

(296) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-415-2022(O&M)
Date of Decision: 18.10.2022

BALJINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. H.S. Dhillon, Advocate for the for the petitioner.

Mr. Ravinder Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 11.11.2021 passed by the learned Additional Sessions Judge, Mansa, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 27.05.2016 passed by the learned Judicial Magistrate, 1st Class, Mansa has been dismissed.

2. The prosecution case briefly put forth is that on 13.10.2013 at about 5.30 P.M, Krishan Kumar son of Megh Raj resident of Ward no. 2 Mansa was going from Tikoni Mansa to his shop situated under railway bridge Khokher road Mansa by his scooter bearing registration no.PB31 H 7808 make LML Vespa. While he was crossing the railway bridge and was in the middle of bridge, one bus was coming from the opposite side. One vehicle make Bolero Camper bearing registration no. HR 05 U 7633 overtook the above-said bus at a very fast speed and in a negligent manner and in that process, the driver of the Bolero Camper struck his vehicle with the scooter being driven by Krishan Kumar. Sukhvir Singh and Amritpal who

were following Krishan Kumar on a motor cycle bearing registration No.PB 31 J 1086 saw Krishan Kumar falling down on the road. As a result of the above said collision Krishan Kumar received serious injuries on his face, eye, head and legs. He started bleeding and ultimately succumbed to the injuries. In the mean time, a police party headed by ASI Amrik Singh received telephonic information in Police Station City Mansa and they reached the spot. Amritpal then gave the entire information to the police disclosing the name of the driver of the offending vehicle as Baljinder Singh son of Manjit Singh, the petitioner. An FIR was accordingly registered against petitioner/Baljinder Singh under sections 304-A, 338, 337, 279 and 427 IPC and investigation was initiated. The spot was inspected, site plan of place of occurrence was prepared, statement of witnesses were recorded, post mortem on the body of Krishan Kumar was got conducted and case property was handed over to Incharge Malkhana. On 14.10.2013, the petitioner/Baljinder Singh was arrested. After completion of other necessary formalities of investigation, challan was prepared and presented in the court against the petitioner.

3. On perusal of statements of witnesses and documents on the file, a *prima facie* case under Sections 279 and 304-A IPC was made out against the petitioner. He was charge sheeted accordingly on 17.03.2014 to which he did not plead guilty and claimed trial. To prove its case, the prosecution examined PW1-Subhash Kumar who deposed to the effect that on 13.10.2013, he was asked to click photographs of the accidented vehicles i.e. Bolero Jeep bearing registration no.HR 05 U 7633 and scooter bearing registration No.PB 31 H 7808 make LML Vespa by the investigating officer.

He proved on record Ex.P1 memo, vide which Ex.P2 to Ex.P15 photographs were taken into police possession. Thereafter, Dr. Harmandeep Singh Chahal appeared as PW-2 and deposed by way of Ex. P16, his duly sworn affidavit that on 14.10.2013 he along with Dr. Harpal Singh Sran and Dr. Nishan Singh had conducted post mortem on the body of Krishan Kumar son of Megh Raj at 12.20 P.M on 14.10.2013. He further stated that injuries found on the right side of his head, face, eyes, fore head and right thigh were sufficient to cause death in the ordinary course of nature. PW-2 thus proved Ex. P17 the post mortem report on record. Thereafter, the complainant of the present case namely Amritpal appeared as PW-3 and deposed as per the prosecution version. While proving Ex. P18 his previous statement given to police and Ex. P19 rapat vide which body of Krishan Kumar was handed over to him, PW-3 identified the accused/petitioner present in the court and specifically deposed that it was due to negligence and rash driving by accused Baljinder Singh and also due to high speed with which the accused struck his Bolero into the scooter of Krishan Kumar, that the latter died on the spot. PW-3 also identified Ex. MO-1 scooter bearing registration no.PB 31 H 7808 and Ex. MO-2 Bolero Camper bearing registration no. HR 05 U 7633 produced in the court. Thereafter PW-4 Jaswinder Singh Mechanic Mansa supported the prosecution case to the effect that on 17.10.2013, he had physically and mechanically checked scooter bearing registration no.PB31 H 7808 and Bolero Camper bearing registration no. HR 05 U 7633 and thus proved on record Ex. PW4/A and Ex. PW4/B, the inspection reports of scooter bearing registration no. PB 31 H 7808 and of Bolero Camper bearing registration no. HR05U7633 respectively. Thereafter Sukhvir Singh

