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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-42-2018 [O&M]
Date of Decision : November 26, 2018

Gagan Kumar Petitioner

Versus

The State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Munish Soni, Advocate,
for Mr. Sudhir Pruthi, Advocate,
for the petitioner.

Mr. D.S. Sukarchakia, DAG, Punjab,
for the respondent – State,

Mr. A.S. Gill, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present revision petition is against the judgment of conviction and order of sentence dated 12.05.2017 passed by Judicial Magistrate Ist Class, Jalandhar, whereby the revisionist was convicted and sentenced as under:-

Under Section 279 of the Indian Penal Code, 1860.	To undergo Rigorous Imprisonment for the period of six months and to pay a fine of Rs.1,000/-. In default of payment of fine, to further undergo Simple imprisonment for fifteen days.
Under Section 304-A IPC	To undergo Rigorous Imprisonment for the period of two years and to pay a fine of Rs.5,000/-. In default of payment of fine, to further undergo Simple Imprisonment for one month.

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2. The appeal filed by the revisionist was dismissed by learned Additional Sessions Judge, Jalandhar vide judgment dated 08.12.2017.

3. Facts relevant for the purpose of decision of this revision petition; that on 21.10.2012, motor vehicular accident had taken place at about 7.30 AM. Complainant, Dharam Pal of this case reported the matter to the police that he was coming back from morning walk from Prithvi Nagar towards his house at Lamba Pind and when he reached near the graveyard, one tractor Mohindra (red colour) came from the side of Shere Punjab Colony which was being driven by Gagan Kumar son of Bharat Bhushan (petitioner herein) in a rash and negligent manner. At the same time, his nephew, Vijay Kumar was going towards Shere Punjab Colony from Lamba Pind on his bicycle on his correct side. The aforesaid tractor driver caused the accident. Resultantly, Vijay Kumar sustained severe injuries. The accused stopped for a while on the spot and then fled away along with the tractor-trolley. Injured was taken to Civil Hospital, Jalandhar with the help of Sonu and Amarjit, where he died. As per the complainant, the accident was caused due to the rash and negligent driving of the present petitioner. FIR was registered. Investigation was carried out and the police presented the challan.

4. Learned trial Judge completed the trial, including framing of charge against the accused, recording of evidence and examining the accused under Section 313 Cr.P.C., and after considering the prosecution evidence and defence evidence held the present revisionist guilty and convicted and sentenced him thereunder. Appeal preferred by the revisionist was dismissed by learned Additional Sessions Judge vide judgment dated 08.12.2017 and as such the present revision petition

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before this Court.

5. Learned counsel for the revisionist contended that in fact, the accident had taken place because of rash and negligent act on the part of Vijay Kumar (deceased) himself as he was going on a wrong side and he had taken a turn all of a sudden and as such accident had taken place. The site-plan (Ex. PW-9/C) prepared during investigation reflects that the deceased was at point – A. However, both the Courts below have not appreciated the correct facts including the site plan.

6. Learned counsel for the petitioner further contended that in this case, the complainant and the eye-witnesses have deposed falsely because the deceased was related to them and their testimony cannot be relied upon. More so, the accident had taken place in busy locality, but no independent witness was joined who could depose the correct facts

7. Plea was also taken that as per the latest custody certificate (Annexure P/1), as on 09.09.2018, the petitioner has already undergone 7 months and 20 days of actual sentence out of total two year's sentence awarded under Section 304-A IPC. So, the petitioner be released from custody.

8. Learned State counsel as well as learned counsel representing the complainant have contended that learned Magistrate has recorded the judgment of conviction and order of sentence on the basis of statements of both the witnesses including complainant, Dharam Pal who appeared as PW-1 apart from statements of Amarjit (PW-2), Chaman Lal (PW-3) and Om Parkash (PW-5), who are eye-witnesses in this case.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered

view that the matter regarding accident was promptly reported to the police and thereafter investigation was carried out. During the trial stage, the complainant as well as PW-2, PW-3 and PW-5 have deposed in so many words that the accident had taken place because of rash and negligent driving on the part of the revisionist while driving the tractor, whereas, the deceased was going on his correct side. All these witnesses were cross-examined at length, but nothing substantial could come in the cross-examination so as to disbelieve their testimony. Their testimony could not be disbelieved merely on account of the fact that they are related to the deceased. More so, the testimony of the complainant and the eye-witnesses as well as oral and documentary evidence available on the file has been minutely scanned by both the Courts below and held the revisionist guilty for commission of offence punishable under Sections 279 and 304-A IPC and awarded sentence thereunder.

10. As regard to order of sentence, the Courts below have already taken a reasonable view in light of the fact that the petitioner has taken a precious human life because of his rash act and no interference is called for therein in the revisional jurisdiction.

11. In view of the above, there is no illegality much less perversity calling for interference by this Court in the judgment of conviction and order of sentence of the Courts below. There is no merit in the present Revision Petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

November 26, 2018

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes