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

CRR-1023-2013

Date of decision-15.11.2018

Jasbir Singh

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Subhash Godara, Advocate for
Mr. S.S.Dinarpur, Advocate for the petitioner.

Mr. M.K.Sangwan, DAG, Haryana.

MANOJ BAJAJ, J.

Jasbir Singh has come up with this revision petition to assail the judgment dated 06.03.2013 passed by Additional Sessions Judge, Ambala whereby the conviction recorded by the trial Court for the offences punishable under Section 279 and 304-A of the Indian Penal Code was affirmed.

The trial Court awarded simple imprisonment (in short 'S.I') under Section 279 IPC for a period of six months and fine of ₹500/- and in default of payment of fine to undergo S.I for a further period of one month and under Section 304-A IPC, S.I for a period of one year with fine of ₹1000/- and in default of payment of fine to undergo S.I for a further period of two months.

The brief facts of the case are that on 16.03.2004 Pala Ram and his brother Sultan Singh were standing in front of the shop of Haryana Property Dealers along with other persons, when a tractor came from the side of Mahesh Nagar being driven by the petitioner who intentionally ran over a person who was walking on the berm of the road. The persons present there raised noise, but the tractor driver did not stop and turned the tractor towards them. Thereafter, tractor ran over the son of Pala Ram, namely, Satish Kumar and finally the tractor driver struck his tractor against police gypsy bearing No.HR-01-A-8061. It is the case of the prosecution that the tractor driver was dead drunk. On the basis of the complaint given by Pala Ram, formal FIR No.65 dated 16.03.2004 under Sections 279 and 304-A IPC was registered at Police Station Mahesh Nagar.

After submission of challan and completion of formalities, charges were framed the petitioner for the offences punishable under Sections 279 and 304-A of Indian Penal Code vide order dated 19.05.2014 by the Judicial Magistrate First Class, Amabala and thereafter, the prosecution adduced its evidence and in all 09 witnesses were examined. Learned trial Court after appreciating the evidence found that prosecution has successfully brought the guilt of the petitioner and resultantly, convicted him and inflicted sentence as mentioned above.

Aggrieved against the judgment of conviction dated 01.06.2011 and order of sentence dated 02.06.2011, an appeal was preferred before learned Sessions Judge, Ambala. The appellate Court found that there is no valid reason to interfere in the impugned judgment of conviction as the

prosecution has proved the charges against the convict Jasbir Singh.

Now the petitioner has preferred the present revision petition challenging both the judgment passed by the trial Court as well as the appellate Court.

I have heard learned counsel for the petitioner and the State, and with their assistance gone through the record of the case carefully.

Both the Courts below have found that the prosecution witnesses particularly the complainant-PW-2 who is one of the eye witnesses of the occurrence supported the prosecution case and narrated the entire occurrence cleanly. The evidence of PW-2 is further supported by EHC Naresh Kumar who testified as PW-3 and supported the prosecution case revealing the rash and negligent driving by Jasbir Singh who caused death of two persons. This witness was a driver of PCR No.9 which was also damaged by tractor driver (petitioner).

Learned counsel for the petitioner submitted that there is no postmortem report produced to establish the charges and therefore, the petitioner deserves the benefit of doubt. This Court has considered this submission and find no merit in it, as PW 8-Dr.Satish Kumar was examined who stated that on 16.03.2004, he medico-legally examined unknown person (Satish Kumar) vide MLR Ex.PW-8/A and he observed intense bleeding from mouth and the nose with deformity of face and lower jaw, lacerated wound star shape bone deep on occipital region and lacerated wound lower lip bleeding. Further, he sent rukka Ex.PW-8/B to the Police Post Regiment, Ambala Cantonment.

No doubt, the doctor who conducted postmortem examination on the dead bodies of Satish Kumar and Satish Chander has not been examined by the prosecution, but from the testimony of PW-2 Pala Ram, it is proved that Satish Chander died on the spot and from the testimony of PW-8 Dr. Satish Kumar, it is proved that due to injuries on the person of Satish Kumar, his general condition as well his vitals were very poor. In the present case, causing of death of Satish Kumar and Satish Chander due to injuries suffered by them in the accident caused by rash and negligent driving of the tractor driven by the accused-petitioner is proved by the ocular evidence of PW-2 Pala Ram, PW-3 EHC Naresh Kumar, PW-4 Satnam Singh and PW-7 ASI Bhim Singh. As to running over of the tyres of the tractor over the heads of Satish Kumar and Satish Chander, is also supported by inquest reports Ex.PW-9B and Ex.PW-9/C proved by PW-9 ASI Suresh Pal. Therefore, mere non-examination of the doctor who conducted the postmortem examination on the dead bodies of Satish Kumar and Satish Chander is not fatal to the case of the prosecution.

In view of the above, there is no ground to interfere with the conviction recorded by the Courts below.

Lastly it is urged that the petitioner has suffered the agony of trial and appeal for the last 15 years and has prayed that the benefit of probation be extended to him. The said prayer has been opposed by learned State counsel. According to him, the petitioner has caused death of two persons by driving rashly and negligently and the charges have been proved against him. It is contended that the trial Court has already shown leniency

by imposing the sentence of one year only. No other point was raised.

Considering the prayer, this Court is of the opinion that sentencing is equally important feature in a criminal case where the Courts have to ensure that the proportionate sentence is imposed upon the convict. In case the disproportionate sentence is awarded, the same would not have the deterrent effect and the object and purpose of penal laws would stand defeated. It is a case where the petitioner was drunk and was unable to control the tractor and rammed into the standing persons thereby causing two deaths. Besides, the Police vehicle was damaged and it was at that stage the vehicle came to a stop.

In “*State of Punjab Vs. Balwinder Singh and others*” 2012 (1)

SCC (Criminal) 706, Hon'ble the Supreme Court has held as under:-

“10) It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, this Court, on several occasions, has reminded the criminal courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act, 1958. We fully endorse the view expressed by this Court in Dalbir Singh (supra).

11) While considering the quantum of sentence to be imposed for the offence of causing death or

injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.

12) In the light of the above principles, we express our inability to accept the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days. Merely because the fine amount has been enhanced to Rs.25,000/- each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers of the bus and the truck. Accordingly, we set aside the impugned order of the High Court and impose a sentence of rigorous imprisonment for six months with a fine of Rs. 5,000/- each. The trial Court is directed to take appropriate steps for surrender of the accused in both the appeals to serve the remaining period of sentence. The appeals are allowed to the extent mentioned above.”

In view of the above, benefit of Probation of Offences Act, 1958 cannot be extended to convict who has been convicted for the offences punishable under Sections 279 and 304-A IPC.

Dismissed.

(MANOJ BAJAJ)
JUDGE

15.11.2018
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No