appeared as PW-5 and supported the prosecution version being an eyewitness to the occurrence dated 13.10.2013 and categorically stated that when he reached on the over bridge on the front side, one Bolero Camper overtook the bus rashly and negligently and hit the scooter of Krishan Kumar, as a result of which Krishan Kumar died at the spot. He specifically identified accused Baljinder Singh in the court to be the one who was driving the Bolero Camper on 13.10.2013. PW-5 proved on record Ex. PW5/A memo vide which scooter bearing registration no. PB 31 H 7808 make LML Vespa was taken into police possession and Ex. PW5/B memo vide which the Bolero Camper bearing registration no. HR 05 U 7633 was taken into police possession. Thereafter, Jagdish Bansal, Press Reporter Mansa appeared as PW-6 and deposed to the effect that on 13.10.2013, accused Baljinder Singh had visited his house and told him that he had caused an accident with a scooter at over bridge Mansa and the driver of the scooter died on the spot. He further stated that accused Baljinder Singh was perplexed at that time and he requested him to produce him before the police. However, on 13.10.2013 it was Dussehra. He asked him to visit on the next day, but he did not turn up. Thereafter, HC Harinder Singh appeared as PW-7 and proved all the steps of the investigation which were conducted by the team headed by ASI Amrik Singh. While identifying the signatures of ASI Amrik Singh, PW-7 proved on record Ex. PW7/A police proceedings, Ex. PW7/B FIR, Ex. PW7/C form no. 25.35, Ex. PW7/D application, Ex. PW7/E memo vide which blood stained soil and normal soil were taken into police possession, Ex. PW7/F rough site plan Ex. PW7/G arrest cum information memo, Ex. PW7/H personal search memo of accused, Ex. PW7/J memo vide which RC bearing registration no.

HR 05 U 7633 was taken into police possession and Ex. PW7/K memo vide which clothes of deceased Krishan Kumar were taken into police possession. Lastly, Prem Kumar MRC, SDM Office Karnal appeared as PW-8 and proved on record Ex. PW8/A copy of registration certificate of vehicle make Bolero Camper bearing registration no. HR 05 U 7633 on the production of original record.

Thereafter, Learned APP for the state tendered into evidence Ex. PH registration certificate of scooter bearing registration no. PB 31 H 7808 in the name of Sukhdev Singh son of Sarwan Singh and closed the prosecution evidence.

4. The statement of the accused/petitioner was recorded under Section 313 Cr.P.C wherein all the incriminating evidence appearing against him was put to him. The accused denied all the allegations against him and pleaded false implication in the present case.

5. In view of the evidence led and the documents exhibited, the petitioner/accused came to be convicted and sentenced vide judgment and order of sentence dated 27.05.2016 as under:-

Name of Convict	Under Section	Sentence
Baljinder Singh	279 IPC	RI 06 months
	304-A IPC	RI 02 years

6. Aggrieved by the judgment and order of sentence dated 27.05.2016 passed by the Trial Court, the petitioner herein preferred an appeal, where similar grounds were raised, which came to be dismissed by the Court of learned Additional Sessions Judge, Mansa leading to the filing of the present revision petition against the aforementioned two judgments.

7. The learned counsel for the petitioner contends that the Courts below have miserably failed to take into account the material contradictions in the testimony of PW3-Amritpal and PW5-Sukhvir Singh, witnesses to the present occurrence. As per the cross-examination of PW5-Sukhvir Singh, the statement of witnesses was recorded in the Police Station, whereas, as per the prosecution case the statements of the witnesses were recorded on the spot. He contends that the Courts did not take into consideration the cross-examination of PW2-Harmandeep Singh Chahal and PW4-Jaswinder Singh mechanic. A perusal of their cross-examination would reflect that the tampering of the case property could not be ruled out. In fact, there was no evidence on record that the vehicle in question was being driven by the petitioner/accused. He contends that as per the prosecution case PW-3 and PW-5 saw the accident from a place which was more than 200 feet away and therefore looking at the topography of the area, the said witnesses could not have noted down the registration of the vehicle. He also contended that undue weightage was given to PW6-Jagdish Bansal, Press Reporter before whom the petitioner is said to have made a confession. It is, thus, contended that the conviction has been wrongly recorded. In fact he ought to be acquitted of the charges framed against him.

