

CRR-7123 of 2018 (O&M)

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

CRR-7123 of 2018 (O&M)
Date of Decision: 14.01.2019

Daljit Singh

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Vaibhav Goel, Advocate,
for Mr. Dheeraj Mahajan, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

CRM-45284 of 2018

For the reasons mentioned in the application, same is allowed. Delay of 36 days in filing the accompanying revision is condoned.

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Accused has preferred this revision against the judgment of the First Appellate Court dated 13.08.2018, whereby his appeal against the judgment dated 15.02.2017, holding him guilty under Section 279 and 304-A IPC and sentencing to undergo rigorous imprisonment for maximum period of two years and pay fine of ₹500/-; in default thereof to undergo simple imprisonment for fifteen days vide order of sentence of even date was dismissed.

Learned counsel for the petitioner referring to the statement of PW9 H.C. Raj Kumar, who had photographed both the vehicles and has

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testified that offending vehicle was not found damaged from the front side *inter alia* contends that there are major contradictions in the statements of prosecution witnesses. The ocular version of prosecution is contrary to the documentary evidence. No identification parade was conducted by the investigating officer. Therefore, identity of the petitioner is doubtful. Petitioner is a first offender. Therefore, in case, this Court is not inclined to set aside judgments of both the Courts below, in that eventuality, he may be released on probation.

Having given considerable thought to the submissions made by learned counsel for the petitioner, the instant revision merits dismissal for the reasons to follow.

No question of law much less substantial has been raised in this revision.

Prayer of learned counsel for releasing the petitioner on probation cannot be accepted inasmuch as Hon'ble Supreme Court in **Dalbir Singh Versus State of Haryana 2000(2) RCR (Criminal) 816** has held that the Courts should not as a normal rule, invoke the provisions of the Probation of Offenders Act when the accused is convicted of the offence under Section 304-A IPC for causing the death of a human being by rash or negligent driving.

There are concurrent findings of both the Courts below against the petitioner. Submissions raised by learned counsel for the petitioner have already been dealt with by both the Courts below. Therefore, re-dealing with the same would be a repetition. As far as identity of the petitioner is concerned, PW1 complainant Prashant Sood and his wife PW3 Swati Sood being victims of the accident in question,

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had identified the accused on the spot, and have categorically identified him again in Court. PW1 complainant Prashant Sood specifically stated that accident had taken place due to rash and negligent driving of the petitioner. He was not cross-examined by the petitioner or his counsel for the reasons best known to them, which requires to draw an adverse inference against the petitioner that he did not adopt any such exercise intentionally and deliberately, being guilty in his mind for causing the accident in question. Since PW1 complainant, who had witnessed the accident, was not cross-examined, therefore, his examination-in-chief has rightly been accepted by both the Courts below in toto. Consequently, argument raised by learned counsel for the petitioner about identity of the petitioner being devoid has no legs to stand.

As far as statement of PW9 HC Raj Kumar, who had photographed the offending vehicle and the car in which the deceased, complainant and his wife were travelling, same cannot be given any effect for the reason that the offending vehicle in the instant case is Tata-207, body of which and its bumper are made of a thick iron sheet. Therefore, if such a vehicle hits some other vehicle or object, it may cause severe damage to other object/vehicle without any dent in its own body and bumper. PW9 HC Raj Kumar admittedly did not witness the accident. Therefore, his statement qua taking photographs of the offending vehicle and the vehicle of the complainant cannot brush aside statements of eye-witnesses.

Learned counsel for the petitioner could not point out any discrepancy going to the root of the case.

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Courts below and find no illegality or perversity in the same.

Dismissed.

January 14, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No