

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

(Through Video Conferencing)

CRR-133-2022(O&M)

Date of Decision:-04.03.2022

Bijender.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ivneet Singh Pabla, Advocate for the Petitioner.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 15.12.2021 passed by the learned Additional Sessions Judge, Jhajjar vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 29.11.2018 and 30.11.2018 passed by Sub-Divisional Judicial Magistrate, Bahadurgarh, has been dismissed.

2. Briefly, the present case was got lodged on the statement of Sunil Kumar son of Rajpal to the effect that on 22.12.2013, he was coming from Bahadurgarh to his village Chhara in his vehicle bearing registration No.HR-13E-8500 make Mahindra Logan. One motor cycle CD Delux bearing registration No.HR-13E-5867 was going in front of his vehicle near Rewari Kheda Turn, which was driven by his co-villager Vicky and Dinesh

was the pillion rider. At about 3.30 PM, when they reached on Rewari Kheda Mod, an Eicher Canter being driven in a rash and negligent manner by its driver came from the side of Bahadurgarh without blowing the horn or giving an indicator and hit the motor cycle from the back. Due to this, Dinesh and Vicky fell down on the road along with the motor cycle and sustained multiple injuries. The registration number of the offending vehicle was HR-63B-4119 and the driver disclosed his name as Bijender son of Jagbir Singh. Many people gathered on the spot and when he was holding Dinesh and Vicky the driver of the Canter fled away from there. Thereafter, he took Dinesh to GH Jhajjar, where he was declared dead by the doctor and Vicky was taken to PGIMS, Rohtak by his family members. The said accident took place due to the rash and negligent driving of the driver of the offending canter, Hence, legal action may be taken against him.

3. On the basis of above facts, FIR No.642 dated 22.12.2013 under Section 279, 337 and 304-A IPC P.S. Sadar Bahadurgarh was lodged. After registration of the case, investigation was set into motion and after collecting sufficient evidence, the accused was arrested. After completion of the investigation, challan was prepared and presented before the Court, copy of which was supplied to the accused free of costs as envisaged under Section 207 Cr.PC.

4. After having heard the accused on charge, the then learned JMFC, Bahadurgarh, found a prima facie case punishable under Sections 279, 337, 338 and 304-A of IPC made out against the accused and he was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution examined as many as

ten witnesses.

- PW-1 :** **Pawan son of Sultan Singh**, identified the dead body of deceased Dinesh.
- PW-2 :** **Sunil Kumar (complainant)** proved the contents of his complaint Ex.PW-2/A
- PW-3 :** **Vikas @ Vicky (eye witness)**, witnessed the accident and supported the version of the complainant and proved the memo Ex.PW-3/A vide which motor cycle, registration certificate, photocopy of admission card and discharge card and his driving licence were taken into police possession.
- PW-4 :** **SI Ramesh Kumar, (investigating Officer)** proved the complaint Ex.PW-2/A, tehrir Ex.PW-4/A, FIR Ex.PW-4/B, endorsement on tehrir Ex.PW-4/C, death report of deceased Dinesh Ex.PW-4/D, site plan Ex.PW-4/E, recovery memo of offending canter Ex.PW-4/F, photographs of place of occurrence and offending vehicle Ex.PW-4/G to Ex.PW-4/J, memo vide which driving licence of accused and insurance papers of offender canter were taken into possession Ex.PW-4/K.
- PW-5 :** **Dr. Sameer Minocha**, tender his affidavit Ex.PW-5/A and proved the copy of postmortem report of deceased Dinesh as Ex.PW-5/B.
- PW-6 :** **Ramphal**, brought the summoned record and proved the medical file Ex.PW-6/A of injured Vikas.
- PW-7 :** **EHC Rajpal**, proved the recovery memo of papers of the motor cycle and driving licence of injured as Ex.PW-4/C and recovery memo of offending canter Ex.PW-4/F.
- PW-8 :** **EASI Bal Kishan**, proved the mechanical examination report of motor cycle as Ex.PW-8/B and of canter bearing No.Ex.PW-8/A.
- PW-9 :** **Narender Singh**, proved the superdarinama of canter Ex.PW-9/A.
- PW-10 :** **Dr. Piyush**, proved the X-ray films Ex.P1 to Ex.P15, CT

Scan Ex.P16, X-ray report Ex.PW10/A and CT Scan report Ex.PW10/B

6. Thereafter the evidence of the prosecution was closed by the learned PP for the State vide her separate statement dated 15.05.2017.
7. The accused was examined under Section 313 Cr.PC where he denied all the allegations and pleaded his false implications. However, accused did not examine any witness in his defence.
8. Thereafter vide judgment of conviction dated 29.11.2018 and order of sentence dated 30.11.2018 passed by Ms. Deepti, learned SDJM Bahadurgarh, the accused was convicted as under:-

Sr. No.	Offence under Sections	Imprisonment	Fine	In default of fine imprisonment
1.	279 of Indian Penal Code	Rigorous imprisonment for two months	Rs.200/-	Simple Imprisonment for 15 days
2.	337 of Indian Penal Code	Rigorous imprisonment for two months	Rs.200/-	Simple Imprisonment for 15 days
3.	338 of Indian Penal Code	Rigorous imprisonment for six months	Rs.500/-	Simple Imprisonment for one month
4.	304-A of Indian Penal Code	Rigorous imprisonment for two years	Rs.1000/-	Simple Imprisonment for two months

9. Aggrieved with the impugned judgment of conviction and order of sentence the petitioner filed an appeal before the ASJ, Jhajjar. In appeal the judgment of conviction and order of sentence of the Trial Court was affirmed and the petitioner was ordered to be taken into custody and sent to District Jail, Jhajjar for undergoing the remaining sentence awarded to him vide judgment dated 15.12.2021.
10. Thereafter the petitioner has filed the instant revision petition

challenging both the judgments of the Trial Court and the Lower Appellate Court.

