

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

**CRR No.2014 of 2017 (O&M)
Date of Decision: 29.05.2018**

Jatinder SinghPetitioner
Vs
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Sheenu Shura, Advocate for
Ms. Diya Sodhi, Advocate
for the petitioner.

Mr. Sandeep Kumar, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. The present crl. revision petition has been filed against the judgment of conviction and order of sentence recorded by the Courts below.

[2]. Vide order dated 28.10.2013 passed by the Judicial Magistrate Ist Class, Fatehgarh Sahib, petitioner was convicted under Sections 279, 337, 304-A IPC and was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs.3,000/- under Section 304 IPC, rigorous imprisonment for a period of 6 months and to pay fine of Rs.1,000/- under Section 337 IPC and to pay fine of Rs.1,000/- under Section 279 IPC. The default clauses were also made in

the event of non-payment of fines. In the event of non-payment of fine under Section 304-A IPC, petitioner was to further undergo rigorous imprisonment for a period of 3 months. Similarly in event of non-payment of fine under Section 337 IPC, he was to further undergo rigorous imprisonment for a period of 1 month and similarly in the event of non-payment of fine under Section 279 IPC, he was to undergo rigorous imprisonment for a period of one month. All the sentences were ordered to run concurrently.

[3]. Brief facts are that a vehicular accident in question took place on 26.10.2010 at about 11.30 a.m., in which Bhupinder Singh died. Two other persons namely Sandeep Singh and Basta Singh were injured. The police swung into action on receipt of two medical *ruqas* from Medical Officer, Khamanon with regard to admission of injured Sandeep Singh and Basta Singh as well as with regard to death of Bhupinder Singh. Statement of Sandeep Singh was recorded, who stated that on 26.10.2010, he and his father Bhupinder Singh were going on motor cycle to Khamanon from their village for distributing wedding cards. Sandeep Singh was driving the motorcylce and his father Bhupinder Singh was pillon rider. When they reached half a kilometre ahead of village Mansurpur at about 11.30 a.m., one tempo came from the side of Khamanon. One motorcyclist

was also driving the motorcycle in a rash and negligent manner. That motorcyclist while overtaking the said tempo, struck in the motorcycle of the complainant. Due to the impact, the father of complainant fell down and his left arm was fractured. Father of the complainant received multiple injuries and became unconscious. The complainant also received injuries. Due to the collision, driver of the offending vehicle as well as pillion rider also fell down. Driver of offending vehicle was Jatinder Singh and pillion rider was identified as Basta Singh. The injured were hospitalized by the witnesses. Father of complainant succumbed to his injuries on the way. The police filed the challan against the petitioner. Petitioner was chargesheeted for the offences under Sections 279, 337, 304-A IPC.

[4]. Prosecution examined as many as 10 prosecution witnesses, besides exhibiting number of documents on record.

[5]. After completion of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C., wherein he denied all the allegations and pleaded false implication. Liberty was given to lead evidence in defence, but he did not lead any oral or documentary evidence in his defence.

[6]. The trial Court on the basis of material on record convicted and sentenced the petitioner in the manner as

narrated above.

[7]. The appeal filed by the petitioner was also dismissed by the lower Appellate Court vide judgment dated 05.10.2016.

[8]. Though the present crl. revision petition was filed challenging the impugned judgments on merit, but vide order dated 26.05.2017, learned counsel appearing on behalf of the petitioner confined his submission for taking lenient view in respect of quantum of sentence awarded to the petitioner without challenging the conviction of the petitioner on merits.

[9]. By now, it is settled principle of law that even if, the accused makes a prayer for taking lenient view for reduction of sentence, the Court is required to appraise the case on merits. The point for consideration in the present revision petition is whether the accident had occurred due to rash and negligent driving of the petitioner.

[10]. Learned counsel for the petitioner submitted that the accident had not occurred due to any negligence on the part of the accused/petitioner as he had no such intention to cause accident. The pleaded case of the petitioner was to the effect that one tempo was passing and while overtaking the same, the side of tempo hit the motorcycle of the complainant and due to which drivers of both the motorcycles fell down and all the

occupants received injuries. Later on Bhupinder Singh succumbed to his injuries. There was no rash and negligent act on behalf of the petitioner, rather the same had happened due to the circumstances when the petitioner was overtaking the tempo.

