

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

CRR-3753-2012

Date of Decision: 26.11.2018

Sukhbir Singh

...Petitioner

vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Divya Godara, Advocate, for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for setting aside the judgment of trial Court dated 04.08.2010 vide which the petitioner was held guilty for commission of offence punishable unde Sections 279, 337 and 304-A IPC and order of sentence dated 05.08.2010 vide which the petitioner was directed to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 01 month, as well as judgment dated 08.11.2012 passed by the lower appellate Court vide which the appeal filed by the petitioner was dismissed.

Brief facts of the case are that FIR No. 112 dated 06.07.2006 was registered on the statement of one Vikram Singh vide his statement Ex. PA. It is stated that the complainant was going with his mother to Ramgarh (Rajgarh) to attend the funeral ceremony of his maternal grand father in his Maruti Car bearing No. HR20F/9698 and when he reached at T.Point, one jeep bearing No. HR20D/7583, driven by the petitioner at a high speed, came from Sirsa side and, he turned the jeep towards village Dabwali. The

complainant by applying the breaks of his car, tried to save but the petitioner while driving the Jeep in a negligent manner hit the car and on that account, the complainant and his mother received injuries and two persons traveling in the jeep also sustained injuries. The police, after registration of the FIR, submitted the challan and the trial Court framed charges under Sections 279/337/304-A IPC vide order dated 04.06.2007 to which the petitioner did not plead guilty and claimed trial.

Thereafter, trial Court recorded the prosecution evidence. Complainant-Vikram appeared as PW1 and deposed on the line of the version given in the FIR and stated that in the accident, one person had died. PW2-Savitri also deposed on the same line. PW3-Partap Singh stated that he was one of the passengers in the jeep driven by the petitioner and the accident was caused due to rash driving of the petitioner. PW4-Dr. S.L.Aggarwal proved the X-ray report of injured PW1 and PW2. PW6-Vijay Kumar proved the mechanical inspection report of the car. PW7-Mulakh Raj proved the photographs of the place of occurrence. PW8-Dr. G.S.Sumani proved the MLR of the injured persons and PW9-Mani Ram, also an eye witness, deposed on the line of the FIR.

Trial Court, thereafter, recorded the statement of the petitioner under Section 313 Cr.P.C. and all the incriminating material was put to him, however, he denied the same. However, no defence evidence was led by him.

Thereafter, trial Court convicted the petitioner and sentenced him to undergo rigorous imprisonment as mentioned in the earlier part of this judgment.

The appeal filed by the petitioner was also dismissed by the

lower appellate court.

Hence the present criminal revision petition.

During the pendency of the present petition, the sentence of the petitioner was suspended vide order dated 14.03.2013.

Counsel for the petitioner has argued that both the Courts below have failed to appreciate the statements of PW3 and PW9, who are relative of the injured/deceased and are interested witnesses. Counsel further submits that from the statements of prosecution witnesses, it could not be proved that the petitioner was driving the jeep in a rash and negligent manner. It is further argued that identity of the petitioner is not proved as Test Identification Parade is not conducted. It is further argued that the Investigating Officer has not appeared as a witness and, therefore, the benefit of doubt should be given to the petitioner.

Counsel for the petitioner further argued that the petitioner is facing the trial since 2006 and he remained on bail during the pendency of the trial, first appeal and in the present revision petition, his sentence was suspended in 2013 and in the intervening period, he has not committed any offence; has not misused the concession of bail and this shows substantive improvement in his behaviour. She further submitted that the petitioner is a first convict and a young person, has his own family to support, and being a poor person, he is earning his livelihood by working as a driver, therefore, the sentence awarded to him be reduced to the sentence already undergone by him i.e. 04 months and 22 days as he is ready to pay additional compensation to the legal representative of the deceased to a tune of Rs.50,000/-.

Learned State counsel has filed custody certificate and as per the custody certificate, the petitioner has undergone 04 months and 22 days of total sentence and he is not involved in any other case.

After hearing learned counsel for the parties, I do not find any fault with the concurrent findings recorded by both the Courts below and, therefore, uphold the conviction of the petitioner under Sections 279/337/304-A IPC as both the Courts have rightly held that though the prosecution witness are interested witnesses, but it will not effect the merits of the case as they were the co-passengers in both the vehicles and they have deposed that it was on account of rash and negligent driving of the petitioner, the accident has occurred. Courts below have also rightly held that there was no dispute about identity of the petitioner as he was the driver of the offending vehicle wherein the witnesses were also travelling alongwith deceased/injured person. Therefore, the judgment of conviction passed by the Courts below are upheld.

However, considering the mitigating circumstances explained by learned counsel for the petitioner that the petitioner is a poor person; sole bread earner of the family and is not involved in any other case, as per custody certificate dated 24.11.2018, and noticing that the petitioner is facing the trial since 2006 and he remained on bail during trial and his sentence was suspended by the lower appellate court as well as by this court and during the intervening period of 12 years, he has neither misused the concession of suspension of sentence nor is involved in any other case, the sentence can be reduced.

In view of the same, this petition is partly allowed, while upholding the judgment of conviction, the sentence of the petitioner is

reduced to 04 months and 22 days i.e. the sentence already undergone by him.

However, this will be subject to the condition that the petitioner will deposit an amount of Rs.50,000/- with the trial Court/Successor Court/Illaq Magistrate within a period of 03 months from today which shall be payable to the LRs of the deceased-Rajender @ Raju.

With the aforesaid modification, petition is disposed of.

It is further made clear that if the petitioner fails to deposit the said amount within a period of 03 months, this revision petition shall be deemed to be dismissed without any further orders.

26.11.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No