

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

**CRR No.255 of 2022 (O&M)
Reserved on : 24.02.2022
Pronounced on: 02.03.2022**

Gurpreet Singh

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by :- Mr. Mohit Vashishat, Advocate, for the petitioner.

VINOD S. BHARDWAJ, J.

1. By means of the instant revision petition, a challenge has been raised to the judgment dated 24.07.2018 passed by the Sub Divisional Judicial Magistrate, Khamanon, in case FIR No.136 dated 23.10.2013, vide which the petitioner was convicted for offences under Section 279, 337, 338, 304-A IPC, registered at Police Station Khamanon, District Fatehgarh Sahib as well as the subsequent dismissal of the appeal vide judgment dated 26.10.2021 passed by the learned Sessions Judge, Fatehgarh Sahib. The following sentence was awarded by the learned Court:-

Sr. No.	Offence	Sentence	Fine	In default
1.	U/s 279 IPC	To undergo rigorous imprisonment for a period of six months	-----	-----
2.	U/s 337 IPC	To undergo rigorous imprisonment for a period of six months	-----	-----

3.	U/s 338 IPC	To undergo rigorous imprisonment for a period of one year	Rs.1,000/-	In default one month SI
4.	304-A IPC	To undergo rigorous imprisonment for a period of one year	Rs.9000/-	6 month R.I.

All the sentences were ordered to be run concurrently.

2. The undisputed facts as they emanate from the record reflect that medical *ruqa* was received by the police on 22.10.2013 as regards admission of injured Harpreet Singh and Mandeep Singh with the history of road side accident upon the police official visiting the Civil Hospital, Khamanon, he was informed about the patients having been referred to PGI Chandigarh. On 23.10.2013, Investigating Officer along with other police officials reached PGI and upon medical opinion as regards fitness of Harpreet Singh and Mandeep Singh to make a statement, the same was recorded. In the statement of Mandeep Singh S/o of Charan Singh, he informed that he along with Harpreet Singh son of Harnek Singh were going on scooter bearing No.PB-49-3019 from Kang Market, Khamanon towards their house. The scooter was being driven by him and Harpreet Singh was the pillion rider. At about 6:00 p.m., when they reached in front of gate of *Anaj Mandi*, Khamanon, then a Skoda car came from the behind, on a very high speed and in a rash and negligent manner and struck his car in their scooter. As a result of which, he and Harpreet Singh fell on the road and the car had dragged the scooter at a distance. Due to which his left leg from thigh was broken and had also received injuries on his head and blood starting oozing. Harpreet Singh had also received injuries on his head and his shoulder near right side of his neck has also been broken, who

remained un-conscious at the spot. The driver of the Skoda car stopped his car at the spot and on seeing the multiple injuries on them, the driver of the said Skoda car fled away from the spot. He had noted down the number of the car as PB65P-0047 and the name of driver revealed as Gurpreet Singh son of Surjit Singh r/o Ranwan and the scooter was also badly damaged. He can identify the driver of car being produced before him. The accident occurred due to rash and negligent driving of the car driver.

3. On the statement of complainant, FIR in question was registered. The petitioner-accused was arrested during the course of investigation and mechanical testing of the vehicle was carried out. On 27.10.2013, as per information received from the PGI, Chandigarh, complainant Mandeep Singh died on account of injuries sustained by him. A final report under Section 173 Cr.P.C. was filed after completion of all formalities and the investigation, the same was present in the Court. As the petitioner pleaded not guilty, the trial commenced.

4. In order to prove its case, the prosecution examined as many as 12 witnesses viz., PW1 Dr.Sunil Subramanya, Jr. Resident of PGI, PW2 HC Rajinder Kumar, PW3 Gurdeep Singh, PW4 Harpreet Singh injured/eye witness, PW5 HC Dilbag Singh, PW6 Dr. Navdeep Singh, Sr. Resident of PGI, PW7 Jagpal Singh, PW8 Sohan Singh, PW9 ASI Jagaroop Singh, PW10 Balvir Kaur, PW11 Bhawna Sharma, Clerk DTO Office, FGS and PW12 Dr. Karan, Sr. Resident of PGI.

