

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

CRR No.427 of 2010

Date of Decision: 23.05.2017

Dharambir

.....Petitioner

Versus

State of Haryana

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Anil Ghanghas, Advocate
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. This criminal revision has been preferred by the petitioner against the judgment dated 20.11.2009 passed by the Additional Sessions Judge-III, Bhiwani vide which judgment of conviction dated 02.04.2008 and order of sentence dated 03.04.2008 passed by Judicial Magistrate Ist Class, Siwani Camp at Bhiwani were upheld.

[2]. The FIR was registered on the statement of Phool Chand with the allegations that on 24.03.2001, the complainant while going back to his village from Bhiwani on 24.03.2001 paid obeisance at Hanuman temple near village Kitlana and thereafter, he was going towards bus sand of Kitlana on foot. At about 3:30 PM, when he reached on Bhiwani-Dadri road, near PWD stone crusher, then from the side of Bhiwani, a dumper was seen coming, which was being driven by its driver in a rash

and negligent manner with high speed. From the side of village Kitlana, three wheeler carrying passengers was coming, which was being driven by the complainant's nephew Pankaj. Accident took place between dumper and three wheeler, due to which three wheeler got struck under the front portion of the truck. Truck driver put the truck in back gear so as to get the three wheeler out from the truck. However, three wheeler was dragged to some distance. The driver left the truck at the spot and fled away. The name of the driver came to be known as Dharambir. In the meanwhile, Haryana Roadways bus came from Dadri and the passengers after alighting from the bus helped the injured. The complainant took out the passengers travelling in the three wheelers whose names were known to be Ram Kishan Pharmacist, Sunder Sweeper, Phool Pati and Kamla. They had suffered number of injuries. Kamla's son namely Anish aged 6-7 months had died at the spot. One young lady was unconscious. She was sent to Bhiwani for treatment. Pankaj (nephew of the complainant) and one more person namely Ram Kumar also died at the spot. Later on, aforesaid unknown lady also died due to injuries in the accident. In all, five persons had died and number of persons were injured in the accident in question. Initially, FIR was registered under Sections 279, 337 and 304-A IPC and thereafter, offence under Section

338 IPC was also added.

[3]. During course of investigation, both the vehicles were recovered and were taken into police possession. Postmortem of the dead bodies were conducted and statements of the witnesses were recorded under Section 161 Cr.P.C. Accused/petitioner was arrested and thereafter, report under Section 173 Cr.P.C was filed.

[4]. On finding *prima facie* case, petitioner was charge-sheeted for the offences under Sections 279, 337, 338 and 304-A IPC, to which petitioner did not plead guilty and claimed trial.

[5]. Prosecution led evidence by examining 25 witnesses and thereafter, evidence of the prosecution was closed by order of the Court on 04.06.2007. Statement of the accused was recorded under Section 313 Cr.P.C and all the incriminating material was put to him in his statement, to which he pleaded false implication and claimed innocence.

[6]. One of the prosecution witness namely Phool Chand was recalled for re-examination and after his re-examination, the accused/petitioner was also given opportunity to record his statement under Section 313 Cr.P.C and he did the same. The petitioner opted to lead evidence in defence and tendered copy of statement of Phool Chand recorded in MACT case No.23 of

2001 and thereafter, defence evidence was closed by the defence counsel on 27.03.2008.

[7]. Trial Court proceeded to decide the case by recording judgment of conviction against the petitioner by holding that he was driving the offending vehicle in a rash and negligent manner and caused the accident in question, wherein Ram Kishan, Pankaj, Ram Kumar, Anish and Kamla died due to injuries suffered by them and PWs namely Sunder, Phoolpati and others suffered injuries on their person. Trial Court ultimately sentenced the petitioner to pay fine of Rs.1000/- under Section 279 IPC, fine of Rs.500/- for the offence under Section 337 IPC, rigorous imprisonment for 1 year and fine of Rs.500/- under Section 338 IPC and rigorous imprisonment for 2 years and fine of Rs.1000/- under Section 304-A IPC. All the sentences were ordered to run concurrently.

[8]. Feeling aggrieved against the said judgment, the petitioner filed an appeal before the Additional Sessions Judge, Bhiwani, which was dismissed on 20.11.2009. That is how, the present criminal revision came to be filed in this Court.

[9]. The revision was admitted and sentence of the petitioner was suspended by the High Court on 07.07.2010.

