

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-865-2021(O&M)

Date of decision : 30.09.2021

Jagmit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHLPresent: Mr.Amandeep Chhabra, Advocate
for the petitioner.

Mr.Saurav Khurana, DAG, Punjab.

Mr.Manish Raj Chaudhary, Advocate
for the complainant.**(Through Video Conferencing)****VIKAS BAHL, J.(ORAL)**

The present revision petition has been filed against the judgment dated 13.10.2017 as well as judgment dated 20.07.2021. Vide judgment dated 13.10.2017, the Judicial Magistrate Ist Class, Malout, had convicted the present petitioner under Section 279/304-A IPC and had awarded following sentence:-

<i>Under Section</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
279 IPC	RI 6 months	Rs.500/-	15 days
304A IPC	RI 1 year	Rs.1500/-	1 month

All the sentences shall run concurrently. The period of detention, if any, already spent by the convict in this case, shall be set off against the substantive sentences awarded to him.”

Sessions Judge, Sri Muktsar Sahib, vide judgment dated 20.07.2021.

The case of the prosecution in brief is that on 16.09.2011 one telephone call was received at Police Station City Malout to the effect that an accident had taken place between a tractor trolley and a motor cycle on the defence road. On the basis of said information, a police team had reached the spot where Boota Singh (complainant) and his maternal uncle met the police. Boota Singh got his statement recorded to HC Ramesh Chander, to the effect that he was a resident of the abovesaid address and his maternal grandparents lived at village Kulwar and at about 11.20 AM, his father-Gurcharan Singh and his mother-Harpal Kaur were on his motor cycle Hero Honda bearing no.PB37D-0736. He along with his maternal uncle Gurdev Singh, was going on scooter bearing no.PB03-2241 from village Kullar to village Nahia wala behind them. At about 12.30 PM, one tractor along with trolley loaded with mud, which was being driven in a very rash and negligent manner, hit his father's motorcycle and crossed over his parents, on account of which, the parents of the complainant died on the spot. The driver ran away from the spot and after some time, it was learnt that the name of driver was Jagmit Singh (present petitioner). It is stated that the said accident occurred on the basis of rash and negligent driving of the petitioner and thus, the present FIR was registered.

After registration of the FIR, challan was filed and charges were framed under Sections 279/304-A IPC. The prosecution examined following witnesses:-

- “1. PW-1 Angrej Singh
2. PW-2 HC Gurpal Singh
3. PW-3 Dr.Sunil Bansal

4. PW-4 ASI Ramesh Chander
5. PW-5 Jagpal Singh
6. PW-6 HC Harwinder Singh
7. PW-7 Boota Singh
8. PW-8 Gurdev Singh
9. PW-9 Anju Swami
10. PW-10 Neeraj Kumar
11. PW-11 Avtar Singh
12. PW-12 Satpal Singh”

After the conclusion of prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded and entire incriminating material was put to the accused. PW-7 Boota Singh and PW-8 Gurdev Singh, who were the eye witnesses of the occurrence, had deposed as per their complaint and stated that they were present at the spot as they were going on the scooter behind the motor cycle of the parents/deceased persons. They stated that the petitioner was driving the tractor trolley in a very rash and negligent manner and on account of the same, met with an accident with the motor cycle of their parents and on account of which, the parents of the petitioner died on the spot. The said witnesses named the present petitioner as the person driving the tractor in question. PW-3 Dr.Sunil Bansal produced on record the post-mortem register Ex.PW3/C, apart from the other important documents and proved that the death had taken place on account of said accident. PW-4 ASI Ramesh Chander, who was the investigating officer, has also fully proved the prosecution case and also relevant documents including recovery memo of the tractor trolley which is Ex.PW4/E. The driving licence of the petitioner was also taken in custody

and the memos regarding the same is Ex.PW2/C. Other witnesses including PW-1 Angrej Singh, PW-2 HC Gurpal Singh, PW-5 Jagpal Singh, PW-6 HC Harwinder Singh PW-9 Anju Swami, PW-10 Neeraj Kumar, PW-11 Avtar Singh and PW-12 Satpal Singh also fully proved the case of the prosecution. The said witnesses were cross-examined but nothing came out so as to dent the case of the prosecution. The Judicial Magistrate Ist Class, Malout, after considering the above evidence as well as documents on record, convicted the petitioner under Sections 279/304-A IPC and awarded the sentence which has been reproduced hereinabove. The Additional Sessions Judge, Sri Muktsar Sahib, after considering the entire material and reappraising the evidence on record, dismissed the appeal filed by the petitioner and thus, upheld the conviction. Against the said orders, the present revision petition has been filed.

During the course of arguments, learned counsel for the petitioner has submitted that though he does not challenge the conviction under Sections 279/304-A IPC, but he would be satisfied in case a lenient view is taken with respect to the sentence which has been awarded to the petitioner. In this regard, it has been submitted that the incident in question is of year 2011 and thus, the petitioner has suffered agony of trial and appeal / revision for all these years and the petitioner has been granted bail / suspension of sentence but he has never misused that concession. It has further been submitted that the petitioner has three minor daughters. He is the sole bread winner of the family. It has also been submitted that the petitioner has compensated the complainant and the complainant has given an affidavit in favour of the petitioner and said affidavit is annexed as

Annexure A-1. The said affidavit is reproduced hereinebelow:-

“ I, Buta Singh, aged 46 years, son of Sh.Gurcharan Singh, resident of VPO Nehianwala, Tehsil and District Bathinda, do hereby solemnly affirm and declare as under:-

