

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

**CRR No.3575 of 2016(O&M)
Date of Decision-19.01.2017**

Vikas Bhatia

... Petitioner

Versus

State of Haryana

... Respondent

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

Present: Mr. Gautam Dutt, Advocate for the petitioner.

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

Mr. Harinder Sharma, Advocate for legal heirs of the deceased.

RAJ MOHAN SINGH, J.

CRM No.40178 of 2016

For the reasons mentioned in the application, the same is allowed. Date of hearing is preponed from 02.02.2017 to 19.01.2017, therefore, main case is taken up today itself.

Main case

[1]. In this criminal revision, petitioner has assailed judgment of conviction and order of sentence dated 28.10.2015 passed by Judicial Magistrate Ist Class, Ganaur and the judgment dated 06.09.2016 passed by Additional Sessions

Judge, Sonapat vide which appeal against the judgment of conviction and order of sentence was dismissed.

[2]. Prosecution story started with the facts that on 09.12.2012 at about 9.00 P.M, Neeraj, Ram Kumar, Mahesh and Deepak were going from Panipat to Barot (UP) to attend a marriage on two different motorcycles. Neeraj and Ram Kumar were on one motorcycle, whereas Mahesh and Deepak were on second motorcycle. At about 10.00 P.M, when they reached in front of divine city on GT road, Ganaur, the offending car came from behind in a rash and negligent manner and hit the motorcycle of Mahesh due to which Mahesh and Deepak fell down on the road. The car also overturned and skidded off the road. Neeraj and Ram Kumar rescued the injured. In the meanwhile, highway ambulance also reached there and the injured were shifted to Government Hospital, Sonapat. The driver of the offending vehicle managed to escape from the site along with his car. Injured Mahesh succumbed to the injuries, whereas Deepak was referred to PGIMS, Rohtak. The family members of Deepak preferred to bring him to Government Hospital, Panipat where he also died.

[3]. On the statement of Neeraj, FIR came to be registered under Sections 279, 337, 304-A IPC. After the occurrence, a bag along with identity card of the accused was found at the spot which was produced before the Police. During

investigation, petitioner-driver was arrested on 11.12.2012 and Innova car bearing No.DL-4C-NE-8058 was also recovered which was found in a damaged condition. After the investigation, petitioner was chargesheeted for the offences under Sections 279 and 304-A IPC by the trial Court to which the petitioner pleaded not guilty and claimed trial.

[4]. Prosecution in order to bring home guilt of the accused, examined eye-witnesses namely Neeraj as PW 2 and Ram Kumar as PW 6. Besides examining the aforesaid eye-witnesses, prosecution also examined PW 1 Dr. Poonam Dahiya, PW 3 Rampal, PW 4 Ram Niwas, PW 5 Neetu Tomar, PW 7 Dhaninder Jain, PW 8 Dr. Shashi Verma, PW 9 Head Constable, Mukesh Kumar, PW 10 Head Constable, Pardeep, PW 11 ASI, Satbir Singh, PW 12 Head Constable, Surender, PW 13 Dr. Saurabh, PW 14 Investigating Officer Satbir Singh.

[5]. The statement of the accused petitioner was recorded under Section 313 Cr.P.C where he admitted the accident, but explained that his car met with an accident in the night of 09.12.2012 at GT road near Ganaur, when he was going from Chadigarh to Delhi. The car did not hit the motorcycle, but suddenly, skidded off the road and turned turtle. The car was fit enough to further driven away and as such, the petitioner driven his car to Delhi, but his wallet, identity card and a bag was dropped at the site of the accident. In a way, the accident of the

car was admitted by the accused petitioner, but in different context.

[6]. Trial Court after appraisal of the evidence, convicted the petitioner for the offences under Sections 279/304-A IPC and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.10,000/- under Section 304-A IPC and in default of payment of fine, to further undergo simple imprisonment for 3 months. The accused was also sentenced to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- for the offence under Section 279 IPC and in the event of default in making the payment of fine, to further undergo simple imprisonment for 1 month. Both the sentences were ordered to run concurrently. The accused remained unsuccessful in appeal before the Additional Sessions Judge, Sonapat which was dismissed on 06.09.2016. That is how, the present criminal revision came to be filed in this Court.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioner submitted that though the Innova car was met with an accident, but the accident was not done with any motorcycle and the car was fit enough to be driven away to Delhi and as such, in the absence of any test identification prayed, no culpability could be alleged against the petitioner. The registration number of the vehicle was not mentioned in the FIR. Eye-witnesses namely Neeraj (PW 2) has

improved his version while appearing as a witness. Both the eye-witnesses namely Neeraj and Ram Kumar while appearing as PW 2 and PW 6 respectively in the case have testified the prosecution version with reference to manner in which the accident took place.

[9]. The accident took place during the night time and the driver driven away the vehicle without caring to take the injured to the hospital. The bag containing identity and other documents was recovered from the spot and on the basis of that, identities of the vehicle as well as the accused were established. The car was taken in Police possession which was found to be damaged. The entire incriminating material was put to the accused in his statement under Section 313 Cr.P.C. The petitioner could not bring on record anything to counter the prosecution evidence.

[10]. The accused in his statement under Section 313 Cr.P.C has admitted the factum of accident of his car and his car overturned and a bag containing identity card and wallet fell down on the place of occurrence. The recovery of the bag containing identity card, wallet and damaged motorcycle proved that the accident had taken place on the site in which Innova belonging to the accused and the motorcycle of the deceased were involved. The accused was driving the Innova car in a rash and negligent manner, which was not challenged during the course of cross examination done by the defence.

[11]. In criminal revision arising out of conviction recorded by both the Courts, re-appreciation of evidence cannot be made. On 29.09.2016, during course of arguments in the criminal revision, learned counsel for the petitioner sought time to seek instructions to compensate the heirs of deceased in addition to the amount, if any, awarded by the Motor Accident Claims Tribunal. The said conduct of the petitioner was treated to be a mitigating circumstance to hear the petitioner on quantum of sentence. However, petitioner reserved his right to argue the matter on merits.

[12]. It has been brought on record that the legal heirs of deceased Mahesh and Deepak have been granted awarded compensation by the Motor Accident Claims Tribunal. In addition to the aforesaid award, the petitioner showed his willingness to compensate the legal heirs of the deceased by paying the additional compensation to them. The Court proceeded to hear the petitioner regarding quantum of sentence. On notice, complainant and legal heirs of the deceased appeared before the Court and brought on record the amicable settlement reached between them on the condition of additional compensation to be paid by the petitioner. Though there cannot be any compounding on the basis of compromise in an offence under Sections 304-A, 279 IPC and no acquittal can be recorded on that score, however, in view of the fact that a settlement has been arrived at between the petitioner and Smt. Meena Jain,

legal representative of deceased Mahesh Jain and Smt. Sundari and Rampal, legal representatives of deceased Deepak vide which additional compensation to the tune of Rs.2,50,000/- in favour of Meena Jain and Rs.2,50,000/- jointly in favour of Smt. Sundari and Rampal (i.e. Rs.1.25,000/- each) have been paid, therefore, the sentence of the petitioner for the period already undergone by him can be considered.

[13]. Legal representatives of Mahesh and Deepak have already been brought on record vide order dated 16.01.2017. It has been informed that the legal heirs of both the deceased have taken the respective additional compensation from the accused. An amount of Rs.20,00,000/- each in respect of death of Mahesh Jain and Deepak has already been awarded by the Motor Accident Claims Tribunal and in addition to the aforesaid amount, an amount of Rs.2,50,000/- in case of each deceased has been paid by the petitioner in view of settlement arrived at between the petitioner and legal heirs of both the deceased.

[14]. Taking into consideration the entirety of facts and circumstances of the case, I am of the view that since the petitioner has already undergone 5 months and 12 days of actual sentence as on 11.01.2017 out of total sentence of 2 years, therefore, case of the petitioner can be considered for sentencing him to the period already undergone by him in view

of additional compensation paid to the legal heirs of both the deceased.

[15]. In view of aforesaid, conviction of the petitioner is maintained, however, sentence is modified thereby sentencing the petitioner for the period already undergone by him.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

19.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No