

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3816-2012 (O&M)

Reserved on 10th November, 2017

Pronounced on: 16th November, 2017

Sakir Hussain

Petitioner

versus

State of Haryana

..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Sunil Panwar, Advocate, for the petitioner.

Mr. Surender Singh, Assistant Advocate General, Haryana
for the respondent.

RAMENDRA JAIN, J.

1. Through this instant revision, the petitioner has challenged the impugned judgment dated 23.8.2012 of the lower appellate court dismissing the appeal of the appellant-petitioner, thereby affirming the judgment of conviction dated 21.10.2011 and order of sentence dated 22.10.2011 of the trial court under sections 279, 337 and 304-A IPC in the following terms:

U/s 279 IPC To undergo RI for a period of six months and to pay a fine of Rs.500/-. In default thereof, further undergo Simple Imprisonment for one week.

U/s 337 IPC To undergo RI for a period of six months and to pay a fine of Rs.500/-. In default thereof, further undergo Simple Imprisonment for one week.

U/s 304-A IPC To undergo RI for a period of two years and to pay a fine of Rs.1000/-. In default thereof, further undergo

Simple Imprisonment for 15 days.

All the sentences were ordered to run concurrently.

2. Briefly stated, on 2.5.2007, ASI Devender Singh, who along with Constable Inder Singh present at the bus stand, Ferozepur Jhirka, in connection with patrol duty, on receipt of a telephonic message regarding accident on Alwar-Gurgaon road, reached the spot and recorded the statement of Balram @ Bablu to the effect that on 2.5.2007, he along with his younger brother Pankaj went to the house of Guwariya. At around 12.30 PM, when they were returning to the bus stand on their cycle, a tractor being driven by the accused-appellant in a rash and negligent manner, came and struck against their cycle. As a result thereof, both of them, fell down and wheels of the tractor ran over hands and head of Pankaj, who succumbed to his injuries on the spot. He also suffered injuries in the accident. Hitesh Kumar and some other persons also reached there. The driver left the tractor and ran away from the spot. On the basis of this statement, a case was registered. Investigation commenced. Accused was arrested, but, was, later on, released on bail. After completion of necessary formalities, a final report under section 173 of the Code of Criminal Procedure was presented before the trial court.

3. Copies of challan, as envisaged under section 207 of the Code of Criminal Procedure, were supplied to the accused free of costs. The accused was charge sheeted under sections 279, 337 and 304-A IPC, to which he pleaded not guilty and claimed trial.

4. After closure of the evidence by the prosecution, statement of the petitioner under section 313, Code of Criminal Procedure, was recorded, putting all the incriminating material appearing against him, wherein he

pleaded his false implication. He, however, did not lead any evidence in defence.

5. After analysing the ocular as well as documentary evidence and hearing arguments by both the sides, both the learned courts below convicted and sentenced the petitioner under sections 279/337/304-A IPC, in the manner as set out in the opening paragraph of this judgment.

6. Learned counsel for the petitioner, at the out-set, contended that the identity of the petitioner has not been established on the record. The complainant, being brother of the deceased, is an interested witness and his testimony, being not corroborated by the other alleged eye witness, namely, PW2 Hitesh Kumar, is not worth-reliance. Both the learned courts below committed errors in relying upon the sole testimony of complainant-injured PW1 Balram @ Bablu, whose presence at the spot was highly doubtful. The prosecution did not examine the Investigating Officer in this case. Lastly, learned counsel prayed for the grant of benefit of probation to the petitioner under the Probation of Offenders Act, 1958 (in short “the Act”), keeping in view the family circumstances of the petitioner.

7. On the other hand, learned State counsel refuted the submissions made by learned counsel for the petitioner contending that the prosecution, on the strength of testimony of the witnesses produced on record, has been able to prove its case beyond reasonable doubt. Both the learned courts below, on appreciation of evidence in its correct perspective, arrived at a right conclusion in convicting and sentencing the petitioner of the offence under sections 279/337 and 304-A IPC, therefore, revision, deserves to be dismissed.

