

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

**Criminal Revision No.4117 of 2017 (O&M)
Date of Decision: August 06, 2018**

Jasbir Singh

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. R.P. Dhir, Advocate
for the petitioner (s).

Mr. Amitoj Singh Dhaliwal, D.A.G., Punjab.

SURINDER GUPTA, J.

This is revision against the judgment dated 30.10.2017 passed by learned Additional Sessions Judge, Hoshiarpur, whereby the appeal filed by the petitioner against the judgment/order dated 03.03.2016 passed by Chief Judicial Magistrate, Hoshiarpur, convicting and sentencing him for offences punishable under Sections 279, 338 and 304-A of Indian Penal Code (for short-IPC), was dismissed.

As per case of the prosecution, Navdeep Singh @ Navi along with his friends Navjot Singh and Harsumiran Singh was going to bus stand on his motorcycle bearing registration No.PB-21B-7689. At about 10.15 p.m., they reached near Police Station Sadar Hoshiarpur and on seeing the green signal, tried to cross the Chowk. In the meanwhile, a Tavera vehicle of gray colour bearing registration No.PB-06H-0690, came from

Chandigarh side. It was being driven in a rash and negligent manner and at a high speed. The driver of Tavera vehicle despite red light signal tried to cross the chowk and hit the motorcycle of complainant, resulting in serious injuries to Navdeep Singh, Navjot Singh and Harsumiran Singh, who fell on the ground. The driver of Tavera stopped his vehicle and tried to pick the complainant/injured and in the process, his driving licence fell at the spot from which the complainant came to know his name as Jasbir Singh son of Bua Singh. Navjot Singh succumbed to his injuries at the spot. In the meanwhile, a PCR of Punjab Police came at the spot. People also gathered there on which Jasbir Singh fled away from the spot. Initially, both injured was taken to Civil Hospital. Later Harsumiran Singh was got admitted in a Hospital at Mukerian and Navdeep to Bagha Hospital, Hoshiarpur. This accident took place due to rash and negligent driving of Tavera vehicle by its driver Jasbir Singh.

Petitioner Jasbir Singh was arrested on 20.04.2009. The offending vehicle in damaged condition, was taken into possession and after completion of investigation, challan was presented before the Court.

After complying the provisions of Section 207 Code of Criminal Procedure(for short-Cr.P.C.) and on finding a prima facie case, charge for the offences punishable under Sections 279, 338 and 304-A IPC was framed against the petitioner to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined complainant Navdeep Singh as PW1, Dr.A.K. Saini as PW2, ASI Daljit Kumar as PW3, Head Constable Gurdeep Singh as PW4, Injured Harsumiran Singh as

PW5, Harbhajan Singh PW6, Dr. Sukhwinder Singh as PW7, Dr. Rajesh Mehta as PW8. Thereafter the evidence of prosecution was closed by court order.

All the incriminating material was put to the petitioner-accused while recording his statement under Section 313 Cr.P.C., which he denied and pleaded his innocence and false implication. Petitioner did not lead any evidence in his defence.

Learned trial Court found the petitioner-accused guilty for the offences punishable under Sections 279, 338 and 304-A IPC and sentenced him as follows:-

Sr. No.	Under Section	Sentence.
1	279 IPC	Rigorous imprisonment for a period of Six months and to pay fine of Rs.500/- and in default of payment of fine the convict shall undergo simple imprisonment for a period of ten days.
2	304-A IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.500/- and in default of payment of fine the convict shall undergo simple imprisonment for a period of ten days.
3	338 IPC	Rigorous imprisonment for a period of one year and to pay fine of Rs.500/- and in default of payment of fine the convict shall undergo simple imprisonment for a period of ten days.

Conviction and sentence of petitioner as awarded by the trial Court was upheld by the Appellate Court in appeal.

Learned counsel for the petitioner submits that in this case, PW5 Harsumiran Singh, one of the injured-witness has turned hostile and did not identify the petitioner in Court. Investigating Officer has not been examined and due to his non-examination, important document like site plan of the place of accident was not duly proved. Prosecution has failed to prove that the petitioner was rash and negligent in driving the vehicle.

As per case of the prosecution, deceased was on the motorcycle of Navdeep (PW1) along with Harsumiran Singh (PW5). Complainant Navdeep has appeared as PW1 and fully supported the prosecution case. He has stated that when he was crossing the chowk near Police Station Sadar Hoshiarpur on green light signal, a Tavera vehicle, which was being driven by the petitioner in a rash and negligent manner, came from Chandigarh side and hit the motorcycle of complainant, resulting in injuries to him, Harsumiran Singh and Navjot, who died at the spot. He had identified the petitioner and stated that he (petitioner) tried to pick them from the road but on seeing the people gathering there, he sped away from the spot in his vehicle. In the process, his driving licence fell on the ground from where, he came to know about the petitioner. He has categorically stated that accident had taken place due to rashness and negligence on the part of petitioner. He has further stated that he along with Harsumiran Singh remained at Civil Hospital, Hoshiarpur till 6.00/7.00 a.m.. Thereafter, he left for private hospital at Gardiwala.

