

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 305 of 2007

Date of Decision: 10.03.2017

Binder Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice (Dr.) Shekher Dhawan.

Present: Mr. Sanjiv Gupta, Advocate
for Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. Yogesh Kumar Gupta, Assistant Advocate
General, Punjab for the respondent.

Shekher Dhawan, J.

Present revision petition is directed against the judgment of conviction and order of sentence dated 23.4.2005, recorded by learned Judicial Magistrate Ist Class, Samana, whereby petitioner was convicted and sentenced as under:-

Sr. No.	Conviction under Section	Sentence awarded
1.	279 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 200/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.
2.	304-A IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months.

2. The sentences were ordered to run concurrently.

3. First appeal, filed by the petitioner, was dismissed by learned Additional Sessions Judge, Patiala vide judgment dated 14.12.2006.

petition that on 5.4.1999, complainant Prem Singh (PW.2) was going along with his wife Harjit Kaur alias Babli and his son Paramjit Singh alias Lavi, aged about 2½ years, to bus stand so as to see off his brother-in-law Sarabjit Singh. At about 9.00 a.m. when they reached near the house of Joginder Singh, one Tata Sumo, bearing registration No. PB-11J-8435 came from back side and the same was being driven at a high speed and struck against his wife Harjit Kaur and son Paramjit Singh. Resultantly, both of them sustained injuries and fell down. Tata Sumo, after causing the accident, stopped at a short distance. The driver of said vehicle came down and disclosed his name to be Binder Singh. Complainant as well as his brother-in-law Sarabjit Singh were busy in looking after the injured Harjit Kaur and Paramjit Singh and in the meanwhile, driver of the Tata Sumo fled away from the spot. The injured were shifted to the Civil Hospital, Samana for medical treatment and thereafter, they were taken to Rajindra Hospital, Patiala. While on the way to Rajindra Hospital, Harjit Kaur breathed her last, whereas Paramjit Singh succumbed to his injuries in the hospital. The accused was arrested, while Tata Sumo, involved in the accident, was taken into police custody and its mechanical examination was got done. Postmortem examination of the dead bodies was got done and investigation proceedings were completed and challan was presented in the Court for trial.

5. During process of trial, the learned trial Judge completed various proceedings of trial including framing of charge against the accused 279 & 304-A IPC, recording of statement of prosecution witnesses and examination of the accused under Section 313 Cr.P.C. and after considering the prosecution evidence and defence evidence, held the petitioner guilty and

convicted and sentenced him for the alleged offences, as indicated above.

6. Present petitioner preferred first appeal before the learned Additional Sessions Judge, but remained unsuccessful and now before this Court by way of revision petition.

7. Learned counsel for the petitioner, while assailing the judgment of both the Courts below, contended that both the Courts below failed to appreciate the real controversy involved in this case. As per learned counsel for the petitioner, the cause of accident was because of mechanical defect in the Tata Sumo and the same is evident from Mechanical Examination Report Ex.PW.4/1, which was proved on the file as per the statement of PW.4 Paramjit Singh. That fact also established on the basis of statement of PW.1 Satish Kumar, Photographer, who had produced and proved photographs Ex.P1 to x.P5. Infact the accident was caused because of busting of tyre of Tata Sumo as noticed by the Mechanical Examiner in his report. But both the Courts below did not consider this aspect.

8. Learned State counsel, while arguing on this point, contended that infact the prosecution case was proved before the trial Court that accident was caused because of rash and negligent driving of the petitioner as the Tata Sumo was being driven at a very fast speed and hit Harjit Kaur and Paramjit Singh from the back side, which resulted into their death. Thereafter, Tata Sumo hit against the wall and the tyre damaged at that stage. There is no such material that tyre got busted before the accident took place. On this point, there is eye witnesses account by way of statements of PW.2 Prem Singh and PW.3 Sarabjit Singh, who were present at the spot.

9. Having considered the submissions made by learned counsel for

both the parties on this point and appraisal of the entire evidence available on file, both the Courts below have appreciated the eye witnesses account by way of statements of PW.2 Prem Singh and PW.3 Sarabjit Singh, who made statements that the accident was caused because of rash and negligent driving of petitioner, who was driving Tata Sumo bearing registration No. PB-11J-8435 and hit against Harjit Kaur and Paramjit Singh from the back side and thereafter, the vehicle struck against the wall and the tyre of Tata Sumo was damaged at that stage. Both these witnesses were cross-examined at length but there was nothing substantial on the file to support the version of present revisionist that accident was caused because of busting of tyre, rather the tyre busted because of hitting vehicle against the wall after causing the accident. Otherwise, there was no mechanical defect in the vehicle.

10. If the contention of learned counsel for the petitioner taken to be correct that the accident was caused because of an act, which was beyond the human control i.e. by way of busting of tyre, then there must have been some skid marks on the road. However, in site plan Ex.PW.5/B, prepared during investigation, there were no skid marks on the spot. More so, there was no such observation of the Investigating Officer in this regard that there were some skid marks nor there was any question put to the witness during his cross-examination.

11. The prosecution case is otherwise proved as per statement of PW.6 Dr. Karan Singh, who had proved postmortem report of Harjit Kaur and PW.8 Dr. Deepak Walia, who had proved postmortem report of Paramjit Singh. PW.5 Head Constable Bhupinder Singh, Investigating Officer had

completed the investigation formalities and as per his investigation also, the cause of accident was because of rash and negligent driving of petitioner. PW.2 Prem Singh and PW.3 Sarabjit Singh had identified the petitioner on the spot and thereafter, identified him at the trial stage as well. As such, there is no dispute about identification and both the Courts below have recorded the findings resulting into conviction of the present petitioner.

12. While arguing on the point of sentence, learned counsel for the revisionist contended that the petitioner is not a previous convict and not involved in any other case, so he be released on furnishing of probation bonds.

13. Learned State counsel has contended that this is not a case where petitioner should be released on probation.

14. Having considered this submission of learned counsel for the revisionist, this Court is of the considered view that the rash and negligent driving of revisionist resulted into loss of two human precious lives i.e. Harjit Kaur and her son Paramjit Singh, aged about 2½ years. It is a matter of common knowledge that motor vehicle accidents are having increasing trend now-a-days and such type of rash and negligent driving resulted into unsafe roads for every user of the roads, no leniency is required to be taken qua such like culprits and this is not a case where the petitioner should be ordered to be released on probation and the sentence part has also been taken care of by the learned trial Magistrate as well as learned Additional Sessions Judge while disposing of the appeal.

15. In similar matter, put before the Hon'ble Apex Court in ***Dalbir***

Singh v. State of Haryana 2000(2) R.C.R. (Criminal) 816, while dealing

with sentence of an accused involved in identical offences under Section 279 & 304-A IPC and giving the benefit of provisions of Section 4 of the Probation of Offenders Act, 1958, it was observed as under:-

“13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the P.O. Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance think that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play,

particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

16. Similar view was taken by the Hon'ble Apex Court in ***State of Punjab v. Balwinder Singh and Others 2012(1) R.C.R. (Criminal) 424.***

17. As petitioner Binder Singh is on bail, he be taken into custody to serve the remaining sentence. In that case, his bail/surety bonds shall stand cancelled. The trial Court shall comply with this order forthwith under intimation to this Court. The Registry shall keep track of the submission of compliance report and put up the papers accordingly after a period of three months.

18. In view of above, the present petition is without any merit and the same is dismissed.

(Shekher Dhawan)
Judge

March 10, 2017
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No