

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

Criminal Revision No. 3248 of 2010 (O&M)

Date of decision: 21.9.2018

Bijender

.. Petitioner

VS

State of Haryana

.. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Adish Gupta, Advocate, for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Rajesh Bindal, J.

The petitioner was arrayed as an accused in FIR No. 387 dated 4.8.2003 registered under Sections 279, 337, 338 IPC at Police Station, Sadar Ballabgarh, District Faridabad, on the allegation that due to rash and negligent driving by the petitioner, three persons Jai Devi, Umesh and Satyawati sustained injuries.

Briefly, the facts are that FIR in question was recorded on the statement of Jai Devi with the allegations that on 3.8.2003 at about 5.00 p.m., when the complainant and the girls accompanying her reached near the house of Narayan Singh, a Maruti Van bearing No. HR-29J-9099, which was being driven rashly and negligently, rammed into them. Due to this impact, they all sustained injuries. The driver sped away with the vehicle. Some people chased the driver, however, he escaped after leaving behind his van on Pyala Railway Crossing. The accident was witnessed by the complainant, Ganga Ram and Kallu. In the course of investigation,

petitioner Bijender son of Jai Kishore was arrested and thereafter released on bail.

After completion of investigation, challan was presented against the petitioner. He was charged for offences punishable under Sections 279, 337, 338 IPC to which he pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, examined as many as ten witnesses. In his statement recorded under Section 313 Cr.P.C., the petitioner stated that he has been falsely implicated in this case.

Considering the unimpeachable evidence on record in the form of statements of eye witnesses, the learned trial Court opined that the charges against the petitioner were proved beyond doubt and accordingly, he was sentenced to undergo following sentence:-

<i>Under Section</i>	<i>Sentence of imprisonment</i>	<i>Fine</i>
279 IPC		₹ 400/-
337 IPC		₹ 600/-
338 IPC	Six months imprisonment	

Fine was deposited by the petitioner before the learned Trial Court. In appeal before the learned Additional Sessions Judge, the conviction and sentence of the petitioner was upheld.

Though, initially learned counsel for the petitioner sought to assail the findings of the Courts below whereby he was convicted and sentenced to undergo imprisonment for the offence committed under Section 338 IPC, however, finding it difficult in view of the statements of the persons who were the eye witnesses, learned counsel for the petitioner prayed that keeping in view the fact that the petitioner was not a habitual offender, he had faced the agony of trial for about fifteen years and further

that he has family to support and being the sole bread-earner of the family should be extended the benefit under the Probation of Offenders Act, 1959. He further submitted that after he was taken into custody, on rejection of his appeal by the learned Sessions Judge, he has already undergone actual imprisonment of two months.

After hearing learned counsel for the petitioner, this Court does not find any illegality in the conviction of the petitioner. However, the factum of long trial, the petitioner being first offender, and sole bread-earner of the family are sufficient mitigating circumstances to extend the benefit of probation to the petitioner.

Keeping in view my above observations, the present petition is disposed of by holding that the conviction of the petitioner is upheld, however, the sentence awarded to him is modified to the extent that instead of undergoing the imprisonment for the remainder sentence, the petitioner shall be released on probation on his executing bonds to the satisfaction of Chief Judicial Magistrate, Faridabad. The petitioner is also directed to file an undertaking to keep peace and maintain good behaviour and to appear and undergo sentence as and when called upon to do so.

The petition is disposed of accordingly.

21.9.2018
vs

(Rajesh Bindal)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No