[10]. Learned counsel for the petitioner submitted that the petitioner had already undergone 9 months of actual sentence

at the time when his sentence was suspended and he was released on bail on 20.07.2010. Learned counsel in his first attempt confined his arguments to the quantum of sentence and for release of the petitioner for the period he has already undergone keeping in view the composition of his family and his clean antecedents except the accident in question, which took place due to the alleged fault of both the drivers of the vehicles.

[11]. Learned counsel by referring to statement of PW 3 Phool Chand stated that material contradictions in his testimony coupled with his status being related to deceased Pankaj (driver of the three wheeler) should have been discarded by the Courts below as he was intentionally introduced as a witness. In the absence of his testimony, there was no other material on record to presume that the offending vehicle was driven rashly and negligently at the time of accident. Learned counsel further contended that the presence of PW 3 was doubtful at the spot and in his cross examination, no reliable evidence has come forth for forming any opinion of conviction of the petitioner. The alleged identification of the petitioner by the said witness would always remain doubtful. Out of 25 witnesses, none could prove the presence of the petitioner at the spot being driver of the offending vehicle. None of the injured witnesses could corroborate the testimony of PW 3.

[12]. Having seen the material on record, it is found that PW 3 Phool Chand identified the dead body of his nephew Pankaj. He stated that on 24.03.2001 after reaching the place of accident, proceedings in terms of Section 174 Cr.P.C were conducted in respect of Pankaj and he had identified the dead body. Place of site was photographed and spot inspection was done and both the vehicles were taken into police possession. He along with his brother put their signatures on recovery memo. The said witness was recalled on 14.01.2008 by Fast Track Court, Bhiwani and during his re-examination, he stated that on 24.03.2001, he was going to his village by sitting in jeep and he alighted from his vehicle to pay obeisance to Hanuman Mandir and proceeded towards bus stand on foot. In the meanwhile, offending vehicle (dumper) came from behind in a rash and negligent manner from Bhiwani side and three wheeler was coming from village Kitlana side and the accident took place. Three wheeler was struck under front portion of the dumper. The driver of the dumper put the dumper in back motion and three wheeler was dragged to some distance. The driver of the dumper fled away and his name was known to be Dharambir.

[13]. Much stress has been made by the learned counsel for the petitioner on the witness being interested as he was relative

of Pankaj driver of the three wheeler. Kamla wife of Raj Kumar also corroborated the statement of Phool Chand on material particulars. From the statement of witness, the factum of rash and negligent driving of driver of the dumper was established. Ram Bhagat (PW2) was also present at the spot and he identified the dead bodies of Ram Kumar and Anish. Similarly, Ram Parsad (PW 6) also corroborated the statement of complainant PW 3 and statement of PW 7 Dharam Chand who had identified the dead body of his wife in general hospital, Bhiwani. Jagat Singh (PW 8) also corroborated the fact that driving licence of his son Pankaj was taken into possession by the police during course of investigation. Pankaj had died in the accident. PW 11 Balraj had identified the dead body of his wife Kamla.

[14]. Petitioner has been convicted and sentenced to undergo rigorous imprisonment for 2 years under Section 304-A IPC along with sentence passed for related offences. In the light of corroboration made by prosecution witnesses, there is no scope for acquittal of the petitioner on merits. Learned counsel for the petitioner has also confined his arguments on the quantum of sentence keeping in view the composition of the family of the petitioner involving two daughters of marriageable age and grant of compensation by Motor Accidents Claims

Tribunal in favour of the families of the victims.

[15]. In **CRA No.520 of 2015** titled **State of Punjab Vs. Saurabh Bakshi**, the Hon'ble Apex Court in a case of two deaths held that the compounding in terms of Section 304-A IPC on the basis of compromise is bad, however, while considering the facts and circumstances of that case, the Hon'ble Apex Court allowed the accused to be released after sentencing him for a period of 6 months already undergone by him.

[16]. In the instant case, though five persons had lost their lives and the findings of guilt have been recorded by the Courts below which have been approved by this Court on merits, therefore, it would be just and appropriate to reduce the sentence of the petitioner under Section 304-A IPC for a period of 1 year and 6 months keeping in view the composition of his family and antecedents in the past. The petitioner shall be taken into custody to undergo remaining part of his sentence.

[17]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

23.05.2017
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No