

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

**CRR No.2479 of 2010 (O&M)
Date of decision : September 19, 2017**

Pardeep Kumar**..... Petitioner**

Versus

State of Haryana**..... Respondent****CORAM : HON'BLE MR. JUSTICE KULDIP SINGH****Present:-** Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. R.K. Makkad, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

In the present revision petition, the petitioner has impugned the judgment dated 31.08.2010 passed by the learned Sessions Judge, Rohtak, affirming the judgment of conviction and order of sentence dated 18.07.2009 passed by the learned Sub Divisional Judicial Magistrate, Meham, whereby the present petitioner was convicted and sentenced as under:

Sr. No.	Offence	Imprisonment	Fine
1	279 IPC	R.I. for six months	₹500/-
2	337 IPC	R.I. for six months	₹500/-
3	304-A IPC	R.I. for one year	₹500/-

In default of payment of fine, the petitioner was ordered to further undergo rigorous imprisonment for two months.

The prosecution case is based upon the statement of Krishan S/o Karan Singh, who stated that he is an agriculturist. On 14.03.2004, in

the morning he had gone to the Neebwala fields on his tractor trolley bearing registration No.HR-15-6981 to harvest the sugarcane crop. He was accompanied by Bala w/o Ramesh, Angoori w/o Jaipal, Bala w/o Rohtash, Rajesh w/o Ajit and Ramesh w/o Karan Singh. After harvesting the sugarcane crop, they loaded the same in the tractor trolley and left for their village. At about 11.30 a.m., when his tractor trolley reached on passage near the Tindsi wala feilds, he found that Pardeep S/o Ram Kumar (present petitioner) along with his tractor trolley was present there. He requested the accused-petitioner to park his tractor trolley at a side and leave some passage for the other vehicles, on which, the accused-petitioner exhorted him that he (complainant) would not be able to face even one date (before the court). When he started moving from there, the accused-petitioner while driving his red coloured tractor make “Eicher” rashly and negligently came from behind and hit on the side of the tractor trolley of the complainant Krishan. As a result of which, the tractor trolley turned turtle into the ditches and all the occupants/passengers received injuries. The accused-petitioner ran away from the spot with his tractor trolley. The complaint was removed to the Rohtak Medical Hospital. Rajesh w/o Ajit died before she could be treated. After the investigation, the challan was presented and the accused-petitioner was charge-sheeted for the commission of offence punishable under Sections 279, 337 and 304-A IPC.

To support its case, the prosecution examined 11 witnesses and ultimately, the prosecution evidence was closed by orders with the result that the Investigating Officer could not be examined.

When the accused-petitioner was examined under Section 313 Cr.P.C., he claimed that incorrect evidence has been led against him and stated that he has been falsely implicated.

The accused-petitioner did not lead any evidence in his defence. The learned Sub Divisional Magistrate vide judgment of conviction and order of sentence dated 18.07.2009 convicted and sentenced the accused-petitioner as above. His appeal was dismissed by the learned Sessions Judge, Rohtak, vide judgment dated 31.08.2010.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner has vehemently argued that in this case, injured Angoori w/o Jai Pal (PW3) and Bala w/o Rohtash (PW4) turned hostile and did not support the prosecution case.

However, Krishan, complainant (PW6), Ramesh (PW7) and injured Bala w/o Ramesh (PW8) supported the prosecution case and it was on the basis of the testimony of these eye witnesses, the statement and the report of the mechanical examiner and the other evidence that the learned Sub Divisional Judicial Magistrate, Meham convicted and sentenced the accused-petitioner as above.

Learned counsel for the petitioner has further vehemently argued that Krishan, complainant (PW6) had claimed that he was driving the tractor trolley. However, when he was cross-examined, he stated that he did not know driving. He also admitted that he has no driving licence. Therefore, the prosecution story that Krishan was driving the tractor trolley is not proved. Further, from the cross-examination of Angoori w/o Jai Pal

(PW3), it comes out that one Narender was driving the tractor trolley. Therefore, it is also argued that the tractor trolley turned turtle due to driver's own fault.

I am of the view that whether complainant Krishan was driving the tractor trolley or not, it is irrelevant. Complainant Krishan is one of the injured and is stamped witness. The other occupants of the tractor trolley also received injuries, which show that they were riding the tractor trolley when the accident took place. The manner of the accident was narrated by Krishan, Ramesh as well as Bala w/o Ramesh. All of them stated that the accident took place as the accused-petitioner being annoyed by Krishan, complainant asking him to give the way, drove his tractor trolley rashly and negligently and hit the tractor trolley of the complainant Krishan, which was loaded by 24 Qtls. of sugarcane. As a result of which, both the tractor and the trolley turned turtle. It is not the case of any of the witnesses that the accident took place due to the over loading or rash driving of the tractor trolley driver. Their statements were supported by the report of the mechanical examiner, who had examined the offending tractor bearing registration No.HR-15-3139 and found that two hooks on the left side of the trolley were bent and that scratch marks were also found on the left side of the trolley of the accused-petitioner. The witness has maintained in his cross-examination that the trolley was attached with the tractor of the accused-petitioner. It goes to show that left side of the trolley of the accused-petitioner had hit the tractor trolley of the complainant with the result that the tractor trolley of the complainant turned turtle. Since, from the remaining evidence, it is established that the accused-petitioner was at

fault and drove his tractor trolley rashly and negligently, therefore, the non-examination of the Investigating Officer is immaterial.

Learned counsel for the accused-petitioner has further argued that supplementary statement of the petitioner was recorded by police under Section 161 Cr.P.C. in which he had stated that one Narender Singh s/o Rajmal was driving the tractor trolley.

However, such statement recorded under Section 161 Cr.P.C. was not put to Krishan, PW. Therefore, it cannot be taken into consideration at this stage.

From the statements of Krishan, Bala w/o Ramesh and Ramesh coupled with the report of the mechanic, it is proved that the accused-petitioner drove his tractor trolley bearing registration No. HR-15-3139 rashly and negligently and caused the accident, resulting in death of Rajesh w/o Ajit and simple injuries to the other occupants. There is no misreading of the evidence by the lower court. The judgments passed by both the courts below are well-reasoned and there is no ground to interfere in the same.

Faced with this situation, learned counsel for the accused-petitioner has prayed for showing leniency in the sentence awarded to the accused-petitioner and also prayed for sentencing him to the period already undergone by him. He has also relied upon the following judgments:

1. “State of Punjab v Saurabh Bakshi”, 2015(2) R.C.R.(Criminal) 495.
2. “Jaspal Singh v U.T., Chandigarh”, 2015(4) R.C.R.(Criminal) 953.
3. “Hari Singh v State of Rajasthan”, 2016(1) R.C.R.(Criminal) 15.

After considering the facts and circumstances of the case, I am of the view that the accused-petitioner was annoyed on being asked by Krishan, complainant not to park the tractor trolley on the way and it is for this reason that he committed the crime. The offence is much greater than under Section 304-A IPC. However, the petitioner was charge-sheeted for the commission of offences punishable under Sections 279, 337 and 304-A IPC. Therefore, at this stage, this Court will not touch the said aspect of the case. Considering the act of the accused-petitioner and the fact that the number of rate of accidents is raising either on account of rash and negligent driving or road rage. Thus, there is no ground to show any leniency on the quantum of sentence awarded to the accused-petitioner.

As such, the present petition is dismissed and the petitioner, who is on bail, is ordered to re-arrest to undergo remaining part of the sentence.

(KULDIP SINGH)
JUDGE

September 19, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No