

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

CRR-415-2012(O&M)

Date of decision:-11.5.2018

Shamsher @ Sande

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Sandeep K. Sharma, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 7.4.2010 passed by Judicial Magistrate Ist Class, Jhajjar vide which he had convicted accused Shamsher @ Sande for the offences under Sections 279 and 304-A IPC and order dated 8.4.2010 vide which the said accused was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- 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.1,000/- for the offence under Section 304-A IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month, both the sentences were ordered to run concurrently, as well as judgment dated 28.11.2011 passed by Additional Sessions Judge, Jhajjar vide which the judgment of conviction and order of

sentence passed by the trial Magistrate were affirmed and the appeal filed by the accused – convict was dismissed.

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

Briefly stated, the prosecution story is that on 8.4.2003, complainant Samer Singh son of Sh.Lal Chand along with Chanderi wife of Shri Bhagwan, his wife Neeraj, Santosh wife of Hari Om, Murti wife of Randhir had gone to village Samaspur; that at about 7:00 p.m. while they were standing at bus stand Samaspur for going to Sasroli, then a pick-up jeep bearing No.HR-63-0496 came from Dadri side and stopped near them, the jeep was being driven by Shamsher @ Sande and Bhola son of Preet was sitting with him on the front seat; that Shamsher @ Sande asked the complainant and women standing with him to board their jeep for going to Sasroli; the complainant sat in the front cabin, whereas Chandri, Neeraj, Santosh, Murti and Monika sat in the back portion of the jeep; that Shamsher @ Sande was driving the jeep at a very high speed and he was doing so at the instance of Bhola; the complainant requested Shamsher @ Sande to drive the jeep slowly but to no effect; that when the jeep reached at bus stand Sasroli, then complainant asked Shamsher @ Sande to stop the jeep but he did not do so and rather reached at Sasroli Chowk while driving the jeep in a rash and negligent

manner; there the complainant came out from the jeep and asked the remaining passengers to alight from the jeep, then Shamsheer @ Sande started the jeep and drove it in a rash and negligent manner, resultantly, Monika, Murti, Santosh and Neeraj fell from the jeep on the road; that Chandri also fell down on the road after some distance; Shamsheer @ Sande and Bhola took the jeep towards Matanhail side; that Satyawar son of Raje Ram, who was standing on the chowk came there; the complainant and Satyawar took the injured to General Hospital, Jhajjar where Neeraj, Santosh, Murti were admitted, whereas Chandri was referred to PGI MS, Rohtak due to her serious condition; that Monika was not medically examined due to injury on her person was minor in nature; that the complainant and Satyawar started for Rohtak for taking Chandri there for treatment, however, Chandri expired after reaching Medical College, Rohtak. FIR regarding the accident was lodged by complainant Samer Singh by making statement to the police. After registration of the FIR, the investigation in the case started. Both the accused were arrested in this case and were released on bail since the offences happened to be bailable. Statements of witnesses were recorded. Necessary documents were taken into possession.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Jhajjar.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Jhajjar, 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, Jhajjar finding that charge for offences under Sections 279 and 304-A IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they 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 twelve witnesses, namely, PW1 Samer Singh, PW2 Murti, PW3 Santosh, PW4 ASI Ajit Singh, PW5 HC Bal Krishan, PW6 HC Phool Kumar, PW7 Neeraj, PW8 ASI Shamsher Singh, PW9 Dr.Vimal Sharma, PW10 Sukhbir Singh, PW11 Satyawan and PW12 Randhir Singh.

Thereafter, the prosecution evidence was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to such accused but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Accused did not lead any evidence in their defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Jhajjar convicted and sentenced the accused Shamsher @ Sande as mentioned supra, whereas acquitted accused Sandeep @ Bhola and the appeal preferred by accused Shamsher @ Sande against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Jhajjar was also decided against the accused by learned Additional Sessions Judge, Jhajjar, which left petitioner – accused Shamsher @

Sande 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 Haryana besides going through the record.

From the eye-witness account provided by PW1 Samer Singh, PW2 Murti, PW3 Santosh and PW7 Neeraj, it stands adequately proved on record that accused was author of the incident by rash and negligent driving of offending jeep. Although all these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of all the witnesses to be likely and probable and account given by all of them to be worthy of reliance.

The medical evidence corroborates 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.

It comes out that the accused was driving the jeep 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 jeep on the public way and by his such wrongful driving caused the accident in which Smt.Chandri, an innocent person has lost her life and Neeraj, Santosh and Murti 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 jeep had caused death of one human being. 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.

Shamsher @ Sande – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Jhajjar is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

11.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**