11. The learned Counsel for the petitioner has argued that the presence of the eye witnesses, namely, the complainant-Sunil Kumar (PW-2) and injured witness Vikas @ Vicky (PW-3) is highly doubtful on the spot. He has stated that only Dinesh deceased was shifted to the hospital by the complainant leaving behind Vikas @ Vicky, the injured eye witness which shows that the complainant was not present at the spot at the time of alleged accident. He has further contended that Vikas, PW-3 ought to have been taken to the emergency of PGIMS, Rohtak, which makes his presence at the spot doubtful. He has further contended that if the presence of PW-2 and PW-3 was doubtful then the identification of the petitioner as the accused could not have been established. Thus, his contention was that the petitioner ought to be acquitted on account of the fact that he was not identified properly, the presence of the witnesses was doubtful and there was no evidence of the petitioner driving the canter in a rash and negligent manner.

12. I have heard learned Counsel for the petitioner at length.

13. The evidence of PW-3 Vikas @ Vicky has been placed on record as Annexure P-1 and that of PW-2 Sunil Kumar-complainant as Annexure P-2 . A perusal of the two statements clearly establish that both the witnesses were present at the spot. In fact, so far as the injured witness PW-3 Vikas @ Vicky is concerned he was admitted in hospital and has duly identified the accused person in court as the driver of the offending canter. He has spoken about the speed with which the canter of the accused struck the motorcycle from behind. In a case under Section 304-A IPC it would be

extremely difficult to disbelieve the eye version account of the accident victim when he has received injuries in the occurrence because he can have no possible motive to falsely implicate an accused who is unknown to him prior to the occurrence. In this case, there is absolutely nothing to suggest that Vikas @ Vicky had received injuries in some other occurrence and not in the accident in question. Therefore, the version of PW-2 and PW-3 regarding the manner in which the occurrence took place as also the identify of the accused cannot be disbelieved.

14. Furthermore, PW-5 Dr. Sameer in his testimony clearly proved the postmortem report Ex.PW-5/B in which the cause of death of Dinesh has been mentioned as hemorrhage and shock due to injuries to the vital organs and all injuries are ante mortem in nature sufficient to cause death in normal course of life. Further, PW-6 OTA Ramdhan in his testimony proved the treatment record Ex.PW-6/A of injured Vikas, PW-3. PW-10 Dr. Piyush in his testimony clearly proved X-Ray and CT Scan reports of injured Vikas, PW-3 vide Ex.PW-10/A to Ex.PW-10/B.

15. The next argument of the learned Counsel for the petitioner was that since the complainant Sunil-PW-2 in his examination in chief merely stated about the offending vehicle being at a high speed and even in his cross examination, he clearly stated that the all three vehicles i.e. his vehicle, motorcycle and truck were going from Bahadurgah to Chara and that since in the mechanical examination report of offending canter Ex.PW-8/A and motorcycle Ex.PW-8/B, there was damage to the indicator only, there was no rash and negligent driving by the petitioner. But this argument of the learned counsel for the petitioner cannot be accepted because the complainant in his examination in chief as PW-2 clearly stated about being

struck by the offending vehicle from the back. Moreover, even in his cross examination, he stated that the canter driver even overtook his vehicle but he escaped and that the canter overtook without giving any dipper or indicator. Even in the mechanical examination report Ex.PW-8/A of the offending canter, there is a clear mention about scratches to the bumper and the front tyre and in report Ex.PW-8/B of motorcycle, there is clear mention about other damage and scratches to the motorcycle also. Moreover, even the photographs Ex.PW-4/G to Ex.PW-4/J speak of the manner of the offending vehicle being driving rashly and negligently. Furthermore, in **Bir Chand Vs. State of Haryana 2003(3) RCR (Criminal) 451** it has been clearly stated that merely because the witness did not state that the accused was driving in a rash and negligent manner would not be a ground to acquit the accused because the circumstances of a case would establish that the accused was driving in a rash and negligent manner and mere parrot like repetition of the words in question was not required.

16. From the above, discussion it stands proved beyond any shadow of doubt that the petitioner was the driver of the offending canter which was being driven rashly and negligently, struck the motor cycle of the injured and the deceased leading to the death of Dinesh and injuries to PW-3 Vikas @ Vicky. Thus the offence having been clearly established from the version of the eye witnesses as also the material on record, I find no reason to interfere with the well reasoned judgments of the trial Court and learned lower Appellate Court. Hence, this revision petition is hereby dismissed.

However, since the petitioner is a first time offender and the occurrence is almost 10 years old, I modify the sentence and reduce it to a

period of 1-1/2 years while placing reliance on the judgments of Hon'ble Supreme Court and this Court in **Jaswant Singh Vs. State of Punjab 2020 (1) RCR (Criminal) 163** wherein the sentence was reduced to a period of 04 months and 27 days and **State of Punjab Vs. Saurabh Bakshi 2015(2) RCR (Criminal) 495** wherein the sentence was enhanced to 06 months rigorous imprisonment. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

March 04, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>