

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

**CRA-S-1377-SB-2006(O&M)  
Date of decision:-20.7.2022**

**Balbir Luhar**

**....Appellant**

**Versus**

**State of Punjab**

**....Respondent**

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

Present : Mr.P.K. Chugh, Advocate  
for the appellant.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

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

1. Learned counsel for the appellant states that the appellant has since surrendered in the Court of JMIC at Bathinda nad he has been sent to Central Jail, Bathinda. This fact is corroborated by learned State counsel on instructions from ASI Gurjant Singh and he has placed on record custody certificate in respect of the appellant, which be taken on record.

2. This appeal is directed against the judgment dated 22.7.2006 passed by Additional Sessions Judge (Ad hoc), Fast Track Court, Bathinda vide which on conclusion of trial, appellant Balbir Luhar, an accused in FIR No.54 dated 7.5.2005 for an offence under Section 304 IPC, registered with Police Station Talwandi Sabo, was

convicted for offence under Section 304 IPC and in terms of the order of the even date, he was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of 2 months.

3. Feeling aggrieved by the judgment of his conviction and order of sentence, appellant/accused has approached this Court by way of filing the present appeal. Vide order dated 31.7.2006, such appeal filed by the appellant/accused was admitted for regular hearing and recovery of fine was stayed. In terms of order dated 12.3.2007 remaining sentence of the appellant/accused was suspended during the pendency of the appeal. However that concession has since been withdrawn vide order dated 9.5.2022 and the appellant has been taken into custody. Now the appeal has come up for final hearing.

4. Briefly stated, facts of the case as per the prosecution story are that on 7.5.2005 Vir Singh, younger brother of complainant Chhinda Singh, resident of village Naruana along with Jaggar Singh, resident of village Bhagi Wander, both deceased were to leave for village Singho from Talwandi Sabo on scooter bearing No.PB10-M-5447, the scooter was being driven by Vir Singh and Jaggar Singh was the pillion riding. In the meanwhile, at about 6:30 p.m., a truck bearing registration No.RJ-07G-3574 (hereinafter referred to as the offending vehicle) driven by accused Balbir Luhar came from Mor Mandi side and that truck hit against the scooter dragging it and riders Vir Singh and Jaggar Singh towards the road leading to Rama Mandi; both Vir Singh and Jaggar Singh suffered multiple injuries. Vir Singh died at the spot and was

lying under the offending truck along with the scooter. Jaggar Singh – injured was taken to hospital, however, he too succumbed to the injuries. The scooter of the deceased was also extensively damaged. The incident was witnessed by complainant Chhinda Singh and several other persons. After the incident, accused ran away from the spot leaving the offending vehicle behind. The matter was reported to the police and formal FIR Ex.PD/2 was registered on the basis of statement Ex.PD made by complainant Chhinda Singh to ASI Subeg Singh.

5. The investigation in the case started. The scene of incident was got photographed from PW5 HC Balraj Singh, Photographer, who took snaps Ex.P1 to Ex.P7, negatives of which being Ex.P8 to Ex.P14. The dead body of Vir Singh was taken to hospital. The postmortem examination on the dead bodies of both the deceased was carried out. Before that, the Investigating Officer had prepared the inquest reports with regard to unnatural deaths of both the deceased. The truck had been seized by the Investigating Officer from the spot vide a memo. Accused was arrested in this case on 9.5.2005. Registration certificate of the offending vehicle in question was recovered from his possession, which was taken into police custody vide memo Ex.PL. The driving licence of the accused was also seized vide a memo. The offending vehicle was got mechanically tested. The scooter of the deceased was also subjected to that very test. The motive for the incident as stated by the complainant was that he is a truck driver and similarly Balbir Luhar had been working as such and he had hit the scooter of the deceased being annoyed with them.

6. After completion of investigation and other formalities,

challan against the accused was prepared and filed in the Court of learned Sub Divisional Judicial Magistrate, Talwandi Sabo.

7. On presentation of challan in the Court of learned Sub Divisional Judicial Magistrate, Talwandi Sabo, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 304 IPC is exclusively triable by Court of Sessions, learned Sub Divisional Judicial Magistrate, Talwandi Sabo committed the case to the Court of learned Sessions Judge, Bathinda vide order dated 11.5.2006 from where it was entrusted to the Court of learned Additional Sessions Judge, Bathinda.

8. On receipt of case in the Court, learned Additional Sessions Judge, Bathinda, observing that prima facie charge for offences under Section 304 IPC was disclosed against accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

9. During the course of its evidence, the prosecution examined as many as 8 witnesses as per details below:

PW1 Dr.Kuldeep Rai Garg, who had conducted postmortem examination on the dead bodies of Jaggar Singh and Vir Singh submitting his reports Ex.PA and Ex.PB, respectively testified in that regard.

PW2 ASI Subegh Singh, the Investigating Officer of this case deposed with regard to the investigation conducted by him.

PWE3 HC Sandeep Kumar, who had mechanically tested the offending vehicle deposed in that regard proving the report submitted by him in that respect as Ex.PW3/A.

PW4 Constable Ranjit Singh, who had mechanically tested the ill-fated scooter of the deceased testified in that respect proving his report so submitted by him to the Investigating Officer as Ex.PW4/A.

