

CRR-1608-2017

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

**CRR-1608-2017 (O & M)
Date of Decision: 06.11.2019**

Basant Kumar (since deceased through his LRs)

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sumit Sangwan, Advocate,
for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the judgment dated 11.04.2017 passed by the learned Additional Sessions Judge, Jhajjar, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction dated 06.01.2016 and order of sentence dated 07.01.2016 passed by the learned Judicial Magistrate Ist Class, Jhajjar, have been upheld.

The petitioner was tried for committing the offences under Sections 279 and 304-A IPC. As per the prosecution, on 28.09.2011, complainant-Dharambir, brother of Ombir (since deceased) made a statement to the police that in that morning, he and his brother-Ombir were going to Gurukul on their motor-cycle bearing registration No.HR 19C-8101, to meet one Anup. At around 9.30 a.m., when they were returning to their village and reached near a temple, then a Haryana Roadways Bus being driven in a rash and negligent manner, came from the side of village

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Chhuchhakwas and hit their motor-cycle. As a result of the aforesaid, they fell down and sustained various injuries. Because of the accident, the right hand and foot of Ombir got fractured besides him having received injuries in the head. The driver of the bus came to them and disclosed his name as Basant. However, he subsequently fled from the spot, alongwith with bus. The complainant could not note down the registration number of the bus. Ombir was rushed to GH, Jhajjar, from where he was referred to PGIMS, Rohtak, but he succumbed to the injuries on the way.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

Charges were framed against the petitioner under Sections 279 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 11 witnesses.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication. However, the accused did not lead any evidence in his defence.

On the basis of the evidence led, the guilt of the petitioner under Sections 279 and 304-A IPC stood proved. He was, accordingly, sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1,000/- under Section 279 IPC and rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- under Section 304-A IPC. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of three months. Both the sentences were ordered to run concurrently.

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Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Additional Sessions Judge, Jhajjar. However, vide impugned judgment dated 11.04.2017, passed by the learned Additional Sessions Judge, Jhajjar, the appeal was dismissed, thereby affirming the judgment and order passed by the learned trial Court.

Still aggrieved, the petitioner has preferred the present revision petition.

Needless to mention here that during the pendency of present revision, the petitioner expired and his legal representatives were brought on record to pursue this revision.

Learned counsel for the petitioner has contended that both the courts below had wrongly recorded the conviction against the petitioner. The courts below had wrongly appreciated the evidence. In fact, the accident of deceased was caused with some other vehicle and the petitioner had only lent a helping hand to the injured, who was lying in the fields adjacent to the road. The petitioner had been falsely implicated in the present case. There were material contradictions in the statements of prosecution witnesses.

On the other hand, learned State counsel has opposed the present revision and contended that both the courts below have appreciated the evidence and facts on record in the right perspective and hence, the findings recorded by the courts below do not require any interference by this Court.

I have heard learned counsel for the parties and with their able

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assistance, have also gone through the record of the Courts below.

Both the courts below after having scrutinized the evidence on record, have rightly convicted the petitioner for the offences under Sections 304-A and 279 IPC. Nothing has been brought on record to prove as to why the complainant had lodged the false case against the accused. There is nothing on record to disbelieve the version of PW 7-complainant, who is the eye-witness to the occurrence. Similarly, nothing has been pointed out in the cross-examination of other witnesses also, which may render their statements unreliable. PW 1 Manohar Lal Retired DI Haryana Roadways Department Charkhi Dadri, had proved the petitioner being the driver of the offending bus bearing registration No.HR-61-4440 by proving the duty slip Ex.PW1/A. So far as the stand of the petitioner that he had only helped the injured lying on the road, the same did not find any favour with the courts below. The learned Appellate Court has not accepted the aforesaid stand of the petitioner while holding as under:

- “(i) *the defence side did not put forth its version to PW 7 Dharambir or to PW 9 HC Pawan Kumar, in clear and specific terms;*
- (ii) *the accused did not himself act as complainant, when he was so vigilant and upright, as to help any needy lying in distress;*
- (iii) *the accused did not put forth any specific version during his examination under Section 313 of Cr.P.C.;*
- (iv) *neither the accused got examined any such passenger of his bus to depose in his favour nor he dared to get examined himself through the witness-box, in his own defence, to substantiate his own stand and*
- (v) *the mechanical inspection report Ex.PW 5/A reflects a*

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dent and also some brush-scratches towards right side of the front bumper of the bus NoHR 61A-4440, which fortifies the version of the prosecution that the said accident had taken place with the bus itself.”

Since the petitioner had admitted the factum of him being the driver of bus No.HR 61A-4440 on the said date, time and place, the onus shifted upon him to explain the exact manner, in which the accident took place. However, the petitioner had failed to discharge the onus shifted upon him by virtue of Section 106 of the Indian Evidence Act. Both the courts below have rightly drawn an adverse inference against the petitioner. In no way, the concurrent findings recorded by the courts below can be held as perverse or against the evidence. In view of the evidence on record, there is no scope for interference in the concurrent findings given by the courts below. Hence, the conviction of the petitioner under Sections 304-A and 279 IPC is upheld.

Moreover, while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence. Nothing has been pointed out as regard the illegality or perversity committed by the courts below.

Though as noticed above, the petitioner in this case has already passed away, yet as the legal heirs of the petitioner were ordered to be brought on record, the matter requires to be adjudicated regarding the sentence part as well.

The Hon'ble Supreme Court in State of Punjab Vs. Saurabh Bakshi, 2015(2) RCR (Criminal) 495, while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. 01

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year to the period already undergone by him i.e. 24 days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.”

Thus, the consideration as regards the sentence part has become academic, specially when as per the aforesaid judgment, the sentence

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imposed upon the petitioner(deceased) can only be reduced to six months and no benefit except the said reduction part can be granted to him. Thus, in any case, even if the sentence is reduced to six months, the same will not entail any benefit to the legal heirs as it was only in case of the acquittal of the deceased-petitioner, his legal heirs may have drawn any benefit because of the deceased-petitioner statedly being a government servant.

In view of the above, the present revision petition is dismissed.

06.11.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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