

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

CRR No. 3530 of 2017 (O&M)

Date of decision: 26.02.2019

Bhupender

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

Mr. Lalit Kumar, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 13.07.2017, vide which, the trial Court has framed charge against the petitioner along with co-accused Lokesh under Sections 304 IPC read with Section 34 IPC.

Brief facts of the case are that on the statement of Parkash son of Khilli, an FIR bearing No. 76 dated 13.03.2017 was registered under Sections 302 and 34 of the IPC at Police Station Bahin, District Palwal.

As per the allegation in the FIR, on 13.03.2017, it was a day Holi festival and at about 5.00 PM, Lokesh @ Lok Dal was driving his car, bearing registration No. HR-52-C-1987 make Etios, at a high speed in the streets of the village and Om Bir and Dev Dutt, both sons of Ratiram and Bhupender (petitioner herein) were sitting in the car. When Lokesh @ Lok Dal drove his car towards the house of Sher Singh son of Charan Singh, he

ran over the car on Shivam son of Sher Singh, who was aged about ten months and was playing in the verandah of the house and killed him. Thereafter, all the four persons ran away from the village in the said car which was being driven by co-accused Lokesh @ Lok Dal and other three persons were associated in the crime.

Thereafter, the police conducted the investigation and during investigation, two persons, namely Om Bir and Dev Dutt, were found to be innocent and police arrested the petitioner along with Lokesh @ Lok Dal, who was the driver of the offending vehicle. The report under Section 173 Cr.P.C. was submitted against Lokesh @ Lok Dal as well as against the petitioner and in this report, it is specifically mentioned that in the inquiry, aforesaid two persons were found to be innocent, however, nothing is mentioned as to how the petitioner is responsible for the death of minor Shivam which occurred due to rash and negligent driving of co-accused Lokesh @ Lok Dal.

The trial Court, thereafter, has framed charge against Lokesh @ Lok Dal and the petitioner under Sections 304 and 34 of the IPC, vide impugned order dated 13.07.2017, which has been challenged by the petitioner by way of filing the present revision petition.

Learned counsel for the petitioner has argued that the petitioner was only a passenger in the said car and two other co-passengers have already been found innocent and nothing has come during investigation that the petitioner was having any such intention to commit the said offence.

Learned counsel for the petitioner has referred to the statement of Sher Singh and Savita, father and mother of deceased child, recorded under Section 161 Cr.P.C., who have only stated that action be taken against

Lokesh who has run over the car on their son and caused his death. A similar statement was made by complainant Parkash.

Learned counsel for the petitioner has further submitted that in the absence of any evidence that the petitioner had any meeting of mind with co-accused Lokesh @ Lok Dal, who has caused death of minor child by driving his car in a rash and negligent manner and that too without there being any allegation even against Lokesh having any motive to commit the said crime, the charge under Section 304 and 34 of the IPC is not sustainable.

Reply, by way of affidavit of DSP, Hathin, is on record, in which, it is reiterated that on the basis of the investigation, Section 302 IPC was deleted and Section 304 IPC was added. It is further stated in para No. 2 of the reply that during investigation, the respectables of the village were joined and they have stated that accused persons do not have any previous enmity with the petitioner and on the statement of the villagers and on the basis of the investigation, carried out by the police, Section 302 IPC was deleted and Section 304 IPC was added. However, with regard to averments made by the petitioner that there is no direct allegation against him and he had no direct role in the incident, a vague reply has been given in corresponding paragraphs.

Learned State counsel, on instructions from SI Yahya Khan, has shown the police file and a perusal of the same shows that on 16.03.2017, police recorded zimni No. 3 whereby co-accused Lokesh was arrested and he has made disclosure that while driving his vehicle, he has caused the incident while turning the car and in that process, minor Shivam son of Sher Singh had died and he pleaded that he had committed the

offence. The statement of one Raj Kumar son of Dharam was also recorded under Section 161 Cr.P.C., in which he has stated that he came to know that Lokesh, by driving his car at a very fast speed, has caused accident and has killed the son of Sher Singh.

The police in zimni No. 4 has recorded that petitioner has stated that it was the day of Holi festival, when he along with his maternal uncle Lokesh and two other persons were coming in a car and his maternal uncle Lokesh has caused accident in which minor Shivam died. Except for this, there is nothing on police record to connect the petitioner with the commission of offence which was in fact committed by co-accused Lokesh.

After hearing learned counsel for the parties and on perusal of the reply filed by State as well as original police file, I find that there is no direct allegation against the petitioner that he had played any active role in the commission of offence by Lokesh who has caused death of minor Shivam by driving his car in a rash and negligent manner at a very high speed.

Therefore, I find that the charge framed against the petitioner, vide impugned order, is not sustainable. Hence, the present revision petition is allowed and impugned order dated 13.07.2017, framing charge against the petitioner under Sections 304 and 34 of the IPC, is hereby set aside.

February 26, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No