

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

**CRR No.3078 of 2009 (O&M)
Date of Decision: 03 October, 2017**

Ramesh Chand

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kapil Aggarwal, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This is a third consecutive attempt by the petitioner/convict-Ramesh Chand, who was initially found guilty by the learned Judicial Magistrate First Class, Rewari for commission of offences under Sections 279,304-A IPC and was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.2000/- and in default thereof to undergo simple imprisonment of one month in case bearing FIR No.37, dated 25.02.1999, Police Station Khol. The appeal against the same was dismissed vide orders dated 17.11.2009 by the Court of learned Additional Sessions Judge, (Adhoc) Fast Track Court, Rewari upholding the findings of the trial Court. That is how, the petitioner is before this Court challenging his conviction.

Heard learned counsel for the parties and perused the records of the case.

The brief facts are that on 25.1.1999 complainant Sunil made a statement that he was a student of 9th class and on that day around 6

p.m when he was present at old Bus Stand Majra his co-villagers Ajit Singh and Shaitan Singh were going on a bicycle being pedalled by Ajit Singh on their left side of the road. It was at that very point of time when offending bus bearing No.RJ-02P-1028 came from the side of Rewari being driven rashly and negligently at a high speed by the petitioner-convict and hit the cycle, as a consequence of which, Ajit Singh died at the spot, whereas, Shaitan Singh received injuries and was rushed to hospital where he too succumbed to his injuries resulting in prosecution of the accused and his conviction.

The prosecution at the trial examined PW1 Sunil Kumar complainant, PW2 Jagdish, PW3 Laxmi Narayan, PW4 Ramesh Chand, PW5 Rajinder Singh, PW6 Shyam Kishore, PW7 Dr. Vinod Kumar, PW8 Dr. P.D. Mehra and PW9 Ram Singh and, thereafter, the prosecution closed its evidence. The evidence at the trial was put to the accused who denied the same and took the plea of innocence and in his defence examined DW1 Shiv Charan and DW2 Siri Ram and thereafter, closed his evidence.

Learned counsel for the petitioner has led multi-pronged attack on the prosecution on the grounds that Investigating Officer has not been examined and that some of the eye-witnesses, especially, PW2 Jagdish has not supported the prosecution story in totality, whereas deposition of PW4 Ramesh Chand had given a contradictory version and that the witnesses examined in defence have proved that the petitioner was not the driver of bus in question and was deputed on bus No.RJ-02P-739 and not on bus No.RJ-02P-1028. The same has been opposed by learned State counsel on the grounds that two invaluable human lives have been lost by negligent

and rash driving of the petitioner and that the evidence brought about has clearly established his culpability and has sought to advocate that findings recorded by the two Courts below were consistent with the evidence and as per law.

Going through the submissions of the two sides. The petitioner has come up before this Court under the provisions of Section 401 Cr.P.C which bestow upon this Court powers of revision. The very own stand of the accused/petitioner before the trial Court in his stand taken under Section 313 Cr.P.C he has nowhere raked up the plea that he was not the driver on the bus in question. Even during the cross-examination of an eye-witness Sunil this suggestion has never been put to him when the complainant as PW1 has categorically stated that the petitioner Ramesh Chand was driver of the vehicle and driving the same rashly and negligently at a high speed when the deceased were going on his bicycle on the left side of the road and has mowed them down. Learned counsel for the petitioner could not pinpoint anything adverse which has come in his cross-examination and that PW2 Jagdish in his cross-examination has tried to side with the defence but that could not wash off the case of the prosecution as it is the quality of the evidence that matters and not the quantity. Furthermore, the formal witnesses PW4 Ramesh Chand and PW5 Rajinder Singh have given an eye-witness account identifying the bus as well as driver and rather a suggestion has been put to PW4 by the defence that on account of loss of balance by the deceased of their bicycle has led to the accident leaves no scope to doubt that occurrence, place of occurrence, date and time resulting in deaths of two persons stands adequately admitted

by the defence and, therefore, rather bears out contradictory stand of the defence that the petitioner was not the driver on the offending bus and which is well corroborated by PW5 Rajinder Singh. The deaths of two persons by road side accident has been well elaborated by PW7 Dr Vinod Kumar, who has proved deaths of these two persons to be caused by motor vehicular accident. Relevant documents, FIR, site plan have been well proved on the records. Since defence has taken up specific plea that the accident was as a result of loss of balance by the deceased of their bicycle in terms of Sections 101 and 102 of Evidence Act onus shifts upon defence to rebut the same which they have miserably failed to bring about. The two Courts below in their consecutive findings have considered at length the evidence and the stand of the accused side. The Courts below have well relied upon testimonies of PW4 Ramesh Chand and PW5 Rajinder Singh, who were the eye-witnesses of the accident and have categorically stated so and corroborated each other as to the identity of the driver as well as vehicle in question followed by the deposition of the Motor Mechanic, PW6 Shyam Kishore, who has examined the vehicle. Learned counsel for the petitioner could not pinpoint any illegality or perversity in the findings so recorded by the Courts below and rather even documents Ex.DW2/B sought to be relied upon by the defence has not been proved by any official witness from official records and rather appears to be doubtful and has rightly been held it so by the learned trial Court. As a last resort, learned counsel for the petitioner sought to take plea that the petitioner has already undergone incarceration for almost two months and that he be given concession of probation.

Keeping in view that it was the rash and negligent driving of the petitioner which has led to two deaths and in view of the ever growing incidents of roadside accidents such drivers need to be dealt with strictness, else it will send wrong signal to the society at large and would give impetus to ever growing roadside accidental deaths as the people have virtually failed to observe and respect rules of the road and, therefore, no cause for grant such a relief to the petitioner, especially in the present case where two deaths have been caused.

In the light of what has been detailed and discussed above, the impugned findings of the two Courts below are correct appreciation of evidence and law which needs to be upheld, thereby, consequently dismissing the present petition.

(FATEH DEEP SINGH)
JUDGE

October 03, 2017

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