

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 1254 of 2007
Date of Decision: February 02, 2017

Shamsher Singh

...Petitioner

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Saroha, Advocate for
Mr. Rahul Vats, Advocate
for the petitioner.

Mr. R.K. Singla, A.A.G., Haryana.

AUGUSTINE GEORGE MASIH, J. (Oral):

Present revision petition has been preferred by the petitioner against the judgment of conviction dated 07.12.2006 and order of sentence dated 11.12.2006 passed by the Judicial Magistrate First Class, Rewari, whereby, petitioner was convicted and sentenced under Sections 279, 337, 338 and 304-A of the Indian Penal Code (hereinafter referred to as 'IPC') as follows:-

Under Section	Sentence
304-A IPC	To undergo rigorous imprisonment for two years.
338 IPC	To undergo rigorous imprisonment for one year.
279 IPC	To pay fine of ₹ 700/-. In default of payment of fine, he shall suffer undergo rigorous imprisonment for three months.
337 IPC	To pay fine of ₹ 300/-. In default of payment of fine, he shall suffer undergo rigorous imprisonment for two months.

All the sentences were ordered to run concurrently, appeal against the said judgment of conviction and order of sentence was filed by the petitioner was dismissed by the Additional Sessions Judge, Rewari, on 05.07.2007.

It is the contention of the learned counsel for the petitioner that the petitioner had not been driving the vehicle rashly and negligently as has been stated so in the judgments passed by the Courts below convicting him for the offences referred to above. He contends that as a matter of fact, the petitioner was not even driving the vehicle. Apart from that, he contends that the tractor-trolley, which is alleged to have been hit by the mini-bus which is said to have been driven by the petitioner, did not have any light and therefore, it cannot be said that the driver of the mini-bus was negligent and was driving the vehicle rashly. Even the witnesses have not identified the petitioner as driver of mini-bus and said that they have not seen the driver of the offending vehicle. Admission has also been made by one of the eye-witnesses namely Mahesh Kumar (PW-4) that the tractor did not have any light. He, thus, contends that the petitioner has wrongly been convicted and sentenced by the Courts below and deserves acquittal.

On the other hand, counsel for the State submits that there are four eye-witnesses, who had appeared before the trial Court, namely, Ajit, Mahesh, Ramesh and Inder Pal. Counsel contends that all these witnesses have corroborated the prosecution version except Mahesh Kumar (PW-4) who has turned hostile. That apart, he contends that PW-1, Shri Shyam Kishore, Motor Mechanic, has proved the mechanical report Ex.PW1/A

regarding the offending vehicle (mini-bus) bearing registration No. HR-20-D-5245, which clearly establishes that an accident had taken place of the said vehicle. Rajender Parshad had produced the driving licence of the petitioner when he produced the offending vehicle at the police station. He, thus, contends that it has abundantly been proved on record that it was the petitioner who was driving the offending vehicle and was the driver of the said mini-bus, which has caused the accident with the tractor-trolley. His submission is that in the FIR, although the name of the petitioner is not mentioned, but the vehicle number is clearly mentioned. As the accident had taken place at 11.00 PM which was night time, eye-witnesses could not identify the driver because of the darkness. He, thus, contends that the findings as recorded by the Courts below holding the petitioner guilty of the offences under Sections 279, 337, 338 and 304-A of the IPC and imposing sentence on that basis, do not call for any interference by this Court. Prayer has, thus, been made for dismissal of the revision petition.

I have considered the submission made by the counsel for the parties and with their assistance have gone through the records of the case.

The evidence which has been produced by the prosecution clearly establishes that the petitioner was driving the offending mini-bus bearing registration No. HR-20-D-5245 when it hit the tractor-trolley in which deceased-Ishwar Singh alongwith injured Ajit, Ramesh, Sonu, Inderpal and Mahesh were traveling. The reason for non-identification of the petitioner is fully justified as the accident, admittedly, took place at 11.00 PM at night and further, the mini-bus was not stopped at the spot

rather it was driven away after the accident without stopping at the spot by the petitioner. The driving licence and the offending vehicle having been produced by Rajender Parshad as per the evidence of PW-10, Head Constable Ramesh Kumar, alongwith other documents such as insurance policy, registration certificate etc. establish the factum that the petitioner was the driver of the offending vehicle and therefore, he cannot take a plea that he was not the driver of the offending vehicle. Medical evidence has proved the factum of death of Ishwar Singh as also the injuries which have been received by the co-travellers in the tractor-trolley. Although PW-4 Mahesh Kumar has turned hostile but the other witnesses, namely, Ajit (PW-5), Inder Pal (PW-6) and Ramesh (PW-3) have corroborated the prosecution version and the statement of the complainant-Mahender (PW-8). In view of the above, the conviction of the petitioner under Sections 279, 337, 338 and 304-A of the IPC is upheld.

At this stage, counsel for the petitioner submits that the petitioner has already undergone 3 months and 21 days of actual sentence. Further, he contends that this is the only accident which had taken place while driving the mini-bus, there is no other case registered against the petitioner nor is he facing any trial. It is also submitted by the counsel for the petitioner that the accident had taken place in the year 1999 and it has been a long and protracted trial and thereafter, the appeal and the present revision petition. He, therefore, prays for reduction of sentence of the petitioner to the period already undergone by him.

Counsel for the respondent has produced the custody certificate

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of the petitioner which is in the form of an affidavit of Sukh Ram, Superintendent of Jail, Rewari, which corroborates the fact that the petitioner has undergone actual sentence of 3 months and 21 days. He further states that there is no pending or decided case nor has he been convicted or acquitted in any other case, which establishes that the statement of the petitioner is correct.

In view of the above and in the light of the fact that except for the present FIR, there is no other case registered against the petitioner and the offences in the present case are of the year 1999 and thereafter, the petitioner had undergone a protracted trial, after which he was convicted and sentenced on 07.12.2006/11.12.2006 and thereafter, suffered agony of the appeal and the present revision petition is also pending since the year 2007 i.e. it has been more than 18 years that the petitioner is facing the proceedings in the various Courts, this Court is of the considered view that the ends of justice would be best met if the petitioner is sentenced to the period already undergone by him.

Thus, the conviction of the accused is upheld and his sentence is reduced to the period already undergone by him. However, the fine as imposed upon the accused is increased to ₹ 50,000/- which shall be taken as compensation and disbursed to the legal heirs of deceased-Ishwar Singh to the extent of ₹ 30,000/- and to injured Ajit, Ramesh, Inder Pal and Sonu to the extent of ₹ 5,000/- each. The amount of ₹ 50,000/- be deposited with the trial Court within a period of 3 months and 15 days from today, failing which, the present revision petition shall be deemed to have been dismissed.

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If any amount has already been deposited by the petitioner, the same shall be adjusted accordingly. On deposit so being made, trial Court will issue a notice to the legal heirs of deceased-Ishwar Singh and injured Ajit, Ramesh, Inder Pal and Sonu and disburse the amount to them forthwith.

The revision petition stands partly allowed in above terms.

February 02, 2017

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No