli Ram father of the deceased, the present case by way of FIR No. 309 dated 19.11.2001, under sections 279, 304-A, 427 IPC was got registered with Police Station Sadar Batala.

The prosecution to establish its case at the trial had examined eight prosecution witnesses comprising of complainant Beli Ram as PW1, eye witness Mittar Pal as PW2, Investigating Officer ASI Dalip Chand as PW3, SI Kewal Singh as PW4, ASI Narinder Singh as PW5 along with C. Sucha Singh as PW6 and Photographer Sukhwinder Singh as PW7. The evidence was closed by the order of the Court. The accused did not lead any evidence inspite of denial of the prosecution story in his statement under section 313 Cr.P.C. leading to the passing of the impugned judgment.

At the very onset of submissions, counsel for the petitioner has shown a sole contention over the quantum of sentence and has prayed that since the petitioner has remained in custody for his conviction when his appeal stood dismissed has undergone incarceration for a period of more than seven months submitting that the petitioner is young man and has lost his job and has remained in custody for long time and thus, prayed for showing compassion and leniency, though the State has opposed the prayer being sought by the petitioner on the grounds that the allegations against the petitioner are having driving the vehicle rashly and negligently and struck the deceased are in itself sufficient to reflect on the culpability of his crime and thus sought dismissal of the petition.

Appreciating the arguments of the two sides, it needs to be kept in mind that under the golden principle of criminal jurisprudence, it is for the prosecution to establish its case beyond shadow of reasonable doubt and can by no means can take undue advantage of the weaknesses of the defence. It is certainly writ large on the records that the evidence of the prosecution has been closed by order and that the very factum of accidental death by way of post mortem report of the deceased could not be proved by the prosecution on account of the fact that the evidence of the prosecution was closed by order. However, at the same time it is only corroborative feature to the cause of death when the eye witness count certainly bears it so and the witness in no uncertain terms consisting of eye witness Mittar Pal

PW2 has established it so. Though the revisionist had not been arrested at the spot but his conduct in itself is not appreciable. The Court cannot lose sight of the fact that as per the eye witness account the deceased was in the process of over-taking the rickshaw when the accident has taken place are matters which certainly reflect to some extent that even the deceased while driving scooter appears to have gone on right side on the road and thus probably that is how precisely the accident has taken place. The driver of the offending vehicle is also supposed to be cautious and careful and to ensure that others on the road too need to have a right to use the same commensurate with the rules of the road. Photographs proved on the record Ex. P6 to P10 do give an idea that probably the bus was on its left side of the road a material consequence rather reflects that even deceased cannot be absolved of these consequences.

Keeping in view that out of the awarded sentence, the petitioner has already undergone imprisonment for more than seven months and having regard to the totality of the evidence and the degree of culpability of the revisionist-convict, it would sub-serve the ends of justice if this sentence of imprisonment is modified. Having regard to the young age of the petitioner and the fact as has been conceded by the State is a first offender and has family and young children to support, the conviction must have already its adverse impact on his service and must have put the family under tremendous stress physical and mental. Thus in the totality of these and to

ensure the petitioner is not made to live life of criminality by his long stay in custody, it would suffice the ends of justice if the imprisonment so awarded is reduced to nine months. However, having regard to the fact that father has lost his young earning son and that no amount of compensation can assuage the feeling of wrong done to him. To assuage the feelings of wrong done, it would meet the ends of justice, if the petitioner is directed to pay Rs 50,000/- as compensation to the family of the victim which will be over and above of what might have been awarded under the Motor Accident Claim. In case the revisionist-petitioner does not pay the amount of Rs 50,000/-, he shall undergo the remaining part of the sentence so awarded by the trial court.

In view of the aforesaid, the present revision petition stands disposed of in those terms and judgment of conviction thus stands modified.

April 12, 2016
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(Fateh Deep Singh)
Judge