5. Statement of the accused under Section 313 Cr.P.C., was recorded, in which all the incriminating evidence appearing against him was put to him to which he denied and pleaded his innocence. He pleaded

that the witnesses are interested witness and have falsely deposed at the instance of complainant/police. Accused prays that he was working as property dealer and brother of deceased Mandeep Singh namely Gurdeep Singh and Sohan Singh are working as property dealer and there is a dispute between him and Gurdeep Singh and Sohan Singh and the police of PS Khamanon has falsely implicated him at the instance of above said Gurdeep Singh and Sohan Singh. No accident took place with him.

6. Upon consideration of the evidence adduced by the respective parties, learned trial Court recorded a finding of conviction against the petitioner for offences under Sections 279, 337, 338, 304-A IPC.

7. Aggrieved from the judgment of conviction dated 24.07.2018 passed by the Court of Sub Divisional Judicial Magistrate, Khamanon, the petitioner preferred an appeal in the Court of learned Sessions Judge, Fatehgarh Sahib. Vide judgment dated 26.10.2021, the appeal bearing Criminal Appeal No.92 was dismissed by the learned Sessions Judge, Fatehgarh Sahib. Hence the revision petition.

8. Learned counsel for the petitioner has argued that the judgment passed by the Courts below suffer from grave mis-appreciation of evidence and the infirmities in the prosecution case have not been duly noticed. It is argued that the prosecution has failed to prove the guilty of the petitioner beyond doubt and the Courts below have recorded the judgment of conviction solely upon preponderance of probabilities which runs contrary to the settled tenets of criminal jurisprudence. It was further submitted that prosecution has failed to show any MLR to establish that the deceased had received any injuries in the alleged incident and also to establish that the

death occasioned as a result of the injuries sustained by Mandeep Singh in the alleged incident. It is further argued that the incident is stated to have occurred on 22.10.2013 and even as per the case of the prosecution, he was discharged on 26.10.2013, however, the death in question is state to have taken place on 27.10.2013. Hence, it cannot be said that the death was an outcome of the accident in question. Learned counsel thus, prayed that the judgments of the Courts below thus, suffer from perversity and infirmity and are accordingly, liable to be set aside.

9. I have heard learned counsel for the petitioner at length and with his able assistance I have gone through the records of the case.

10. The prime question which thus, arises for consideration is as to whether the petitioner was driving the offending car in question and as to whether the offending vehicle was being driven by the petitioner in a rash and negligent manner so as to endanger human life and public safety.

11. A perusal of the judgment of the trial Court shows that the injured Harpreet Singh appeared as PW-4 and he specifically deposed about the date, time, place and manner of occurrence of the incident. It was specifically stated that the scooter on which the deceased as well as the said witness were riding was hit from the back side by the offending vehicle resulting in the witness as well as the deceased sustained multiple injuries. The said witness was confronted about the identification of the petitioner to which he had specifically replied to have known the petitioner and also that the petitioner eventually visited his house. It is not in dispute that the said injured witness remained aware and conscious and became unconscious after lapse of some time from the accident. Such time was

held sufficient by the Courts below for the eye-witness to identify an accused driver of the offending vehicle.

12. Reference is also made to testimony of two other eye-witnesses namely PW-7 Jagpal Singh who was working as an electrician on a mobile tower. The said witness was known to the deceased Mandeep Singh and he has also reiterated that the offending vehicle bearing registration No.PB65P-0047 came from the side of the canal and hit the scooter from behind. It is also stated that the offending vehicle was being driven rashly and negligently and at a high speed resulting in dragging of the scooter to some distance. He again stated that the driver of the offending vehicle was known to him and identified the accused. The version of independent witness stands corroborated by PW-8 -Sohan Singh deposed about the offending vehicle crossing his car from wrong side before it hit the scooter. He also happened to know the deceased Mandeep Singh and injured PW-4 Harpreet Singh. There is categoric averment by the said witness that the offending vehicle was being driving in a rash and negligent manner by the petitioner.

