

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

**CRR No.2875 of 2011
Date of Decision-31.05.2017**

Dal Chand	... Petitioner
Versus	
State of Haryana	... Respondent

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

Present: Mr. S.N, Gaur, Advocate
for the petitioner.

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

RAJ MOHAN SINGH, J.

[1]. This criminal revision has been filed against the judgment dated 12.09.2011 passed by Additional Sessions Judge, Faridabad, vide which judgment of conviction dated 03.03.2010 and order of sentence dated 04.03.2010 passed by the trial Court were upheld.

[2]. Petitioner was convicted and sentenced to undergo rigorous imprisonment for 1 year under Section 304-A IPC and 6 months under Section 279 IPC. Both the sentences were ordered to run concurrently by the trial Court.

[3]. On 26.04.2003 at about 1.15 P.M, complainant Bijender Singh along with his sister Geeta was going to Aggarwal Public School on his scooter. When they took turn from Bhagat Singh Colony to Tigaon road, the offending bus came from behind and hit the scooter and as a result of that, the

complainant fell on footpath adjacent to the road, whereas Geeta fell in the middle of the road and the bus ran over her. The accused after stopping the bus for a while, ran away from the spot. Geeta was moved to hospital where she succumbed to injuries.

[4]. Petitioner was tried for the offences under Sections 279, 304-A IPC. In response to the chargesheet, petitioner pleaded not guilty and claimed trial.

[5]. Prosecution led evidence and examined Dr. N. Kaur as PW 1, HC Tej Pal as PW 2, Sewa Ram as PW 3, Bijender Yadav as PW 4, Dal Chand as PW 5, Jaswant Singh as PW 6 and C. Satbir Singh as PW 7.

[6]. Statement of the accused/petitioner was recorded under Section 313 Cr.P.C, in which he claimed false implication. Accused did not lead any evidence in defence.

[7]. Trial Court held the petitioner guilty and sentenced him to undergo rigorous imprisonment for 1 year under Section 304-A IPC and 6 months under Section 279 IPC. Both the sentences were ordered to run concurrently.

[8]. Petitioner remained unsuccessful in the appeal before the lower Appellate Court which was dismissed on 12.09.2011. That is how, the present criminal revision came to be filed in this Court.

[9]. Learned counsel for the petitioner submitted that the petitioner was not apprehended from the spot, nor any test identification parade was conducted as to the identity of the petitioner. The alleged identification by PW 3 Sewa Ram and PW 4 Bijender Yadav could not advance the case of the prosecution as they identified the petitioner for the first time in the Court. In the absence of test identification parade, such an identification is claimed to be of no consequence. Learned counsel further submitted that the testimony of PW 4 Bijender Yadav cannot be taken into consideration for the simple reasons that he himself was responsible for causing the accident inasmuch as that he being the driver of the scooter took right turn from Bhagat Singh Colony to Tigaon road in order to go to Aggarwal Public School. The bus was going from Ballabgarh to Tigaon on the main road and it was the duty of the scooterist i.e. complainant Bijender Yadav to take notice of the vehicle coming on the main road while coming from side lane on the main road. Since the complainant himself not take notice of the bus on the main road, therefore, the petitioner cannot be held responsible. The driving licence of the scooterist i.e Bijender Yadav could not come on record as he was not having any driving licence to drive the scooter. The statement of PW 4 in the context of his lossing his driving licence cannot be accepted for want of lodging of any report in respect of loss of the same. No duplicate licence was ever got issued by the complainant. In the absence of any driving

licence, the scooterist himself was negligent and had violated the provisions of Motor Vehicles Act. Learned counsel also submitted that the complainant was in hurry as he was to reach the school in time. The Investigating Officer of the case has not been examined.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. The identification of the petitioner has been proved by Sewa Ram (PW 3) and Bijender Yadav (PW 4). Jaswant Singh (PW 6) took the vehicle on *Sapurdari* and admitted that the bus in question was being driven by the petitioner. No evidence to the contrary was led by the petitioner. In this way, the cumulative effect of testimonies of PW 3, PW 4 and PW 6 would prove that the petitioner was driving the offending vehicle at the time of accident in question. There was no enmity between the parties prior to the accident in question, therefore, false implication on the basis of alleged relationship of PW 4 with the deceased cannot go so far. The factum of rash and negligent driving has also been proved by the witnesses i.e. PW 3 and PW 4 as the scooter was hit by the bus on the backside. Merely, because driver of the scooter was not holding the driving licence cannot absolve the driver of the offending vehicle as it does not give any licence to hit someone who is driving the scooter in violation of Motor Vehicles Act. The accident has to be proved in terms of

rash and negligent driving of the vehicle. The factum of rash and negligent driving of the petitioner is otherwise proved on record.

[12]. 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.

[13]. Though no ground is made out to allow the criminal revision on merits, yet in the light of observations made in **Saruabh Bakshish case (supra)**, particularly in view of the fact that the petitioner has already undergone more than 6 months of actual sentence out of total sentence of 1 year under Section 304-A IPC, it would be just and appropriate to reduce the sentence of the petitioner for the period already undergone by him. Ordered accordingly.

[14]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

31.05.2017
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No