

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

CRR-2320-2009(O&M)

Date of decision:-20.1.2020

Pawan Kumar

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Vikram Bali, Advocate  
for the petitioner.

Rana Harjasdeep Singh, DAG, Punjab.

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**H.S. MADAAN, J.**

This revision petition is directed against the judgment dated 27.4.2006 passed by Judicial Magistrate Ist Class, Hoshiarpur vide which he had convicted accused Pawan Kumar for the offences under Sections 279, 304-A and 427 IPC and order of the even date vide which the said accused was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- for the offence under Section 279 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month; to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- for the offence under Section 304-A IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month and to undergo rigorous imprisonment for a period of six months and to pay a

fine of Rs.500/- for the offence under Section 427 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month; all the sentences were ordered to run concurrently, as well as judgment dated 8.6.2009 passed by Additional Sessions Judge ( Ad hoc), Fast Track Court, Hoshiarpur vide which the judgment of conviction and order of sentence passed by the trial Magistrate were affirmed and the appeal filed by the accused – convict was dismissed.

The accused-convict – Pawan Kumar, who is petitioner before this Court prays that the revision be accepted, the impugned judgments of his conviction and order of sentence passed by Judicial Magistrate Ist Class, Hoshiarpur and judgment in appeal by Additional Sessions Judge ( Ad hoc), Fast Track Court, Hoshiarpur be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 20.7.2000 on information having been received at Police Post Bhunga, Police Station Model Town, Hoshiarpur that dead body of Jagtar Singh son of Sarwan Singh, resident of Fabran as a result of suffering injuries in a road side accident, was lying at Civil Hospital, Hoshiarpur, a police party headed by ASI Paramjit Singh, Incharge of Police Post Bhunga (hereinafter referred to as the Investigating Officer/IO) went to the said hospital, where he came across Sarwan Singh son of Sewa Singh, who got his statement recorded, wherein he stated that on the said day at about 8:30 p.m., he along with Baldev Singh, Sarpanch of village Fabran had gone to Civil Hospital, Bhunga for some personal work and while they were returning to their village from the said hospital and time was about 8:45

p.m., his son Jagtar Singh aged about 14 years was returning home on a bicycle after getting his shoes polished from the shop of Durga Dass; when Jagtar Singh had reached at the place leading to the house of Ex-Sarpanch Tarsem Singh situated at a little distance from culvert, the complainant and Baldev Singh were going on foot and were at a distance of 25/30 yards from Jagtar Singh, then a truck bearing registration No.PB-07-C-9491 driven at a high speed in a negligent manner came from the side of Garhdiwala and the driver hit the truck against Jagtar Singh, resultantly he fell down on the road and the truck passed over his body; Jagtar Singh received injuries on his head and right arm and his bicycle was damaged; the truck driver ran away from the spot leaving the truck behind; the complainant and Baldev Singh arranged for a vehicle and took Jagtar Singh to PHC Bhunga, from where he was referred to Civil Hospital, Hoshiarpur keeping in view his serious condition, however, he succumbed to the injuries there. Statement Ex.PA was signed by Sarwan Singh – complainant.

ASI Paramjit Singh appended his endorsement Ex.PW1/A on that statement and sent ruqa to the police station through Constable Surjit Singh on the basis of which formal FIR for the offences under Sections 279, 304-A and 427 IPC was registered by SI Gian Chand. The Investigating Officer carried out the spot inspection and prepared its rough sketch Ex.PW5/D. He got the place of accident photographed. The truck bearing No.PB-07-C-9491, which was standing at the spot was taken into police possession vide recovery memo Ex.PB. The bicycle of deceased Jagtar Singh was also seized vide recovery memo Ex.PC. The

investigating Officer had carried out the inquest proceedings with regard to unnatural death of Jagtar Singh, preparing a report in that regard. During the course of investigation, the accused was arrested in this case and released on bail. Registration certificate of the truck and driving licence of the accused were also taken into police possession. The truck was got mechanically tested from C-II Shingara Singh, who submitted report Ex.PW6/A. Statements of witnesses were recorded. Necessary documents were taken into possession.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Hoshiarpur.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Hoshiarpur, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Hoshiarpur finding that charge for offences under Sections 279, 304-A and 427 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as seven witnesses, namely, Sarwan Singh as PW1, Baldev Singh, Sarpanch, as PW2, Dr.Rajesh Garg, Medical Specialist, civil Hospital, Hoshiarpur as PW3, PHG Raghbir Singh as PW4, ASI Paramjit Singh as PW5, C-II Shingara Singh as PW6 and Sh.Satnam Singh, Clerk DTO, Office, Hoshiarpur as PW7.

With that the prosecution evidence stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to such accused but he denied the allegations contending that he was innocent and had been falsely involved in this case.

Accused did not lead any evidence in their defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Hoshiarpur convicted and sentenced the accused Pawan Kumar and the appeal preferred by accused against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Hoshiarpur was also decided against the accused by learned Additional Sessions Judge ( Ad hoc), Fast Track Court, Hoshiarpur, which left petitioner – accused aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Deputy Advocate General, Punjab besides going through the record.

In this case the eye-witness account of the accident was provided by PW1 Sarwan Singh – complainant and PW2 – Baldev Singh. Both of them were unanimous in saying that the accident had been caused by the accused by rash and negligent driving of the offending truck, resulting in death of Jagtar Singh. Both of them had identified the accused in the Court. PW2 Baldev Singh had stated that Pawan Kumar accused was known to him earlier. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor

contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance.

Sarwan Singh – complainant having lost his real son would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

Although learned counsel for the revisionist has argued that PW2 Baldev Singh had stated in his cross-examination that he had come to the spot after the accident, therefore cannot be taken to be an eye-witness, but I find this contention to be without any merit. Both the eye-witnesses have supported the prosecution story on material points. A line or two cannot be picked up and interpreted out of context so as to give it a

different meaning. It stands adequately proved on file that both the Pws Sarwan Kumar and Baldev Singh had seen the accused.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

It comes out that the accused was driving the truck on a public way in a dare devil manner throwing caution to the winds not caring for the lives of the other commuters on the road. He failed to exercise care and caution expected to him while driving the truck on the public way and by his such wrongful driving caused the accident in which Jagtar Singh, an innocent person has lost his life.

The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. The courts below were justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

As far as sentence is concerned, learned counsel for the revisionist has stated that the revisionist has already undergone about 5 months of imprisonment and he does not have any past criminal record, therefore he be granted benefit of probation. While asking for probation learned counsel for the petitioner has referred to judgment **Paul George Versus State of N.C.T. of Delhi, 2008(2) RCR(Criminal)478** and **Aitha Chander Rao Versus State of Andhra Pradesh, 1981 SCC(Cri) 637.**

Whereas, I am not inclined to accede to that request. I on my

part feel that the accused by rash and negligent driving of the truck had caused death of a human being. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road and such type of elements have to be dealt with sternly otherwise there would be more instances of causalities due to road side accidents. In this case, no leniency can be shown to the accused – convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly.

Pawan Kumar – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Hoshiarpur is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

20.1.2020  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking** : **Yes/No**

**Whether reportable** : **Yes/No**