

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-44-2010 (O&M)

Date of Decision: 12.07.2019

Baldev Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Abhinav Aggarwal, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offences under Sections 279, 337, 304-A IPC. Vide judgment and order dated 12.08.2009, learned Sub Divisional Judicial Magistrate, Kharar, held the petitioner guilty under the aforesaid Sections and sentenced him to undergo RI for a period of six months each under Sections 279 and 337 IPC and RI for a period of one year and to pay a fine of Rs.500/- under Section 304-A IPC and, in default of payment of fine, to further undergo simple imprisonment for one month.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, SAS Nargar. Vide judgment dated 23.12.2009, the learned Additional Sessions Judge, SAS Nagar, while upholding the conviction of the petitioner under

Sections 279 and 337 IPC, acquitted him of the charge under Section 304-A IPC.

As per the prosecution case, on 13.9.1999 at about 5.30 p.m., complainant Karora Singh along with his son Jagkiran Singh @ Nancy was coming to his house at Mohali from village Jhanjeri on a Moped. When they had crossed village Sawara, a bus bearing No. PB-12-A-8305 being driven by Baldev Singh came at a high speed without blowing horn and hit said Moped from backside and caused an accident. Both, Karora Singh and his son (injured) were taken to the hospital, wherein son of Karora Singh, namely, Jagkiran Singh @ Nancy was declared dead. The said accident took place due to the rash and negligent driving of the petitioner as Karora Singh and his son were on the kaccha path, which was on the extreme left of the road. On the basis of the statement of the complainant Karora Singh, FIR in this case was registered.

After completion of the investigation, challan was presented in the Court. Charges were framed against the petitioner under Sections 279, 337, 304-A IPC.

Prosecution had examined as many as 8 witnesses, including complainant Karora Singh as PW2.

Statement of the accused-petitioner under Section 313 Cr.P.C. was recorded. He denied his involvement in the crime and pleaded false implication. However, the petitioner did not lead any evidence.

The learned trial Court, after taking into consideration the evidence on record, especially the testimony of

PW1-Karora Singh, whose son Jagkiran Singh @ Nancy, lost his life in the accident in question, convicted the accused-petitioner under Sections 279, 337, 304-A IPC and sentenced him accordingly. However, in appeal, the appellate Court, while maintaining the conviction of the petitioner under Sections 279 and 337 IPC, set aside his conviction under Section 304-A IPC.

Learned Senior counsel appearing for the petitioner contends that in the instant case accident is alleged to have taken place on 13.9.1999, whereas the FIR in this case was registered on 28.6.2000. Thus, there was a huge delay in registration of the FIR. Still further, the factum of rash and negligent driving by the petitioner was not proved on record as the alleged eyewitness Narinder Singh etc., were not examined by the prosecution. The very evidence of the rash and negligent driving on the part of the petitioner being based on the hear say evidence, the findings recorded by the Courts below are not tenable in the eyes of law. Still further, it is argued that once the petitioner stands acquitted of the charge under section 304-A IPC by the appellate Court, the conviction of the petitioner under Section 279 and 337 IPC is not sustainable. Alternatively, it is argued that if this Hon'ble Court comes to the conclusion that the findings recorded by the Courts below do not require any interference, then taking into consideration the protracted trial being faced by the petitioner, he may be released on probation.

On the other hand, learned State counsel has, while opposing the arguments raised by the counsel for the petitioner,

argued that the findings recorded by the Courts below are based on cogent and convincing evidence. It is further argued that though the appellate Court has acquitted the petitioner of the charge under Section 304-A IPC, yet the conviction and sentence recorded under Sections 279 and 337 IPC stands affirmed for causing death of a young person i.e. son of the complainant, namely, Jagkiran Singh @ Nancy. Hence, it is prayed that the revision petition may be dismissed.

Admittedly, in the accident caused by the petitioner, Jagkiran Singh @ Nancy (complainant's son) had lost his life. Both the Courts below have recorded the findings of guilt on the part of the petitioner under Sections 279 and 337 IPC on the basis of cogent and convincing evidence. Therefore, there is no scope for interference, especially when in its revisional jurisdiction, this Court is not to re-appreciate the evidence. Hence, the conviction of the petitioner as recorded by the Courts below is upheld.

Coming to the quantum of sentence, as noticed above, the petitioner has been facing the agony of criminal trial for the last 20 years. He is not reflected to be a previous convict. As per the custody certificate, the petitioner has already undergone one month and seventeen days of the actual sentence out of the total sentence of six months. Thus, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again. Rather taking into consideration the mandate of the Hon'ble Supreme Court in Chandreshwar Sharma Vs. State of Bihar, (2000)9 SCC 245 followed by this

Court in various cases including Akhtar and another Vs. State of Haryana, 2013(8) RCR (Criminal) 2992, the petitioner can be released on probation.

Resultantly, while upholding the conviction of the petitioner as recorded by the Courts below, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of Chief Judicial Magistrate, SAS Nagar, undertaking to keep peace and be of good behavior for said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds. However, the release of the petitioner on probation shall further be subject to his depositing an amount of Rs.50,000/- with the learned trial Court, within a period of one month from today. On deposit of such amount, the same shall be paid as compensation to the legal heirs of deceased Jagkiran Singh @ Nancy. Failure to comply with the compensation part, shall render the present petition automatically dismissed.

(HARNARESH SINGH GILL)
JUDGE

12.07.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No