

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-429-2018 (O&M)
Date of decision: 04.07.2018

Nishan Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Grewal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this revision petition is to the judgment of conviction and order of sentence dated 17.03.2017 passed by the Sub Divisional Judicial Magistrate, Nakodar, vide which the petitioner was convicted under Sections 279 & 304-A of the Indian Penal Code (for short 'IPC') and was ordered to undergo R.I. for a period of one year and to pay a fine of Rs.1,500/- and the order dated 15.11.2017 passed by the revisional Court/Additional Sessions Judge, Jalandhar, vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that on 22.09.2011, ASI Amrik Singh along with HC Resham Singh, HC Chaman Lal and PHG Darshan Lal was present at Bus stand Allowal, where he received a telephonic message from

MHC to go to Ghai Hospital for conducting proceedings, as an accident has been taken place between bus and motorcycle near Village Gohir and two boys got injured, who succumbed to the injuries at Ghai Hospital, Jalandhar. On which, ASI Amrik Singh along with other police officials reached Ghai Hospital, Jalandhar, where the dead bodies of Karan Kumar and Yusuf were lying in the dead house. Sushil Sondhi son of Mohinder Sondhi met him and suffered a statement before ASI Amrik Singh, in which he has alleged that he along with his friend Dharminder Singh had gone to Dera Peer Baba Muradshah, Nakodar to pay obeisance. Karan Kumar and Yusuf Kumar had also gone to pay obeisance. After paying obeisance, he, on his own motorcycle and Karan Kumar and Yusuf Kumar on their own motorcycle bearing registration No.PB08-AW-Temp-5699, driven by Yusuf Kumar, started coming back from Nakodar. Karan Kumar was sitting on the rear seat of the motorcycle. When they reached at a distance of about 50 meters short from Village Gohir in front of the place of Peer at about 1:00 PM, a bus came from Jalandhar side at high speed and the driver of the said bus hit the same with the motorcycle of Yusuf Kumar in a rash and negligent manner without blowing horn after turning it towards wrong side of the road, as a result of which Yusuf Kumar and Karan Kumar fell on the pavement along the road and became unconscious due to receiving of several severe injuries on their persons and their motorcycle was also badly damaged. He and Dharminder Singh with the help of some other persons brought them to Ghai Hospital, Jalandhar by arranging a vehicle where Karan Kumar succumbed to the injuries at 3:30 PM and Yusuf Kumar succumbed to the injuries at 4:10 PM. The registration number of the offending bus was PB-08-3V-0615 of Dabwali Private Company.

The name of its driver was Nishan Singh son of Jagtar Singh. The said accident took place due to rash and negligent driving of the offending bus by its driver Nishan Singh.

After recording the statement of complainant Sushil Sondhi, Investigating Officer sent the same to the police station for registration of FIR under Sections 279 & 304-A IPC. Thereafter, ASI Amrik Singh prepared inquest report regarding the dead bodies and recorded the statements of witnesses under Section 175 Cr.P.C. The dead bodies were handed over to their relatives after postmortem. ASI Amrik Singh also visited the place of occurrence and prepared rough site plan at the spot. Motorcycle bearing registration No.PB08-AW-Temp 5699 and offending bus bearing registration No.PB-08-3V-0615 were taken into possession from the place of occurrence vide separate recovery memos in the presence of the witnesses. Accused was arrested on 10.10.2011 and the driving licence of accused and registration certificate and route permit of the offending bus were also taken into possession vide separate recovery memos in the presence of the witnesses. The motorcycle and the offending bus were got mechanically tested from mechanic. After obtaining the postmortem report and completing the investigation, report under Section 173 Cr.P.C. was presented against the accused.

