

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

CRR-487-2017(O&M)

Date of decision:-24.10.2017

Darshan Lal

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.H.S. Randhawa, Advocate
for the petitioner.

Ms.Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 19.7.2016 passed by learned Additional Sessions Judge, Rupnagar vide which she had dismissed an appeal against judgment of conviction and order of sentence dated 15.4.2013 passed by Sub Divisional Judicial Magistrate, Anandpur Sahib, vide which he had convicted accused Darshan Lal for the offences under Sections 279, 304-A, 337 IPC and sentenced him to undergo rigorous imprisonment for a period of six months for the offence under Section 279 IPC, further to undergo rigorous

imprisonment for a period of two years and to pay a fine of Rs.3,000/- and in default thereof, to further undergo simple imprisonment for two months for the offence under Section 304-A IPC and to undergo rigorous imprisonment for a period of three months for the offence under Section 337 IPC, all the sentences were ordered to run concurrently.

The accused-convict – Darshan Lal, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence passed by Sub Divisional Judicial Magistrate, Anandpur Sahib and judgment in appeal passed by Additional Sessions Judge, Rupnagar be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that the criminal machinery in this case was set into motion by complainant Ajmer Singh son of Hazara Singh, resident of Doudpur Chhota by way of getting his statement recorded with police of Police Station Nurpur Bedi on 9.4.2007, wherein he stated that son of his cousin sister Smt.Jasbir Kaur married with Jagan Nath of village Saskaur had died about 15/20 days earlier, as such on the said day, he along with his mother Smt.Gurdev Kaur and maternal aunt Smt.Gulzar Kaur had gone to village Saskaur to express condolence with Smt.Jasbir Kaur; that he was driving motorcycle having registration No.PB-71-0344; that his mother Smt.Gurdev Kaur and maternal aunt Smt.Gulzar Kaur were pillion riders on that motorcycle; that Jasbir Singh and Himmat Singh on a separate scooter were going along with them; that at about 1:00 p.m., when they had reached near link road of village Raipur, then a Tempo TATA-407 having registration

No.PB-07-B-3387 being driven by accused Darshan Lal in a rash and negligent manner without blowing horn came from Bainsan side and it struck motorcycle of complainant from behind, resultantly Smt.Gurdev Kaur and Smt.Gulzar Kaur fell down and died at the spot; that the tempo had dragged the motorcycle to some distance; that the complainant also received injuries on his head and other parts of the body; that the motorcycle was extensively damaged. After the accident, the Tempo TATA-407 driver managed to ran away.

This statement made by the complainant 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 accident, took into possession the vehicles involved in the mishap. Inquest proceedings were carried out qua unnatural deaths of Smt.Gurdev Kaur and Smt.Gulzar Kaur. 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 Sub-Divisional Judicial Magistrate, Anandpur Sahib.

On presentation of challan in the Court of Sub-Divisional Judicial Magistrate, Anandpur Sahib, 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 Sub-Divisional Judicial Magistrate, Anandpur Sahib finding that charge for offence under Sections 279, 337 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 the prosecution.

To bring home guilt to the accused, the prosecution examined as many as six witnesses i.e. PW1 Ajmer Singh, PW2 Amarjit Kaur, Clerk, PW3 Chander Mohan, Photographer, PW4 Dr.C.L. Bhatia, SMO, PW5 ASI Baldev Singh, Investigating Officer and PW6 HC Suraj Kumar.

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 has been falsely involved in this case as accident had taken place with alleged vehicle due to negligence of Ajmer Singh; that he was not the driver of TATA-407; that police has planted this false case in connivance with the complainant just to help him and his family members in getting the claim.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Sub-Divisional Judicial Magistrate, Anandpur Sahib convicted and sentenced the accused as mentioned supra. The appeal preferred against the judgment of conviction and order of sentence passed by the Sub-Divisional Judicial Magistrate, Anandpur Sahib was also decided against the accused by learned Additional Sessions Judge, Rupnagar, which left petitioner – accused

Darshan Lal 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.

Learned counsel for the petitioner has raised several contentions, first being that the accident had taken place due to fault of complainant Ajmer Singh, who was driving the motorcycle with two pillion riders inasmuch he had lost the balance and accused was not at fault in happening of the accident. This argument is devoid of any force. The argument might have seemed somewhat plausible if it had been a case of head on collision and then a plea could have been taken that the vehicle was being driven on its correct side but the motorcycle driver due to triple riding had lost the balance in the process had hit the tempo. But the position is completely different. It is a case of tempo hitting the motorcycle from behind, that goes to show the rash and negligent driving of the tempo by the accused. While driving a big vehicle like tempo on the road, the driver is supposed to take all the precautions that the other commuters on the road are not hit and safe distance from the vehicles going ahead is to be maintained. Similarly while overtaking it has to be ensured that enough space is there for overtaking and the vehicles being overtaken and the traffic coming from the opposite side do not get hit in the process. PW1 Ajmer Singh has categorically stated that the accident had taken place due to rash and negligent driving of tempo by the accused. Although he was cross-examined at length on behalf of the