13. The statement of deceased Mandeep Singh was also examined by the learned trial Court as Ex.P1. The FIR in question was registered on the basis of said statement which has been duly proved by PW-4 Harpreet Singh as well as Investigating Officer to whom the said statement was got recorded by deceased Mandeep Singh. The said witnesses had also deposed about the registration number of the offending car. The said statement of Mandeep Singh gains significant importance since the same was a statement made by the deceased regarding the circumstances of the

transaction that ultimately resulted in his death. The proximity of the statement and death of Mandeep Singh is an issue to be considered and there being a continuity and immediate proximity as well as link of the transaction in the form of incident and the ultimate consequence in the form of death of the said transaction, the statement Ex.P1 becomes admissible in evidence in terms of Section 32 of the Evidence Act. The statement having been made under expectation of death and in the proceedings where the issue required to be determined is as regards the cause of death, the said statement assumes significance of dying declaration and becomes a substantive piece of evidence that may not require any further corroboration unless sufficient evidence is produced to convince the Court to disregard the said testimony and to render it unreliable or unworthy of any credit.

14. PW-10 Balvir Kaur, Clerk in the DTO Office Mohali, has stepped into the witness box and proved the verification report Ex.PW9/H regarding ownership of the vehicle as also the record Ex.PW10/A and Ex.PW10/B.

15. Further, in order to ascertain the involvement of the offending vehicle in the commission of offence, both the accidental vehicles i.e. Scooter bearing registration No.PB-49-3019 and Skoda Car bearing registration No. PB65P-0047 were mechanically examined by PW-2 Rajinder Kumar and has mechanical test reports were exhibited along with the record as Ex.PB and Ex.PC. The scooter involved in question was damaged from behind while the car was damaged from the front side landing credence to the prosecution version. There was no other plausible

explanation furnished stating the reasons for the damage to the car. Even though the petitioner is stated to have taken a stand about not driving the offending vehicle in question at the time of the incident, however, being the registered owner of the vehicle, it was for the petitioner to explain and to bring-forth the person who was statedly/allegedly offending vehicle in question at the time of incident. Apart from the oral testimony denying driving the offending vehicle, no evidence has been led by the accused to establish his non-involvement in the accident in question. The said failure on the part of the petitioner assumes significance considering that the witnesses had specifically named the petitioner to be the driver of the offending vehicle at the time when the accident in question occurred.

16. While determining as to whether the offending vehicle in question was being driven in a negligent manner by the petitioner, the trial Court concluded as under:

“ As far as, negligence of accused in causing the accident is concerned, site plan Ex.PW9/D, was proved by IO ASI Jagroop Singh. Although, in the said site plan both the vehicles are shown to be parked on the left side. But Ex.PW9/D, further establishes that the place of occurrence is a busy market area. The drivers are supposed to drive the vehicle slowly, keeping in view the busy market place. All the eye witnesses deposed that accused Gurpreet Singh was driving the car rashly. He hit the scooter from behind. The velocity and the thrust at which the collision took place is clear from the fact that after the accident, the scooter was dragged upto some distance. Both the injured received injuries on their head. One of the injured later died. Due to impact of the high speed of vehicle i.e. car the scooter was swayed away upto distance. Had the offending car being

driven at a slow speed, the thrust must have been lesser and the accident could be avoided. However, in the present case, accused firstly crossed the car of PW-8 Sohan Singh from the wrong side that to at a high speed showing rashness and recklessness of car driver and thereafter hit against the scooter driven by the accused. Thus, rash and negligent act on the part of the accused Gurpreet Singh is proved on record beyond doubts.”

17. The same thus, leads to the arguments of the petitioner that there was no evidence adduced to link the death as a consequence of the accident in question. Since the vehement argument of the counsel for the petitioner was that the deceased was discharged on 26.10.2013 whereas he has died on 27.10.2013 and hence, it cannot be assumed that death in question occurred as a result of accident in dispute.

18. The aforesaid argument of the petitioner does not hold good considering that the said aspects stand duly established and has been noted by the Court. The relevant discussion is extracted as under:

“16. Prosecution examined PW6 Dr.Navdeep Singh, SR Department of Renal Transplant Surgery, PGI, CHD, who deposed that 23.10.2013, injured Harpreet Singh was treated at PGI. On the application Ex.PW6/A, moved by IO, Harpreet Singh was declared unfit by him. He proved MLR of injured Harpreet Singh and found the following injuries.

1. 3 X 2 cm sutured wound on RT parieto occipital region. NCCT head showed acute FTP SDH (fronto parietal sub dural hematoma).

2. FT clavicle fracture.

As per Ex.PW6/D, injuries suffered by Harpreet Singh were grievous in nature caused by blunt weapon.

