

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

**CRR No.1109 of 2018 (O&M)
Decided on: 31.10.2018**

Shiv Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Gurdeep Kaur, Advocate
for Mr. Gobind Korla, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the judgment dated 12.08.2016 vide which the petitioner was held guilty for commission of offence punishable under Section 304-A read with Section 279 of the Indian Penal Code, 1860 (in short 'IPC') and the order of sentence dated 12.08.2016 vide which the petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of fourteen days as well as the judgment dated 01.02.2018 passed by the Lower Appellate Court vide which the appeal preferred by the petitioner, was dismissed.

Brief facts of the case are that on 31.03.2011, the

complainant – Bhupinder Singh along with his father Darshan Singh and cousin brother Tarlochan Singh were going on tractor bearing No.PB-23-B-4926 towards the house of his sister and was sitting on the residue straw of paddy crop (Parali). The tractor was being driven by Tarlochan Singh and his father Darshan Singh was sitting on the right mud guard of the tractor. At about 3.00 p.m, when they reached near defence colony, city near the boundary of village Himayunpur, then one truck which was being driven by its driver at a very high speed came there and struck with the tractor, as a result of which, the tractor lost its control and his father Darshan Singh fell on the road and rear tyres of the truck ran over him due to which the complainant's father sustained serious injuries. He noted down the number of the truck as HR-64-90634. The truck driver came down when he was looking after his father but later on he fled away from the spot. The accident occurred due to rash and negligent driving of the truck by its driver. On the basis of the above said statement, the present case has been registered against the accused. The investigations were started. During the course of investigation, the accused was arrested and the offending vehicle was taken into possession. After conclusion of the investigation, challan against the accused was presented before the Ilaqa Magistrate.

After presentation of the challan and on finding a *prima facie* case under Sections 279/304-A IPC, the petitioner was charge-sheeted, to which he did not plead guilty and claimed trial.

The prosecution examined Jagir Singh as PW1, the complainant – Bhupinder Singh as PW2, Sukhdarshan Singh as PW3, Himmat Singh as PW4, Tarlochan Singh as PW5, Dr. Harkirat Singh as

PW5 (renumbered), Major Singh as PW6, Ramesh Sharma as PW7 and Sarwan Kumar as PW8.

After conclusion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and all the incriminating evidence was put to him but he denied the same by stating that he was innocent and has been falsely implicated. He further submitted that he wanted to lead evidence in defence but did not lead the same.

On appraisal of the material evidence available on record, the trial Court convicted and sentenced the accused vide order dated 12.08.2016.

Thereafter, the accused preferred an appeal, which was also upheld by the Lower Appellate Court.

Feeling aggrieved against the aforesaid orders, the petitioner preferred the present revision petition.

Counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case as the allegations in the FIR are that the complainant along with one Tarlochan Singh and deceased – Darshan Singh were going on a tractor bearing No. PB23-B-4926 towards the sister's house of the complainant and the complainant was sitting on the loaded trolley with paddy straw. The tractor was being driven by Tarlochan Singh and his father i.e. deceased – Darshan Singh was sitting on the right mudguard of the tractor and at about 03:00 pm, the petitioner while driving his truck struck the same against the aforesaid tractor, due to which the driver of the tractor lost the balance and Darshan Singh fell on the road and the rear tyre of the tractor was run over him and thereafter, he died.

It is argued on behalf of the petitioner that both the prosecution witnesses i.e. PW2 – Bhupinder Singh and PW5 – Tarlochan Singh are interested witnesses being related to the deceased and one of the witness i.e. PW2 – Bhupinder Singh was declared as a hostile witness but despite that the Courts below have convicted the petitioner for the offence punishable under Sections 304-A read with Section 279 IPC. It is further submitted that no independent witness was joined and there are material discrepancies in the statement of the witnesses regarding the description of the accident and the manner in which the same was caused.

Counsel for the petitioner in the alternative has also submitted that the petitioner is the first offender and he is the sole bread-earner of the family and is constantly suffering from pain in the lumber region and is under constant medical supervision of the Medical Officer, District Jail Nabha. It is also submitted that out of 01 year simple imprisonment awarded by the trial Court, the petitioner has already undergone about 09 months and 11 days of actual sentence and about 11 months of total sentence including the remissions as per the Custody Certificate dated 23.10.2018. It is further argued that the petitioner is not a previous convict and during the period, he was facing the trial and during pendency of first appeal, he has not misused the concession of bail and he was not found involved in any other case subsequent thereto.

Lastly, counsel for the petitioner has submitted that the petitioner is ready to compensate the legal representative of the deceased – Darshan Singh by paying an additional amount of

Rs.20,000/- as substantive amount has already been awarded in their favour by the Motor Accident Claims Tribunal.

Counsel for the State has already placed on record the medical status report by way of an affidavit of the Superintendent, New District Jail, Nabha including the Certificate of the Jail Medical Officer as Annexure R1 and the Custody Certificate of the petitioner as Annexure R2. Counsel for the State has not disputed the actual and total sentence (including remissions) undergone by the petitioner.

A perusal of the Medical Certificate show that though the petitioner is not suffering from serious ailments, however, he is under constant treatment on account of pain in his lumber region and he is continuously being treated before the Civil Hospital, Nabha, under the supervision of the Jail Doctor.

After hearing counsel for the parties, I find no ground to interfere in the findings recorded by both the Courts below regarding the conviction of the petitioner under Section 304-A read with Section 279 IPC, however, I find merit in the argument raised by counsel for the petitioner that since the petitioner has undergone substantive sentence of about 11 months out of 01 year simple imprisonment, his remaining sentence can be reduced to the period already undergone by him, considering the mitigating circumstances that he is the first offender; he has faced the agony of protracted trial since 2011 and he was on bail during the pendency of the trial and his sentence was also suspended by the Lower Appellate Court and during that period, he has not misused the concession of bail; he has not repeated such offence and he is also not found involved in any other FIR.

In view of what has been discussed hereinbefore and considering the fact that the only one month's time remain to be undergone by the petitioner, the present revision petition is partly allowed and the order dated 12.08.2016, vide which the petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of fourteen days, is modified to the extent that the sentence awarded to the petitioner is reduced to the period already undergone by him i.e. about 11 months.

This will, however, be subject to deposit of Rs.20,000/- with the Chief Judicial Magistrate, Mohali, within a period of 02 months from the date of passing of this order, failing which the present revision petition shall stand dismissed and thereafter, the petitioner will have to undergo the remaining sentence.

The Superintendent, New District Jail, Nabha is directed to release the petitioner forthwith, if he is not found involved in any other case.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

31.10.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No