PW5 HC Balraj Singh, Photographer, who had taken snaps of the place of incident proved the photographs as Ex.P1 to Ex.P7 and negatives Ex.P8 to Ex.P14.

PW6 Joginder Singh, PW7 Mohinder Singh and PW8 Chhinda Singh all three of them being the eye-witnesses of the incident testified in that respect.

10. With that the prosecution evidence got concluded.

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

12. Accused did not lead any evidence in defence.

13. Learned trial Court had formulated following point for determination in this case:

*Whether accused hit the truck against scooter upon which Vir Singh and Jaggar Singh were riding, with an intention or having knowledge that thereby he would cause death of Vir Singh and Jaggar Singh.*

14. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal.

15. I have heard learned counsel for the appellant – accused - convict, learned Addl. Advocate General for the State of Punjab besides

going through the record.

16. In this case all the three eye-witnesses of the incident, namely, PW6 Joginder Singh, PW7 Mohinder Singh and PW8 Chhinda Singh lent support to the prosecution case in material aspects. Although, they were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the occurrence. They had no motive to depose falsely in favour of prosecution and against the accused. The eye-witnesses account is duly corroborated by the other evidence on the record including the medical evidence. Therefore, it stands established on record that on the fateful day, accused Balbir Luhar driving the offending vehicle had hit the scooter being driven by Vir Singh on which Jaggar Singh was pillion riding, dragging the riders and the scooter along with the truck to a considerable distance, in the process Vir Singh and Jaggar Singh had suffered injuries, to which, they had succumbed.

17. Now the question arises as to whether accused had hit the offending vehicle against the scooter of deceased intentionally or otherwise on account of his rashness and negligence. In his statement made to the police, the complainant Chhinda Singh had stated that accused had done so intentionally since he was annoyed with the deceased. But a perusal of the evidence available on the record does not prove it conclusively. No previous enmity between the deceased and the accused is established on the record prompted by which he might have embarked upon the path of causing their deaths. Rather from the statements of the eye-witnesses, it transpires that it was a case of roadside accident, which had taken place on account of rashness and

negligence on the part of accused – truck driver, who was driving the truck throwing caution to the winds, not caring for safety and security of the other commuters on the road and he was not observing the care and caution expected from a normal man driving a heavy vehicle like a truck on a public road, rather he was reckless, in that way, aware of the fact that by his such driving, he could endanger the lives of other people going on the road but still going ahead with such type of driving may be in the hope that no evil consequences would ensue as a result of his wrongful driving though aware about the same.

18. The trial Court has although dealt with this aspect but the conclusion drawn by it that the offence against the accused is under Section 304 IPC providing punishment for culpable homicide not amounting to murder, does not seem to be correct. If we see the definition of culpable homicide under Section 299 IPC, it provides that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. In my considered view, the necessary ingredients of offence of culpable homicide are not fulfilled in the instant case, rather the offence, which is disclosed is under Section 304-A IPC causing death by rashness and negligence not amounting to culpable homicide. As a matter of fact ingredients of offence under Section 304-A IPC are antithesis of offence under Section 299 IPC. Otherwise, the trial Court has dealt with the case properly coming to the conclusion that it stands established that accused was driving the offending truck at the relevant time and the incident had

been witnessed by the eye-witnesses. In that way, it stands established that accused was author of the accident by his rash and negligent driving of the offending vehicle on a public way resulting into deaths of Vir Singh and Jaggar Singh not amounting to culpable homicide.

19. Thus, the conviction of the accused for the offence under Section 304 IPC cannot be sustained. The same is set aside by way of modification in the impugned judgment in view of discussion supra, convicting the appellant/accused for the offence under Section 304-A IPC for causing deaths of Vir Singh and Jaggar Singh by his rash and negligent driving of the offending vehicle on a public way.

20. Regarding the sentence part, learned counsel for the appellant has submitted that the appellant has undergone total sentence of 8 months and 15 days; he is not involved in any other criminal case; at the time of incident, he was aged about 19 years only and presently he is aged 35 years, as such a lenient view in the matter be taken with regard to the sentence part.

21. On the other hand, learned State counsel has opposed the request.

22. Since the appellant/accused had caused death of two innocent persons by his rash and negligent driving on a public way, I am of the view that he is not entitled to be shown any leniency and sympathy and rather deserves to be granted the maximum punishment provided for the offence under Section 304-A IPC i.e. rigorous imprisonment for two years. Therefore, the imprisonment of five years awarded to him for the offence under Section 304 IPC is reduced to rigorous imprisonment for 2 years under Section 304-A IPC. The

amount of fine to the tune of Rs.2,000/- imposed is kept as such.

23. With such modification, the appeal stands disposed of accordingly.

24. Necessary intimation be sent to Chief Judicial Magistrate, Bathinda with a direction to prepare necessary warrant in terms of this judgment so that the Appellant – convict is made to undergo the sentence awarded to him vide this judgment after deducting the period of imprisonment already undergone by him in this case.

Since the main appeal stands disposed of with modification, the miscellaneous application, if any, stands disposed of accordingly.

**20.7.2022**  
**Brij**

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

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |