

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

CRR-4710-2016

Date of decision:-24.10.2017

Baghel Singh @ Geli

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Ms.Sumanjit Kaur, Advocate
for the petitioner.

Ms.Samina Dhir, AAG, Punjab.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 9.5.2016 passed by learned Additional Sessions Judge, Sangrur vide which he had dismissed an appeal against judgment of conviction and order of sentence dated 8.1.2015 passed by Judicial Magistrate Ist Class, Sunam, vide which he had convicted accused Baghel Singh @ Geli for the offences under Sections 279 and 304-A IPC and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous

imprisonment for one month for the offence under Section 279 IPC and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,500/- and in default thereof, to further undergo rigorous imprisonment for one month for the offence under Section 304-A IPC, both the sentences were ordered to run concurrently.

The accused-convict – Baghel Singh @ Geli, who is the petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence passed by Judicial Magistrate Ist Class, Sunam and judgment in appeal passed by Additional Sessions Judge, Sangrur be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 4.7.2011 at about 7:00 p.m., complainant Krishan Singh alias Kala son of Gurmail Singh, resident of Ward No.8, Dirba along with his daughter Kaajdeep Kaur alias Kaju, aged about six years was returning home after making purchases from the market; that when they reached near gate of Gurdwara Baba Jiwan Singh, then a truck trailer bearing registration No.PB-11-AP-4314 being driven by accused Baghel Singh @ Geli in a rash and negligent manner came from the opposite direction and while going on the wrong side hit pole of the street light; that complainant along with his minor daughter Kaajdeep Kaur immediately went inside the gate of Gurdwara, however, the truck trailer hit Kaajdeep Kaur and thereafter, ran over motorcyclist Lachman Dass riding motorcycle bearing registration No.PB-13-Y-8476, who was coming from village Dirba side; that after the mishap, the accused left the truck trailer at the spot and himself ran

away; that Kaajdeep Kaur had suffered multiple injuries to which she succumbed at the place of occurrence; that Lachman Dass, the other injured, also died at the spot. The name of the accused – driver came to be known as Baghel Singh @ Geli.

The criminal machinery was set into motion by complainant Krishan Singh, who had got his statement recorded with the police, which formed basis for registration of the FIR. The investigation in the case started, during the course of which, the Investigating Officer visited the spot, prepared rough site-plan of the place of incident, took into possession the vehicles involved in the incident. Inquest proceedings were carried out qua unnatural deaths of Kaajdeep Kaur and Lachman Dass. Post-mortem examination on their dead bodies was got conducted. Statements of witnesses were recorded. Accused was arrested. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Sunam.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Sunam, 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, Sunam 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 eleven witnesses i.e. PW1 Sheeshpal, PW2 Bittu Ram, PW3 Tarsem Chand, PW4 Bhola Singh, PW5 Krishan Singh, PW6 Kuldeep Singh, PW7 SI Kashmir Singh, PW8 Pawan Kumar, PW9 HC Balwinder Singh, PW10 Retd. ASI Karnail Singh and PW11 HC Jarnail Singh.

Thereafter, the prosecution evidence was closed by the 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.

The trial Magistrate had formulated following points for determination:

- 1. Whether on 4.7.2011 in the area of P.S. Dirba, the accused drove the vehicle bearing registration No.PB-11-AP-4314 in a rash and negligent manner on the public way so as to endanger human life and public safety? If so its effect?*
- 2. Whether on the same date, time and place, accused while driving the above said vehicle in a rash and negligent manner at a high speed caused death of Kaajdeep Kaur and Lachman Dass not amounting to culpable homicide? If its effect?*

After hearing arguments, both the points were answered in

favour of prosecution and learned Judicial Magistrate Ist Class, Sunam 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, Sunam was also decided against the accused by learned Additional Sessions Judge, Sangrur, which left petitioner – accused Baghel Singh @ Geli 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 Punjab besides going through the record and I find that there is no merit in the revision petition.

Though complainant Krishan Singh, who appeared as PW5 did not toe the prosecution line as regards the details of the incident and he was declared a hostile witness as per request of the Public Prosecutor, the Public Prosecutor was allowed to put questions to this witness in the form of cross-examination. But then that by itself does not affect the prosecution case much as the other two eye-witnesses examined namely PW1 Sheeshpal, a brother of deceased Lachman Dass and PW2 Bittu Ram had supported the prosecution story on the material aspects providing the eye-witness account of the mishap. I find their presence at the spot at the relevant time to be natural and probable and account given by them to be worthy of reliance. No previous enmity between these two PWs and the accused has been alleged or proved, prompted by which they might have involved the accused wrongly and deposed against him falsely to secure his conviction. Though these PWs were cross-examined at

length on behalf of the accused but they stuck to their guns and could not be shattered on any vital point. Both the PWs identified the accused to be the person, who was driving the truck trailer at the relevant time. The accused is specifically named in the FIR. Non-holding of the test identification parade in this case does not have any adverse affect for the reason that the name of the accused is specifically mentioned in the FIR being the person, who was driving the truck trailer in question at the relevant time. PW1 Sheeshpal and PW2 Bittu Ram had identified the accused to be the person, who was driving the truck trailer in question in a rash and negligent manner. Rather PW1 Sheeshpal in his cross-examination had specifically stated that he had seen the accused when he was running away after leaving the truck trailer at the spot.

The First Appellate Court has dealt with this aspect in detail in a very convincing manner in para No.20 of the judgment observing that test identification parade is not a substantive piece of evidence.

Furthermore, the offences for which the accused was booked happened to be bailable ones. The investigating agency could not have possibly asked for his custody so as to make him participate in the test identification parade. On his own part, the accused did not request for arranging test identification parade. Since as per prosecution story, the accused after the accident had fled from the spot leaving the truck trailer behind, the eye-witnesses had ample time to see him and as such they were in a position to identify him to be the person, who was driving the offending truck and had caused the accident. It cannot be said to be identification of the accused in the Court by the eye-witnesses being for

the first time since, as per prosecution story and as deposed by the eye-witnesses PW1 Sheeshpal and PW2 Bittu Ram, they had seen such truck trailer driver at the time of accident at the spot.

As regards Krishan Singh – complainant turning hostile, though the same is very unfortunate since Krishan Singh had lost his minor daughter in the accident but even then he opted to resile from the statement got recorded by him with the police. However, it has to be kept in mind that some time people succumb to monetary allurements and financial temptation and at times they come under pressure making them resile from the statement made to the police in an attempt to deflect the path of justice but then the Courts are to take a realistic view of the whole situation and try to separate truth from the falsehood. Since the other two eye-witnesses have fully supported the prosecution story, complainant going hostile does not cause any dent in the prosecution case. The manner of the accident suggests that the rash and negligent driving of the truck trailer was direct and proximate cause of the mishap resulting in loss of two precious human lives. The accused was author of the accident by driving the truck trailer in a rash and negligent manner. Therefore, essential ingredients of Sections 279 and 304-A IPC were successfully established by the prosecution.

It comes out that the accused was driving the truck trailer 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 truck trailer on the public way and by his such wrongful driving caused the accident in

which Kaajdeep Kaur and Lachman Dass, innocent persons have lost their lives. 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.

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.

I on my part feel that the accused by rash and negligent driving of the truck trailer had caused death of two human beings. 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. For that reason, 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 revision petition is found to be without any merit and is dismissed accordingly.

24.10.2017

Brij

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