

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

CRR-3118 of 2016

Date of decision:-18.8.2017

Ram Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 10.5.2016 passed by Judicial Magistrate Ist Class, Rohtak vide which she had convicted accused Ram Kumar for the offences under Sections 279 and 304-A IPC and order dated 11.5.2016 vide which said accused was sentenced to undergo simple imprisonment for a period of six months for the offence under Section 279 IPC and to undergo simple imprisonment for a period of one year and six months for the offence under Section 304-A IPC, both the sentences were ordered to run concurrently, as well as judgment dated 11.7.2016 passed by Additional Sessions Judge, Rohtak vide which the said judgment was affirmed and appeal filed by the accused – convict was dismissed.

The accused-convict – Ram Kumar, who is petitioner before

this Court prays that the revision be accepted, the impugned judgments of his conviction and order of sentence by Judicial Magistrate, Rohtak and judgment in appeal by Additional Sessions Judge, Rohtak be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that criminal machinery in this case was set into motion by complainant Hukam Chand, who got his statement recorded with the police to the effect that on 23.10.2011, he along with his son Ishwar Singh was going from Sampla to his village on a motorcycle having registration No.HR12-M-4997 Make Splendor; that the motorcycle was being driven by Ishwar Singh, on which complainant Hukam Chand was a pillion rider; that at about 8:15 a.m., when they had reached near Kandra turning, National Highway, then the complainant got down from the motorcycle and was standing on his side whereas Ishwar Singh was sitting on the motorcycle; that in the meanwhile, a Haryana Roadways bus of Charkhi Dadri Depot having registration No.HJR-61A-5347 came from Sampla side which was being driven in a rash and negligent manner and hit motorcycle of his son Ishwar Singh, resultantly motorcycle was dragged to a long distance and then bus hit another vehicle make TATA-407 having registration No.HR-56-3839 which was also standing on its correct side; that the bus driver had stopped the bus for some time and then fled from the spot leaving the bus behind. The complainant had stated that if driver of the bus was brought before him then he could identify him.

FIR No.394 dated 23.10.2011 under Sections 279/304-A IPC was registered regarding the accident. The matter was investigated. The

offending bus was taken into possession. The post-mortem examination was got conducted on the dead body of Ishwar Singh. Accused was arrested in this case and released on bail since the offences happened to be bailable.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Rohtak.

On presentation of challan in the Court of Area Magistrate, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Rohtak finding that charge for offence under Sections 279 and 304-A IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as ten witnesses as per details below:

PW1 EASI Ram Karan had submitted his reports qua mechanical examination of the vehicles involved in the incident i.e. offending bus bearing registration No.HR-61A-5347 and motorcycle bearing registration No.HR-12M-4997, as Ex.PW1/A and Ex.PW1/B, respectively.

PW2 Wazir Singh and PW3 Prem Singh had identified the dead body of deceased Ishwar Singh.

PW4 ASI Rohtash had recorded formal FIR as Ex.PW4/A.

He also proved his endorsement on ruqa as Ex.PW4/B.

PW5 Hukam Chand, complainant provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW6 ASI Rajender Singh, the Investigating Officer who had carried out the investigation in this case deposed in that regard proving various documents.

PW7 Dr.Sunita had proved the post-mortem report of the deceased Ishwar as Ex.PW7/A.

PW8 Balbir provided the eye-witness account of the mishap.

PW9 ASI Om Parkash deposed that on 23.10.2011, when they reached at the spot then in his presence the accidental motorcycle and bus were taken into possession vide memo Ex.P3.

PW10 Constable Sunil Kumar, who had clicked the photographs proved the same as Ex.PW10/A to Ex.PW10/M.

Thereafter, the prosecution evidence was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Rohtak convicted and sentenced the accused as mentioned supra, the appeal preferred against the judgment of conviction and order of

sentence passed by the Judicial Magistrate Ist Class, Rohtak was also decided against the accused by learned Additional Sessions Judge, Rohtak, which left petitioner – accused Ram Kumar aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the revision petition.

Learned counsel for the revision petitioner has argued that no rashness or negligence on the part of the accused – convict is established on the record and as such his conviction under Sections 279 and 304-A IPC could not be sustained. In support of his contention, he has referred to various authorities first being **Lachhman Versus State of Haryana, 2000(2) R.C.R.(Criminal) 727**, wherein in an accident case when accused was driving a truck and death of an old woman was caused, in the FIR, it was mentioned that deceased was crossing the road, however, the eye-witnesses stated that deceased was standing on the side of road, the accused was acquitted giving benefit of doubt observing that no evidence was there to show that truck was at a safe distance when deceased started crossing the road and every accident cannot be said to be because rash and negligent driving.

Another authority referred to by learned counsel for the revision – petitioner was **Bal Kishan Versus State of Punjab by this Court reported as 2011(3) R.C.R.(Criminal) 146**, when in an accident case no evidence was there that deceased coming from the side lane had

taken precautions for looking over the vehicle passing on the main road and no evidence was there that accused was driving rashly or negligently. The conviction under Section 279 and 304-A IPC was set aside.

The third authority referred to by learned counsel for the revision – petitioner was **State of Karnataka Versus Satish, 1998(8) SCC 493** by Hon'ble Supreme Court wherein it was observed that prosecution has to establish rash and negligent driving of truck which cannot be automatically presumed on the basis of *res ipsa loquitur*.

The *sine qua non* of offences under Sections 279 and 304-A IPC is rash and negligent driving. In the instant case from the statement of PW5 Hukam Chand complainant and PW8 Balbir eye-witness, it stands adequately proved on record that accused was author of the incident by rash and negligent driving of offending bus. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at

the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance.

Learned counsel for the revision petitioner pointed out that there are variations in the deposition of the eye-witness as regards the manner of the incident making the prosecution story doubtful. Whereas learned State counsel has contended that the statement of witness is to be seen in entirety and a line or two cannot be picked up from the statement of witness so as to interpret it in isolation and to reach at inference favourable to the accused.

After hearing the rival contentions of the parties, I find that both the Courts below on appreciation of evidence have reached a firm conclusion that rash and negligent driving of the offending bus by accused Ram Kumar Kumar was direct and proximate cause of the accident resulting in death of Ishwar Singh. The approach of the trial Court in arriving at this conclusion can certainly be faulted or the conclusion arrived at to be perverse. Rather it comes out that the accused was driving the bus on a public way in a dare devil manner throwing caution to the winds not caring for the lives of the other commuters on the road. He failed to exercise care and caution expected to him while driving the bus on the public way and by his such wrongful driving caused the accident in which Ishwar Singh, an innocent person has lost his life. The medical evidence duly supports the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his

conviction. The other evidence adduced by the prosecution supports its version. The accused had failed to render any reasonable or plausible explanation of his alleged false implication in this case.

As regards the authorities referred to by learned counsel for the revision petitioner, those do not find application to the present case due to different facts and circumstances.

The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. The courts below were justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

The learned counsel for the revision petitioner has prayed that sentence of the accused – convict be reduced keeping in view the fact that he is a first offender, a poor man and sole bread winner of his family. He is behind bars for one year and 29 days as per custody certificate submitted by learned State counsel. However, this request has been opposed by learned State counsel.

I on my part feel that the accused by rash and negligent driving of the bus had caused death of a young human being. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road and such type of elements have to be dealt with sternly otherwise there would be more instances of causalities due to road side accidents. In this incident, no leniency can be shown to the accused – convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and appeal is found to be without any merit and is dismissed accordingly.

18.8.2017

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**