8. Having given thoughtful consideration to the submissions made

by learned counsel for the petitioner, this court is of the considered opinion that revision, being without any merit, is liable to be dismissed for the reasons to follow:

9. Balram, the brother of the deceased as well as eye witness to the occurrence, stepped into the witness box as PW1 and categorically deposed that on 2.5.2007, he along with his younger brother Pankaj was going to the house of his friend Ajit on a cycle from bus stand to Barkali side. In the meantime, a tractor, being driven by the petitioner in rash and negligent manner came and struck against their cycle. He fell down at some distance, while his brother fell down in front of the tractor and ran over by wheels of the tractor. His brother died at the spot. The driver of the tractor, while leaving the tractor, fled away. The accused-petitioner Sakir was driving the tractor. His statement Ex.PW1/A was recorded by the police. He further deposed that Hitesh Kumar son of Bihari Lal reached the spot. He also identified the petitioner present in the court. A perusal of the testimony of this witness spells out that the learned defence counsel, during cross-examination, did not put any suggestions that the accused was not driving the tractor in a rash and negligent manner or that death of Pankaj deceased was not caused in the accident or that Hitesh Kumar son of Bihari Lal was not present at the spot and that he did not identify the accused present in the court. In such circumstances, it can easily be inferred that the presence of PW1 Balram and PW2 Hitesh Kumar at the spot has been admitted and established on the record beyond doubt. PW-2 Hitesh Kumar, the alleged eye witness, though was declared hostile, but he testified that the accident took place with the tractor, but denied to identify the accused, in my considered opinion, hardly makes any difference, keeping in view the fact

that by the time this witness reached the spot, after two hours of the accident, the accused had left the spot. The testimony of complainant PW1 Balram, the eye witness account to the occurrence, clearly goes to show that the petitioner drove his vehicle so rashly and negligently that he could not control over it, struck against the cycle, crushed the body of his brother Pankaj under the wheels of the tractor, resulting in his death at the spot, which fact is clearly established from the testimony of PW3 Dr. Jagvinder Singh, who deposed that on 2.5.2007, he was posted at General Hospital Mandikhera. On that day, he had conducted post mortem on the dead body of Pankaj son of Parma Nand. The cause of death, in his opinion, was due to bleeding, shock and injuries to vital organs. All the injuries were ante mortem in nature. He proved the post mortem report Ex.PW3-A. The ocular evidence is duly supported by the medical evidence. Learned counsel for the petitioner could not point out any discrepancy in the statement of complainant PW1 Balram, the eye witness to the occurrence. Therefore, this court is of the view that the testimony of this witness is sufficient to connect the petitioner with the crime. The findings recorded by both the learned courts below, in my considered opinion, do not call for interference.

10 The contention of the learned counsel for the petitioner that the identity of the petitioner has not been established on the record can not at all be countenanced, keeping in view the fact that there cannot be any obstacle by anybody in seeing the face of the driver of a tractor having its open body as also the fact that the petitioner had left the tractor at the spot, thereafter fled away from there and during this intermittent period, the petitioner had ample opportunity for identifying the petitioner. Furthermore, complainant PW1 Balram, testified that he was called by the police in the police station

to identify the accused, but strangely enough, this witness was not cross-examined during his cross-examination that he was not called by the police to identify the accused. In such circumstances, this court is of the considered opinion that the identity of the petitioner has been established on the record beyond reasonable doubt.

11 So far as non-examination of the Investigating Officer by the prosecution is concerned, this court is of the view that in every case non-examination of the investigating officer is fatal to the case of the prosecution. In the instant case, the identity of the accused, rash and negligent driving by the petitioner and death of the deceased in a road accident have been proved by the testimony of PW1 Balram and PW3 Dr. Jagvinder Singh. Therefore, the examination of the Investigating Officer, in my considered opinion, was not much material, that could weaken the case of the prosecution. Both the learned courts below have dealt with this argument in detail, giving sound reasoning therein. Therefore, The findings recorded by both the learned courts below do not call for any interference.

12 The plea of the learned counsel that the petitioner may be released on probation of good conduct, keeping in view the family circumstances of the petitioner, cannot be acceded to, inasmuch as, the determinative tendency of driving vehicles in this modern era so rashly and negligently, thereby endangering the human life and safety, needs to be curbed down with iron hands. Therefore, in the opinion of this court, where precious life of a person was cut-short in a road accident, this court does not incline to release the petitioner on probation of good conduct under the benevolent Act. In order to fortify my view, I find support from the decision rendered by the Hon'ble Supreme Court in **B. Nagabhushanam** versus

State of Karnataka, 2008 (3) RCR (Criminal) 50, wherein it was held that “ 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 Indian Penal Code as attracting the benevolent provisions of Section 4 of the Act.....”.

13 In view of the foregoing discussion, I do not find any illegality or infirmity in concurrent findings recorded by both the learned courts below that may warrant interference in exercise of revisional jurisdiction by this court. Therefore, the conviction and sentence recorded by both the learned courts below is maintained. Accordingly, revision, being without any merits, fails and is dismissed.

16th November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. Whether speaking/reasoned | Yes/No |
| 2. Whether Reportable: | Yes/No |