[11]. Learned counsel further submitted that the act committed by the petitioner does not fall under rash and negligent act as the same cannot be termed as omission which a reasonable and prudent man guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent man and reasonable man guided by similar considerations would not do. In view of above, the negligence cannot be considered to be an absolute term, rather the same is a relative thing which can be compared viz-a-viz., an individual's case. It cannot be stated with precision or with any mathematically tested formula by which negligence can be infallibly measured in a given case. Whether there exists negligence *per se* or a course of conduct amounts to negligence will normally depend upon the attending circumstances of the case which have to be taken into consideration by the Court while convicting and sentencing the accused. The conclusion is that negligence is a relative term and it depends upon facts and circumstances of each case. In a given case, not doing

something which one was required to do can constitute negligence. The accident in question took place in the process of overtaking the vehicle. The judgment of motorcyclist is a very relative thing. It is a settled point of consideration that every individual behaves differently in a given situation. On seeing a situation, one may react differently. If the situation is applied to the situation of the accident, the petitioner had taken the situation and became courageous to overtake the vehicle i.e tempo. In the same situation, the second motorcyclist would have stopped, slow down the motorcycle and would have allowed the vehicle coming from opposite direction to pass through. In the same situation, third motorcyclist would have accelerated the speed so as to overtake the tempo comfortably with a suitable margin. In any case, the error in judgment in overtaking the tempo suitably or to allow the opposite vehicle to pass through comfortably was dependent upon the stimulus which was ultimately perceived by the petitioner in his mind. Intention cannot be attributed in such a scenario and the act of negligence can at the best be applied. The rash and negligent driving within the meaning of Section 279 IPC is the manner so rash or negligent driving even when one is driving a vehicle at a slow speed but recklessly and negligently. The act presupposes the abnormal conduct and the same is inconclusive

driving of a vehicle at slow speed also. So rash and negligent driving is not necessarily that the motorcyclist should drive the vehicle with a high speed. It all depends upon the situation in which the accident has taken place. The negligent act so as to endanger the human life is the consideration. The act of rash and negligent driving is to be examined in the light of attending facts and circumstances of the present case. It is a fact incapable of being construed or seen in isolation.

[12]. I have heard the submissions made by learned counsel for the parties.

[13]. Presence of the accused is undisputed in the present case. The accused himself had suffered injuries in the said accident along with the other occupants. He was hospitalized along with the complainant. The plea of not conducting identification parade becomes irrelevant when the injured had a chance to have glimpses of the accused for a longer time when the injured persons were hospitalized in the same hospital. The complainant while appearing as PW-1 had identified the accused in the Court. Basta Singh was a pillion rider on the motorcycle of the accused. He was examined by the prosecution as PW-7, who had testified that the petitioner was driving the motorcycle. The statements of PW-1 and PW-7 were corroborative and nothing could be extracted in their cross-

examination. Holding of test identification parade was not necessary in the aforesaid context. There cannot be any straightjacket formula for holding test identification parade on mandatory notion in every case and the failure to hold test identification parade *ipso facto* would not make the prosecution story inadmissible as per ratio in **Ashok Debbarma @ Achak Debbarma vs. State of Tripura, 2014(3) R.C.R. (Criminal) 261.**

[14]. The other evidence led by the prosecution was corroborative of the fact that the accident had resulted due to rash and negligent act of the petitioner. But at the same time, petitioner was not found to be drunk, nor was having any such disability to drive the motorcycle. The accident took place on account of error of judgment. In ***Criminal Appeal No.520 of 2015*** titled '***State of Punjab vs. Saurabh Bakshi***', decided by the Hon'ble Apex Court on 30.03.2015, though the Hon'ble Apex Court came down heavily on drunken driving and observed that the payment of compensation cannot be construed as a passion of mercy in applying the principle of payment of compensation as the factor for reduction of sentence. It will be a misplaced sympathy which would render and affect the justice delivery system because justice is a 'crown glory' and 'sovereign mistress' and 'queen of virtue'. Such an offence blights not only

the lives of victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In the said case, the Hon'ble Apex Court had the occasion to consider the offence of one year imposed by the Courts upon the accused and the same was reduced to six months.

[15]. In the instant case, the petitioner has reached at the stage of concluding the entire sentence except marginal calculations. Learned counsel for the petitioner had confined his statements only for considering the case *qua* quantum of sentence.

[16]. Having taken note of facts and circumstances of the case, in my considered opinion there is no scope of any interference in the conviction recorded by the Courts below for the offences in question. However, petitioner is sentenced to undergo for the period already undergone by him, which on computation would come out to be more than 1 year 11 months out of sentence of 2 years.

[17]. Ordered accordingly.

May 29, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No