

Criminal Revision No.1808 of 2008

Date of Decision: January 22, 2020.

Darshan Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Mohinder Kumar, Advocate, for the petitioner.
 Mr.Rajesh Bhardwaj, Senior DAG, Punjab.

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Vivek Puri, J.

The present revision petition has been preferred against the judgment dated 07.08.2008 passed by the learned Sessions Judge, Fatehgarh Sahib, vide which the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 21.10.2005 passed by the learned Additional Chief Judicial Magistrate, Fatehgarh Sahib, was dismissed.

Briefly, the version of the prosecution is to the effect that on 11.11.2000, Surinder Kumar-complainant alongwith his brother Raj Kumar and Naveen Kumar had hired a tempo bearing registration No.PB-03-2265 (for short, 'the offending vehicle') and had gone from Khanna to a village near Rajpura where Raj Kumar had to provide sound system in the program of a singer Jassi Jassranwala. After the program, they had started their return journey at about 11.35 p.m. When they were a little short of Sadhugaarh Chowk, the petitioner was driving the offending vehicle at a very fast speed in a rash and negligent manner. A combine was going ahead the offending vehicle. The petitioner tried to overtake the combine while

offending vehicle in the cutter of the combine. The occurrence took place at about 12.30 a.m. in the intervening night of 11.11.2000 and 12.11.2000. Raj Kumar and Naveen Kumar alongwith the petitioner sustained injuries. The complainant Surinder Kumar had also sustained minor injuries. The cutter of the combine and the offending vehicle were badly damaged. The persons sitting in the combine took out the occupants of the offending vehicle. Parkash Singh was driving the combine bearing registration No.PJS-1453. Meanwhile, Sumesh Kumar arrived at the spot from the side of Doraha in his car. The petitioner managed to slip away from the spot on the pretext of making telephone call. The injured were shifted to the hospital in the police vehicle. However, Raj Kumar and Naveen Kumar succumbed to their injuries on the way. On the basis of statement of Surinder Kumar, case was registered. On completion of investigation, the challan was presented in the Court and a prima-facie case under Sections 279, 304-A, 337, 447 IPC was made out against the accused-petitioner. He was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

In support of the case, the prosecution had examined as many as 10 witnesses, namely, Parkash Singh-PW-1, Karamjit Singh-PW-2 the eye witnesses to the occurrence, Surinder Kumar complainant-PW-4, HC Bhag Singh PW-5 witness to the recovery, Dr.Balwinder Singh PW-6 who conducted the post-mortem examination of the dead bodies. Brij Mohan PW-7 who identified the deceased during inquest proceedings, Bharpur Kumar PW-8 Photographer, HC Balwinder Singh PW-9 investigating officer of the case and Balbir Singh PW-10 Clerk in the office of the District Transport Office, Faridkot. Statement of the petitioner under

Section 313 Cr.P.C. was recorded and he had examined Amit Aggarwal DW-1 and Balbir Kaur DW-2 Assistant Civil Hospital, Fatehgarh Sahib, during his defence evidence.

The petitioner was convicted and sentenced for the offence committed under Sections 279 and 304-A IPC by the Additional Chief Judicial Magistrate, Fatehgarh vide the judgment and order dated 21.10.2008. He was sentenced as under:-

Under Section 279 IPC : RI for 6 months and to pay a fine of Rs.500/- and in default thereof, to further undergo RI for 15 days.

Under Section 304-A IPC: RI for 2 years and to pay a fine of Rs.1000/- and in default thereof, to further undergo RI for one month.

The petitioner preferred an appeal against the aforesaid judgment and the learned Sessions Judge, Fatehgarh Sahib vide judgment dated 07.08.2008 set-aside the sentence imposed with regard to the offence under Section 279 IPC. However, the sentence with regard to the offence under Section 304-A IPC was maintained.

Against by the judgments of the Courts below, the instant revision petition has been preferred by the petitioner.

I have heard learned counsel for the parties and perused the record.

While assailing the judgments of the Courts below, it has been argued on behalf of the petitioner that the presence of PW-4 Surinder Kumar complainant at the spot is doubtful as there is no evidence with regard to the injuries being suffered by him. His presence was subsequently prepared and

has deposed falsely being brother of one of the deceased. Parkash Singh PW-1 driver and Karanjit Singh PW-2 helper working on the combine have falsely deposed to evade their criminal liability as the combine was being driven in a rash and negligent manner. The occurrence took place due to rash and negligent driving of the combine. Even in the proceedings before the Motor Accident Claims Tribunal, a plea was taken by the legal representatives of the deceased with regard to the contributory negligence on the part of the drivers of both the vehicles. It has been further argued that during the course of cross-examination, PW-4 Surinder Kumar complainant, has imputed the version with regard to negligence on the part of both the drivers.

On the contrary, while supporting the judgments of the Courts below, it has been argued by the learned State counsel that presence of Surinder Kumar PW-4 cannot be termed to be doubtful as the matter has been reported to the police without any delay. Moreover, there is no evidence or allegation with regard to the rashness and negligence on the part of the driver of combine. The eye witness count put-forth by Surinder Kumar PW-4, Parkash Singh PW-1 and Karamjit Singh PW-2 is fairly reliable and also corroborated with the medical evidence and the material on record. Furthermore, there is nothing on record to suggest that the driver of the combine in any manner contributed in the occurrence.

