

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1471-2011 (O&M)

Date of decision: 13.01.2020

Saddiq

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Sunil Panwar, Advocate for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this revision, petitioner-accused had laid challenge to judgment dated 04.07.2011 of Ist Appellate Court, whereby his appeal against judgment of conviction and order of sentence dated 07.09.2009 of the trial Court was dismissed.

Briefly, petitioner was booked and tried in case FIR No. 184 dated 18.10.2001 registered under Sections 279 and 304-A IPC at Police Station Tauru, on the allegations that on 17.08.2001, he while driving his jeep bearing registration No. HR-28-5308 in a rash and negligent manner, caused death of passenger Kailash Rani, travelling in his jeep.

After holding trial, vide judgment of conviction and order of sentence dated 07.09.2009, trial Court convicted the petitioner under

Sections 279 and 304-A IPC. Maximum sentence awarded to him was to undergo rigorous imprisonment for a period of 2 years under Section 304-A IPC.

Being aggrieved, the petitioner approached Ist Appellate Court, who after hearing, dismissed his appeal vide impugned judgment dated 04.07.2011, affirming judgment of conviction and order of sentence of trial Court dated 07.09.2009.

Learned counsel *inter alia* contends that identity of petitioner was disputed, inasmuch as, according to prosecution, he fled away from the spot, but still no identification parade was got conducted. Post-mortem report proving the death of Kailash Rani in the alleged accident, was not brought on record. Both the Courts below have failed to appreciate that non-examination of Investigating Officer was fatal to the prosecution story. PW-1 Rajender, was a chance witness. He did not witness the occurrence. His presence at the spot was doubtful. Complainant did not get himself medically examined, nor any passenger of the jeep allegedly driven by petitioner, which falsify the prosecution story that offending jeep had turned turtle, inasmuch as, it is quite strange that no other traveller received injuries, except deceased-Kailash Rani. There was a delay of 23 hours in lodging the FIR, which was also fatal to the prosecution story. Mechanical examination of offending jeep conducted by PW-3 ASI Ram Singh, was not helpful to the prosecution, because he did not check the mechanism of offending jeep as to whether the same was in running condition. At last, learned counsel for the petitioner submits that he does not challenge the impugned judgments

qua conviction of the petitioner on merits. On quantum of sentence, learned counsel prayed for taking a lenient view urging that accident is of the year 2001. At that time, petitioner was aged around 55 years. By this time he was 75 years of age. He had already suffered a long protracted trial for around 19 years. As per custody certificate dated 11.01.2020, he has already undergone 2 months and 20 days. No useful purpose would be served by sending him behind bars.

On the other hand, learned State counsel strongly refuting the submissions of learned counsel for the petitioner, pleaded the legality and validity of the impugned judgment.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

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

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the judgments of both the Courts below.

The petitioner had cut short a precious life of a human being, while, driving his jeep in a rash and negligent manner. Such type of offenders does not deserve any leniency in the matter of sentence.

Non-examination of Investigating Officer during trial, is not

fatal to the prosecution, inasmuch as, his role always comes into play after the occurrence takes place. In most of the cases, Investigating Officer is not an eye-witness. He only testifies about the manner in which he conducted investigation and nothing beyond that.

In the instant case, PW-1 Rajender is the eye-witness of occurrence. He has jotted the registration number of offending jeep. This witness was cross-examined at length, but nothing favourable to the petitioner could be elicited from his mouth.

Delay in lodging the FIR, is also not fatal to the prosecution story, inasmuch as, in a case of road side accident, paramount consideration is always to save the life of injured. Lodging of FIR is secondary. Since, Kailash Rani wife of PW-2-Laxman (complainant) had received multiple grievous injuries, therefore, he might have first inclined to get his wife medically treated, before taking any action against the revisionist. There is nothing wrong in it.

It was not necessary for the complainant to get himself medically examined, in case, he did not receive any injury or might have received minor injuries. He, as PW-2, categorically supported the prosecution story in its entirety. He too was cross-examined at length by learned defence counsel, but nothing favourable to the petitioner could be elicited from his mouth.

Death of Kailash Rani, could not be disputed by the petitioner by leading any evidence, what to talk of any cogent or convincing. Therefore, in case, post-mortem report of Kailash Rani, was not produced by the prosecution during trial, the same could not have

been made the basis for acquittal of petitioner, more particularly when PW-2 Laxman, complainant specifically testified that his wife died in a accident caused by the petitioner.

I have carefully gone through the judgments of both the Courts below and find no illegality or perversity in the same.

Instant revision, being meritless, is dismissed.

A copy of this order be sent to the Chief Judicial Magistrate, Nuh, who shall issue warrants of arrest against the petitioner to undergo remaining part of his sentence.

January 13, 2020
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No