17. Prosecution also examined as PW1 Dr. Sunil Subramaniam, who deposed on 28.10.2013, he had conducted the post mortem on the dead body of Mandeep Singh son of Charan Singh. The body was brought by ASI Jagroop Singh and was identified by Gurdeep Singh and Hardev Singh and as per the information provided by the police, it was a case of road side accident on 22.10.2013 at 6:00 p.m. In the area of Khamanon. The deceased was brought to PGI on 22.10.2013 and was operated for fracture of femur and was discharged on 26.10.2013. On 27.10.2013, he was again brought back to PGI and terminally developed symptoms of pulmonary embolism and died on the same day at about 5.37 a.m. Rigor mortis was present all over the body and post mortem staining was present over the back of the body except pressure areas. The post mortem was concluded at 10.45 a.m. On 28.10.2013 and he noted down the following injuries:

- 1.- A bluish contusion of size 4cm X 3 cm present surrounding a right ear in the temporal region of the scalp.
2. A brownish scabbed abrasion of size 4 cm X 2 cm present over the lateral aspect of left forearm.
3. A brownish scabbed abrasion of size 3 cm X 2 cm present over the front of right knee joint.
4. Surgical stapled wound of size 5cm x 1cm present over the lateral aspect of upper 1/3rd of left thigh with fracture displacement of underlying shaft of femur surgically fixed with extravasation of blood into the surrounding tissues.

In scalp subaponeurotic hemorrhage present over right temporal region. In skull fissured fracture present over petrous part of right temporal bone. In meninges and vessels thin layer of subarachnoid hemorrhage present over the right basal portion of fronto temporo region. In brain, brain, congested and oedematous with gyri flattened and sulci

narrowed. Tonsils and unci grooved. Multiple contusions present over basal portion of right fronto temporal region. In his opinion, the cause of death in this case was cranion cerebral damage consequent to blunt trauma to head and all the injuries were antemortem in nature and caused by blunt force. He has proved the computerized copy of PMR as Ex.PA.

In his cross examination, this witness deposed that the deceased had died due to the injuries suffered by him. Thus, establishing that there was no other intervening factor which resulted in death of Mandeep Singh. Injuries were suffered by Mandeep Singh in the accident caused by accused.

PW 12 Dr. Karan, SR Deptt. Ortho, PGI, Chandigarh proved the medico legal summary of Mandeep Singh as Ex.PW12/A and death summary as Ex.PW12/B.”

19. A perusal of the said testimony, the medico legal report as well as post-mortem report conclusively establish that the death in question occurred as a result of the injuries sustained by the deceased on account of the accident in question. It has also come forth that the deceased had to be re-admitted on 27.10.2013. It cannot thus, be said that the death was not a direct consequence of the act committed by the petitioner.

20. The aforesaid submissions were also raised in the first appeal and it was duly noticed by the learned Sessions Judge that the death had occurred on account of injuries suffered by him in the accident in question.

The relevant part of the discussion is extracted as under:-

“The prosecution examined PW-1 Dr.Sunil Subramanyam, Junior Resident, who deposed that on 28.10.2013, he conducted post mortem on the dead body of Mandeep Singh and deposed that deceased was brought to PGI on 22.10.2013 and was operated for fracture of femur and was discharged on

26.10.2013, but on 27.10.2013, he was again brought back to PGI with terminally developed symptoms of pulmonary embolism and died on the same day at about 5:37 a.m. This witness categorically stated in the cross-examination that deceased had died due to the injuries suffered by him. Besides this, the prosecution also examined material witness namely Harpreet Singh (PW-4) who also received injuries in the accident. He deposed as per the version given by deceased Mandeep Singh son of Charan Singh in his statement dated 23.10.2013, which has been duly proved on record as Ex.P-1 and in the cross-examination, he categorically stated that the car hit the scooter from behind and when the car hit the scooter from behind, they fell down on the right side and after some time of the accident he became unconscious. He also stated in the cross-examination that he knew Gurpreet Singh earlier and also stated that Gurpreet Singh had come to meet him after the accident at his home. Though, learned counsel for the appellant argued that it has not been proved as to how the witnesses came to know the name of the appellant, but said argument is totally devoid of any merits as accident occurred on 22.10.2013 and name of appellant was mentioned by deceased Mandeep Singh in his statement which was recorded on 23.10.2013 itself. Even registration number of the vehicle was mentioned and PW-4 Harpreet Singh categorically stated in his cross-examination that he knew Gurpreet Singh Earlier. PW-4 Harpreet Singh in the examination-in-chief also stated that the driver of the car on seeing that they have received many injuries ran away from the spot and they had noted down the registration number of the vehicle PB-65-P-0047. Similarly, the prosecution also examined Gurpreet Singh son of Baldev Singh independent witness as PW-7, who duly corroborated the testimony of injured witness namely Harpreet Singh. In cross-examination, he stated that he also went to the hospital and PW-3 Gurdeep Singh, who is brother