accused but he stuck to his gun and could not be shattered on any vital point. He having suffered injuries in the incident and being a person, who had lodged the FIR regarding the mishap giving details of the accident is a stamped witness and his presence at the spot cannot be doubted. No previous enmity between the complainant and the accused has been alleged or proved prompted by which he might have involved the accused wrongly and deposed against him falsely to secure his conviction. Ajmer Singh (PW1) – complainant having lost his real mother and maternal aunt in the accident would have been the last person to try to screen the actual culprit and involve the accused in this case falsely, since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

As regards PW1 Ajmer Singh being the solitary eye-witness that does not cause any dent in the prosecution case since it is the quality of evidence and not the quantity which matters. Independent corroboration is a rule of prudence and not requirement of law. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

As regards PW1 Ajmer Singh saying in his cross-examination that he came to know about the accident after one week thereof and his being unable to disclose as to which part of the offending vehicle had hit, which part of the motorcycle, these things are not much material since statement of a witness is to be seen as a whole and a line or two cannot be picked up so as to interpret it in isolation so as to reach at inference favourable to the accused. The tempo had hit the motorcycle from behind, in the process, the pillion riders had fallen down and suffered multiple injuries, to which they had succumbed at the spot. The complainant and motorcycle were dragged to some distance, complainant had also suffered injuries. He must have been in the state of shock due to said mishap and minute details are difficult to recollect in the process. Furthermore forgetfulness is one of the basic human traits. Some details get forgotten with passage of time. Therefore, considering one or two replies given by PW1 Ajmer Singh in his cross-examination in isolation is not justified.

As regards non-examination of Jasbir Singh and Himmat Singh, who according to the prosecution case had also seen the accident, it has to be taken into view that the trial Magistrate had closed the evidence of prosecution by order and it was not a case of Public Prosecutor closing evidence of the prosecution without examining these witnesses.

One more fact which is to be taken into consideration is that accused had taken a defence that he was driving some other vehicle on the day of occurrence. As such it was for him to prove that fact but he has

been unable to do so. Therefore, it is to be taken that it was the accused who was driving the tempo at the relevant time. He was identified by PW1 being the person, who was driving the offending tempo at the relevant time. 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 plea that the motorcycle driver and the pillion riders were not wearing any helmets, as the name suggests, the complainant and deceased pillion riders belonged to Sikh religion. Nothing has come on record as to whether complainant was wearing a turban or not. Normally Sikh males do wear turbans. It being so, there was no occasion for him to wear a helmet. Similarly, it is not mandatory for Sikh women to wear helmets. However, without entering into this controversy, it is clear from the record that rash and negligent driving of the tempo by the accused was the direct and proximate cause of the accident, resulting in causing deaths of Smt.Gurdev Kaur and Smt.Gulzar Kaur and causing simple injuries to complainant. The accused cannot possibly dilute his guilt by taking such type of pleas.

Learned counsel for the petitioner has referred to citation **Lakshmanan Versus State of Tamil Nadu, 2001(Sup2) JT 396** by Hon'ble Apex Court in support of his contention that when defence that

there was little bit contribution from side of deceased also in happening of accident, it is a factor which should be taken into consideration while quantifying the sentence.

I have gone through this authority carefully. From the record, it does not come out that there was some fault of complainant motorcycle driver in happening of the accident. This aspect has been discussed in detail supra. Therefore, the accused cannot draw any benefit by taking such defence. Even in the authority, it has been held that contributory negligence is not a permissible defence in an action for rash and negligent driving. However, the same does not get proved in the instant case. In this very authority while dealing with an accident case in which mishap had been caused by bus driver driving a bus in a bazaar, it was observed that speed does matters and driver of bus while driving it in a bazar is to slow down the vehicle to such an extent as to be in complete control of vehicle since movements of pedestrians or other people can be expected at any time at such places, therefore, speed should only be such that a sudden application of brake should bring a complete stop to vehicle then and there. These observations are rather against the accused revision petitioner since accused could not control the tempo and had hit the motorcycle from behind thereby showing the rashness and negligence on his part. The manner of the accident suggests that the rash and negligent driving of the tempo 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 tempo in a rash and negligent manner on a public way. Therefore, essential ingredients of Sections 279, 337 and 304-

A IPC were successfully established by the prosecution.

It comes out that the accused was driving the tempo 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 tempo on the public way and by his such wrongful driving caused the accident in which Smt.Gurdev Kaur and Smt.Gulzar Kaur, innocent persons have lost their lives and complainant suffered injuries.

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 tempo 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. 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 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**