Eye witness count in the instant case hinges on the deposition of Surinder Kumar PW-4 who was travelling in the offending vehicle. The same is also supported by the deposition of Parkash Singh PW-1 driver of the combine and Karamjit Singh PW-2 who was working as helper on the combine. The presence of the driver of the combine on the spot cannot be

disputed. The presence of Surinder Kumar PW-4 has been sought to be disputed on the score that as per the version of the prosecution, he has sustained injuries but no medical record in this regard has been produced. The accused has sought to put-forth a version to the effect that Surinder Kumar PW-4 being brother of one of the deceased has been falsely introduced as a result of after thought.

It may be mentioned here that merely because Surinder Kumar PW-4 is the brother of Raj Kumar deceased, it cannot be construed as a circumstance to disbelieve the version as put forth by him. There cannot be any bar to base the conviction on the statement of an eye witness who is shown to be relative of the deceased. However, in such circumstance, a note of caution is sounded and the presence of such witness must appear to be probable on the spot. Moreover, the material on record should not indicate that an attempt has been made to falsely implicate the petitioner. Although the case of the prosecution is to the effect that Surinder Kumar PW-4 sustained minor and superficial injuries and no medical record has been produced but it cannot be termed as a circumstance to disbelieve his presence on the spot. Surinder Kumar PW-4 has sustained minor and superficial injuries and in such circumstance, it is quite possible that he may not have got himself medically treated. Furthermore, his brother Raj Kumar and one more person had sustained fatal injuries. The natural anxiety on the part of Surinder Kumar PW-4 would have been to provide immediate medical aid and care to the deceased with an attempt to save their life. In such circumstance, merely because there is no medical record pertaining to the injuries on the person of Surinder Kumar PW-4, his presence at the spot cannot be disputed. Moreover, the FIR was lodged on the basis of statement

of Surinder Kumar PW-4 with due promptitude and there is lack of material on record to indicate that his presence has been procured later on to falsely implicate the petitioner.

Learned counsel for the petitioner has also sought to shift the liability upon the driver of the combine. It has been pointed out that in the proceedings for compensation case before the Motor Accident Claims Tribunal, the version is with regard to contributory negligence. Moreover, during the cross-examination of Surinder Kumar PW-4, he has testified to the effect that the accident took place due to the fault of the driver of combine and the offending vehicle.

It may be mentioned here that examination in chief of Surinder Kumar PW-4 was recorded on 11.04.2002 and his cross-examination has been recorded on 06.08.2002 after a gap of a period of four months. The possibility cannot be ruled out that the intervening period might have been utilized by the petitioner to win over the witnesses. There is a categorical version emerging in the examination in chief of Surinder Kumar PW-4 imputing rash and negligent driving of the offending vehicle driven by the petitioner which resulted in the collision.

The petitioner has sought to put-forth a case to the effect that combine was moving in zig-zag manner and the accident took place due to the fault of the combine. Parkash Singh PW-1 driver and Karamjit Singh PW-2 helper working on the combine have deposed falsely to save Parkash Singh PW-1 the driver of the combine. It may be mentioned here that there is lack of material on record to indicate that the driver of the combine was rash and negligent. Moreover, the accident took place on a high-way. A perusal of the site plan exhibit PW-9/C indicates that there was a divider in between

the road and the accident took place on the G.T. Road. The petitioner was following the combine and while overtaking the combine struck with the cutter attached with the combine. It was incumbent upon the petitioner to maintain safe distance while overtaking the combine. Further, the material on record indicates that such adequate caution was not taken by the petitioner. Furthermore, no record pertaining to MACT was produced before the courts below. Even otherwise, the proceedings for compensation in the MACT are distinct and separate and to be adjudicated on the basis of material adduced on record of such case. Even copy of the order passed in the said petition placed on record in the present petition shows that the matter was settled and decided on the basis of compromise.

On the perusal of the material on record, it is evident that the death of Raj Kumar and Naveen Kumar has occurred due to rash and negligent driving of the offending vehicle by the petitioner. The direct and proximate cause of the collision and consequential death of two persons is the rashness and negligence on the part of the petitioner while driving the offending vehicle. In these circumstances, the trial court has recorded finding of conviction on the basis of reliable and convincing evidence, which establish the guilt of the petitioner beyond the shadow of reasonable doubt and the conviction and sentence with regard to the offence under Section 304-A IPC has been correctly affirmed by the learned Appellate Court. The findings of conviction, as recorded by the learned Appellate Court, do not suffer from any error, illegality or irregularities which may call for any interference by this Court.

Lastly, it has been contended on behalf of the petitioner that he is a patient of diabetes, aged about 55 years, no criminal antecedents have

been put-forth against him and he may be released on probation for good conduct. In this regard, it may be mentioned here that the petitioner was required to be vigilant and careful while driving the offending vehicle on the highway to ensure safety of the passengers travelling in the vehicle being driven by him. In the event the petitioner is released on probation for good conduct, it will amount to putting premium to his criminal arrogance. However, keeping in view the fact that the accident took place as back as on 11.11.2000 and further considering the fact that in the occurrence the death of two persons has taken place, the sentence with regard to the offence under Section 304-A IPC is reduced to RI for a period of 1½ years without any alternation in the amount of fine and the default sentence.

With the aforesaid partial modification in the quantum of sentence, the revision petition being debarred of merits is dismissed.

The petitioner is stated to be on bail. The concerned Court may initiate the proceedings for his re-arrest so that he can undergo the sentence imposed upon him.

January 22, 2020
mohinder

(VIVEK PURI)
JUDGE

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