Presence of petitioner Jasbir Singh and his vehicle at the spot was not disputed. A suggestion was given to PW1 Navdeep Singh that in fact, he had tried to cross the red light and in the process, his motorcycle slipped. At that time, car of petitioner was in stationary condition due to red light at the crossing. He was also suggested that motorcycle hit the vehicle of petitioner when it was started on green signal. Another suggestion was given to him that he was driving the motorcycle at a high speed while crossing red signal and could not control it and hit against the vehicle of petitioner. The other injured and eyewitness of the occurrence had appeared

as PW5 and has stated that he along with Navjot (since deceased) and Navdeep was going towards National Bakery on the motorcycle of Navdeep. At about 10.45 p.m. when they reached near the chowk of Police Station Sadar Hoshiarpur, a vehicle came from Chandigarh side. It was being driven in a rash and negligent manner and hit their motorcycle, as a result of which they all fell down and sustained injuries. He, however, did not tell number of the offending vehicle or disclosed identity of its driver. However, from his statement, this fact is duly proved that the accident had taken place due to rash and negligent driving of the vehicle coming from Chandigarh side. In the cross-examination of Navdeep (PW1), accident has been admitted and in cross-examination, nothing was suggested to this witness (PW5) that the accident was not caused due to rash and negligent driving of vehicle coming from Chandigarh side, which vehicle is proved to be the vehicle (Tavera) being driven by petitioner at the time of occurrence.

Learned counsel for the petitioner has laid much stress on the point that Navdeep Singh has though stated that he was admitted in Civil Hospital but no record of his admission in the hospital was produced. This shows that he had avoided to go to Civil Hospital to avoid detection of consumption of liquor by him at the time of accident.

The above argument of learned counsel for the petitioner has no merits in the absence of any medical evidence to this effect. It is correct that the prosecution has not produced any evidence regarding admission of Navdeep or Harsumiran Singh at Civil Hospital but Navdeep while appearing as PW1 has stated that he remained at Civil Hospital till morning on the next day and then left for private hospital.

The petitioner has not produced any evidence to rebut the statement of Navdeep and Harsumiran Singh that the accident was caused due to rash and negligent driving of Tavera vehicle by its driver, who from the statement of PW1 Navdeep, is proved to be petitioner. Though Harsumiran Singh PW5 has not identified the petitioner as driver of the vehicle, which was involved in the accident, this fact has no relevance as in the cross-examination of PW1 Navdeep, fatum of accident and driving of vehicle Tavera, which caused the accident by petitioner, is admitted.

Prosecution has examined ASI Daljit Singh as PW3, who stated that after receiving the information, he along with SI Ashok Kumar and other members of the police party reached the spot and took the injured/dead body of Navjot to Civil Hospital. Motorcycle and Tavera vehicles were taken into possession by the Investigating Officer vide recovery memos Ex.PW3/B and Ex.PW3/A. The petitioner was arrested from the spot vide arrest memo Ex.PW3/C. His statement to the effect that both the injured were taken to Civil Hospital is unrebutted in cross-examination. It is also proved that the petitioner was taken into custody from the spot and his vehicle was also taken into possession.

Learned counsel for the petitioner has laid emphasis on non-examination of investigating officer in this case and has argued that due to his non-examination, site plan of place of accident was not proved. Learned Appellate Court has considered this submission and has rightly rejected the same with the observation that non-examination of investigating officer has not caused any prejudice to the accused. The mere fact that site plan of the place of occurrence has not been proved, is no reason to discard the entire

prosecution version. Testimony of PW1 Navdeep Singh supported by medical evidence and also by the testimony of PW5 Harsumiran Singh have been rightly relied on by the Courts below while recording the conviction of the petitioner for the offences punishable under Sections 279, 304-A and 338 IPC. The judgments of the Courts below do not suffer from any legal or factual infirmity calling for any interference in this revision petition on the question of conviction of petitioner under Sections 279, 304-A and 338 IPC and the same is upheld.

I have also carefully considered quantum of sentence awarded to the petitioner. Though in such type of road accident cases, no interference is usually made on the question of quantum of sentence as awarded by the Courts below but keeping in view the fact that petitioner after the accident got down from his vehicle, tried to pick up the injured and remained at the spot till he was arrested, shows that after the accident, his approach was humanitarian. Though the complainant has stated that he ran away from the spot but ASI Daljit Singh (PW3) has stated that petitioner was arrested at the spot and his vehicle was taken into possession.

No doubt, petitioner was rash and negligent and tried to jump the red light during night hours. This case is a lesson for those, who avoid stopping their vehicle at red signal during night hours and particularly after 10.00 p.m. under the impression that light signals are not required to be followed during night hours. This is the most dangerous time as the person, who has green light signal towards his side, try to cross without slowing down the speed of his vehicle and if somebody intrudes from the side which has red light signal, it proves fatal. The petitioner has also committed the

same mistake. However, keeping in view conduct of the petitioner after the accident, I reduce the sentence of rigorous imprisonment for two years awarded to him to rigorous imprisonment for 15 months. However, the amount of fine imposed upon him for offences punishable under Sections 338 and 304-A IPC is enhanced to ₹25,000/- each, which on recovery will be paid to the heirs of deceased and injured PW1 and PW5 in following manner:-

- (i) Legal heirs of deceased Navjot Singh : ₹30,000/-
- (ii) Navdeep Singh and Harsumiran Singh : ₹10,000/- each.

However, in default of payment of fine, petitioner shall further undergo rigorous imprisonment for three months.

With the above modification in quantum of sentence, revision petition is partly allowed. The conviction of petitioner for the offences punishable under Section 279, 338 and 304-A IPC as recorded by the Courts below is upheld, however, the sentence awarded by trial Court is modified, as discussed above.

August 06, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>