The trial Court framed the charges against the petitioner under Sections 279 & 304-A IPC and the prosecution in its evidence examined PW1 ASI (Retired) Amrik Singh, the Investigating Officer, who deposed on the lines of the investigation conducted by him, PW2 Vinod Kumar, a witness, who identified the dead bodies of the victims Yusuf Kumar and Karan Kumar, PW3 Dr. Manjit Singh, who proved the post-mortem reports, PW4 HC Tarlochan

Singh MTO, who proved the test reports of the vehicles as Ex.PW4/A and Ex.PW4/B, PW5 Susil Sondhi-complainant, who also deposed on the lines of the version given in the FIR Ex.PW1/A, PW6 Paramjit Singh also proved the post-mortem reports Ex.PW6/A and Ex.PW6/B and PW7 Dharminder Singh, an eye-witness also supported the prosecution version as per the statement Ex.PW6/A. Both the Courts below have, on appreciation of the evidence, held the petitioner guilty of offences punishable under Sections 279 & 304-A IPC.

Learned counsel for the petitioner could not make out substantive ground to challenge the concurrent finding recorded by the trial Court and therefore, did not contest the findings recorded by the Courts below on merits and has submitted that the sentence undergone by the petitioner i.e. 07 months and 18 days of actual sentence and 08 months and 23 days of total sentence including remission, out of 01 year R.I. awarded by the trial Court may be reduced to the period already undergone by him. It is further submitted that the petitioner is ready to pay some compensation to legal representatives of the victims Yusuf Kumar and Karan Kumar. Counsel for the petitioner further submits that the petitioner is first offender and is facing the agony of trial since 2011 and he was on bail during pendency of the trial as well as during pendency of the appeal before the first appellate Court and has neither misused the concession of bail nor was involved in any other such subsequent FIR and has shown improvement in his character.

Learned counsel for the petitioner has further submitted that the petitioner has his own family to support and since he is behind the bars for more than 07 months, his family is facing great financial crisis.

In reply, learned State counsel has submitted that on account of

rash and negligent driving of the petitioner, two persons have died and therefore, the sentence awarded to the petitioner by the Courts below be upheld.

After hearing learned counsel for the parties, though the petitioner has not challenged the finding on merits, however, on a careful perusal of lower Court record and statements of the prosecution witnesses, photocopies thereof submitted by the petitioner's counsel, I find that the Courts below have rightly held the petitioner guilty of offences punishable under Sections 279 & 304-A IPC. However, considering the following mitigating circumstances, I deem it appropriate to reduce the sentence of the petitioner, which he has already undergone: -

- (a) The petitioner is first offender and after registration of the FIR in the year 2011, he remained on bail during pendency of the trial as well as during pendency of the appeal before the first appellate Court. The petitioner has not misused the concession of bail and was not found involved in any other criminal case subsequently.
- (b) The petitioner is ready to compensate the legal representatives of the victims Yusuf Kumar and Karan Kumar.
- (c) The petitioner is facing the agony of trial since 2011 and his family is facing great hardship as the petitioner is behind the bars for more than 07 months.
- (d) The petitioner has undergone total sentence of 08 months and 23 days of total sentence including remission out of 01 year R.I. and thus has undergone substantive sentence.

In view of the above, this revision petition is partly allowed, however, the judgment of conviction and order of sentence dated 17.03.2017

passed by the trial Court and judgment dated 15.11.2017 passed by the revisional Court and sentence of payment of fine is upheld and the sentence awarded to the petitioner by the trial Court i.e. one year R.I. with a fine of Rs.1,500/- is reduced to the period already undergone by him i.e. 07 months and 18 days of actual sentence and 08 months and 23 days of total sentence including remission. The petitioner is directed to deposit an amount of Rs.50,000/- as compensation within a period of 08 weeks from today to be paid to the legal heirs of the deceased Yusuf Kumar and Karan Kumar.

This will however be subject to deposit of fine, if not paid, and the amount of Rs.50,000/-, on or before 07.09.2018 with the Chief Judicial Magistrate, Nakodar, failing which this revision petition shall be deemed to be dismissed and the petitioner will have to surrender before the jail authorities to undergo his remaining sentence.

Disposed of, accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

04.07.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No