of Mandeep Singh, met him. He further deposed that he knew the appellant earlier and at the time of accident Gurpreet Singh remained at the spot for some time and this witness further deposed that he (PW-7) was present at the accident spot prior to the accident. This witness was cross-examined at length, but his testimony could not be shattered and rather this witness in the cross-examination further deposed that scooter was driven by Mandeep Singh. Similarly, the prosecution also examined PW-8 Sohan Singh who also corroborated the testimony of injured witness. The prosecution also examined PW-10 Balvir Kaur, concerned official of DTO Mohali, who deposed that vehicle No.PB-65-B-0047 (i.e.,offending vehicle) was owned by Gurpreet Singh resident of village Ranwan, Tehsil Khamanon, District Fatehgarh Sahib (present appellant). Thus, from the above said evidence, it is clear that prosecution not only proved that the present appellant was driving the vehicle rashly and negligently, but also proved that the offending vehicle was owned by him. The mere fact that the appellant hit the scooter from behind, clearly proves that the appellant was driving the vehicle negligently and rashly. The witnesses duly identified the appellant in the court and the vehicle also belongs to the appellant. Thus, it is held that prosecution has duly proved the identity of the appellant in this case and have also duly proved that deceased died in the accident due to the injuries received by him.”

21. It has been held by the Hon'ble Supreme Court in the matter of ***Janata Dal Vs. H.S.Chaudhary (1992) 4 Supreme Court Cases 305***, that the controlling power of the High Court under Section 401 Cr.P.C. must be exercised in the interest of justice and with regard to all facts and circumstances of the each particular case to prevent miscarriage of justice

irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted in some undeserved hardship to individuals. The relevant observations of the Hon'ble Supreme Court are extracted as under:-

“128. Section 397, 401 and 482 of the new Code are analogous to Section 435, 439 and 561 (A) of the old code of 1898 except for certain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this Section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court.

129. By virtue of the power under Section 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law,

irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.”

Further the issue was again examined in the matter of **Amit Kapoor Vs. Ramesh Chander 2012 (9) SCC 440**. The relevant part of the judgment is read as under:

“The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression ‘prevent abuse of process of any court or otherwise to secure the ends of justice’, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicui con cedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

Further in the matter of ***New India Assurance Company Limited Vs. Krishna Kumar Pandey*** decided on 06.12.2019 passed in ***Criminal Appeal No.1852 of 2019***, it was held as under:-

8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law.

Further , in the matter of ***Duli Chand Vs. Delhi Administration (1975) 4 Supreme Court Cases 649***, the Hon'ble Supreme Court has held that the revisional Court cannot re-appreciate evidence. The relevant part of the judgment is extracted as under:-

“4. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court. “

5.The High Court in revision was exercising supervisory jurisdiction of a restriction nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.....”

22. The revisional jurisdiction of the High Court being restricted to examine whether there is any manifest error of law or procedure, such a power is to be exercised when there is an apparent illegality, gross procedural irregularity or impropriety leading to miscarriage of justice, legal infirmity or gross mis-appreciation of the evidence that does not reconcile to the conclusion drawn by the Court. The High Court in a revisional jurisdiction would not interfere in the opinion of the Courts below if such an opinion is a possible opinion on the basis of the evidence brought on record and would not substitute its own opinion merely because such opinion is also a possible opinion.

23. The petitioner has failed to point out any legal infirmity of impropriety in the judgment of the Courts below. He has also not been able to indicate as to how the findings recorded by the Courts below are not borne out from the evidence adduced on record or that the conclusions so drawn would not be possible conclusions on the appreciation of evidence.

The revision petition is accordingly dismissed and the judgment passed by

02.03.2022

(VINOD S. BHARDWAJ)
JUDGE

anil

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