- 1. That the deponent is permanent resident of above said address.*
- 2. That due to misunderstanding the deponent lodged one FIR No.61 dated 16.09.2011, U/s 304A/279/427 IPC at Police Station Kabarwala, District Sri Muktsar Sahib against Jagmit Singh son of Manjit Singh son of Teja Singh, resident of New Gobind Nagari, Gali No.5, Malout, Tehsil Malout, District Muktsar Sahib, who was alleged to be driver of offending vehicle tractor trolley.*
- 3. That in the above said accident which took place on 16.09.2011, the parents of deponent died and on account of this present FIR was lodged on the statement of deponent.*
- 4. That in the present case, the accused Jagmit Singh has been convicted by the Id.Judicial Magistrate First Class, Malout, vide order dated 13.10.2017 and his appeal against the same has also been dismissed by the Court of Ld.ASJ Sri Muktsar Sahib vide judgment dated 20.07.2021.*
- 5. That now with the intervention of respectable and relatives of both the parties, a Panchayat was convened and in the Panchayat the matter has been amicably settled between the deponent and accused Jagmit Singh. Although accused Jagmit Singh belong to poor family, but he has paid some compensation to the deponent on account of death of parents of deponent and now the deponent has no ill-will or grouse against accused Jagmit Singh.*

6. That the deponent has no objection if the conviction is set aside or the accused is acquitted by the Hon'ble High Court Chandigarh and the deponent do not want to pursue the present case against Jagmit Singh.

7. That the deponent is already and willing to make his statement before the Hon'ble Court regarding compromise and the deponent has also no objection if the accused Jagmit Singh is ordered be released on bail or ordered to be already undergone his sentence.

8. That the deponent is giving his present affidavit without any fear, pressure or undue influence of any kind and has signed the affidavit after reading and understanding the contents of this affidavit in simple language.

Chandigarh

Dated: 05.08.2021

Sd/-

DEPONENT

VERIFICATION:

Verified that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing has been concealed therein.

Chandigarh

Dated: 05.08.2021

Sd/-

DEPONENT"

A perusal of the above affidavit would show that the complainant has submitted that he has no objection in case the conviction of the petitioner is set aside and he is acquitted from the offence.

In support of his arguments, learned counsel for the petitioner

has relied upon ***CRR-1931 of 2010*** decided on 23.07.2019 titled as ***Chander Bhan Vs. State of Haryana*** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495*** was considered. Further reliance has been placed upon a judgment of this Court in ***CRR-4830-2016*** decided on 08.03.2017 titled as ***“Balwinder Singh @ Binder Vs. State of Punjab”*** in which case also the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra) was considered. Further, reliance has also been placed upon case of ***Jaswant Singh Vs. State of Punjab, CRR-1239-2012*** decided on 29.08.2019, reported as ***2020 (1) RCR (Criminal) 163***, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra), the sentence was reduced to already undergone.

Learned counsel for the petitioner has also submitted that the petitioner has already undergone 2 months and 13 days of actual custody and also has earned remission of 1 month and 4 days, thus, the total sentence including remission of the petitioner is 3 months and 17 days out of total sentence of one year.

Learned counsel for the State of Punjab has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on

record. However, the fact with respect to the custody of the petitioner as well as having never misused the concession of bail/suspension of sentence, has not been disputed by the learned State counsel.

Learned counsel for the complainant has also submitted that he has no objection in case either the present petition is allowed and the petitioner is acquitted or the sentence is reduced to already undergone.

This Court has heard learned counsel for the parties and perused the record.

As far as the conviction of the present petitioner under Sections 279 and 304-A IPC is concerned, this Court is of the view that both the Courts have considered the entire evidence and record in detail and have rightly come to the conclusion that it was the petitioner who was involved in the incident.

In the present case, two eye witnesses PW-7 Boota Singh and PW-8 Gurdev Singh, who were following the motor cycle on which parents of the complainant were riding, as they were on their two-wheeler and had seen the entire occurrence and had stated that the petitioner was driving the tractor trolley in question, in a very rash and negligent manner and caused accident to the motor cycle of parents of the complainant and on account of which his parents had suffered fatal injuries and died at the spot. PW-1 and PW-8 had named the petitioner as the person who had caused accident. PW-3 Dr.Sunil Bansal had proved on record the medical evidence to show that the death had taken place on account of the accident with tractor trolley of the petitioner. PW-4 ASI Ramesh Chander, Investigating Officer had proved on record all the relevant documents including recovery memo of the tractor trolley Ex.PW4/E as well as driving licence of the petitioner

Ex.PW2/C. Other witnesses have also supported the case of prosecution and have proved the relevant documents on record. Nothing has come out in the cross-examination so as to demolish the case of the prosecution and thus, the conviction under Sections 279/304-A IPC is upheld.

As far as the sentence awarded to the petitioner is concerned, this Court is of the view that the incident in the present case is of year 2011 and the petitioner has never misused the concession of bail / suspension of sentence and that he is not involved in any other case and also has three minor children and he is sole bread winner in the family, and also the fact that complainant has given an affidavit to the effect that he has no objection in case the petition is allowed and learned counsel for the complainant has also submitted that he has no objection in case sentence of the petitioner is reduced to already undergone and also the fact that as per custody certificate, the petitioner already undergone 2 months and 13 days of actual custody and also earned remission of 1 month and 4 days, thus, the total sentence including remission is 3 months and 17 days out of period of one year, and also in view of the authorities of law relied upon by counsel for the petitioner, it is ordered that sentence awarded to the petitioner is reduced to the period already undergone by him.

With the above observations, the present petition is disposed of.

Since the criminal revision petition has been disposed of, pending miscellaneous application(s), if any, also stands disposed of accordingly.

(VIKAS BAHL)
JUDGE

September 30, 2021

Davinder Kumar