8. I have heard the learned counsel for the petitioner at length.

9. PW3-Amritpal and PW5-Sukhvir Singh the eyewitnesses to the occurrence were following the deceased Krishan Kumar on a scooter on the same road at the relevant time. Both of them categorically identified the petitioner and narrated in detail the manner in which the occurrence took place. Merely because PW3-Amritpal is a related eyewitnesses would not take away his credibility. In fact, PW3-Amritpal and PW5-Sukhvir Singh are residents of

Mansa and PW-5 who is not related to the deceased has categorically stated that he along with PW3-Amritpal was going towards Sirsa. Therefore, their presence at the time of the occurrence is natural and their testimony cannot be discarded.

The discrepancy pointed out by the counsel for the petitioner regarding the place from which PW3-Amritpal and PW5-Sukhvir Singh witnessed the occurrence is a minor contradiction which does not in any manner dent the veracity of the statements of the witnesses. Similarly, the contradiction between the statements of PW3-Amritpal and PW5-Sukhvir Singh regarding the place where their statements were recorded is also too minor so as to significantly dent the prosecution version in the light of evidence on record.

Regarding the identity of the petitioner, PW3-Amritpal has explained as to how. He knew the petitioner. He stated that the petitioner used to buy eatables from him from his shop. Apparently this witness identified the accused but took time to verify his name and then inform the police. Even otherwise, the occurrence is of early evening at about 05.30 PM and therefore, the witnesses could easily see and identify the petitioner. The photographs of the spot also establish the time of the incident.

Certain minor discrepancy regarding the time at which the photographs of the place of occurrence were taken or over writing in the number of the FIR in the mechanical report would not create any doubt about the prosecution version in the light of the categorical statement of the witnesses as also the mechanical reports which show that both the vehicles in question i.e. the scooter and the Bolero car were damaged.

The PW6-Jagdish Bansal, Press Reporter who stated that the petitioner had made an extra-judicial confession before him also cannot be

doubted. He has explained as to how he knew the petitioner and the petitioner had disclosed to him as to how he had caused the accident with the scooter in which the driver of the scooter had died.

10. Keeping in view the aforesaid facts, I find that the prosecution has established its case beyond reasonable doubt that the death of the deceased Krishan Kumar had been caused on account of the rash and negligent driving of the petitioner and he has been duly and properly identified by the witnesses.

11. In view of the discussion above, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is dismissed.

12. With regard to the imposition of sentence, the Hon'ble Supreme Court in **State of Punjab Versus Saurabh Bakshi, 2015(2) RCR (Criminal) 495**, held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of

notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

(Emphasis supplied)

Similarly, this Court in **Jaswant Singh Versus State of Punjab**

2020(1) RCR (Criminal) 163, held as under:-

"12. As noticed above, the petitioner has already undergone 4 months and 27 days out of the total substantive sentence imposed upon him. Though, there is a shortfall of one month and three days so as to make the said sentence as six months, yet keeping in view the fact that the deficient period is very short, I deem it appropriate to treat the same as six months.

13. In view of the above, while upholding the conviction of the petitioner under Sections 304-A and 283 IPC, the

substantive sentence imposed upon the petitioner is reduced to the one already undergone by him, but subject to payment of Rs.25,000/- as fine to be paid as compensation to the legal heirs of the deceased –Varinder Kumar. The said amount shall be deposited by the petitioner before the Chief Judicial Magistrate concerned within a period of two months from today, failing which the revision petition shall stand dismissed automatically. Once, such amount is deposited before the learned Chief Judicial Magistrate, the same shall be disbursed to the legal heirs of deceased-Varinder Kumar.”

(Emphasis supplied)

13. Since the occurrence pertains to the year 2013 and the petitioner is a first-time offender, I modify the sentence and reduce it to a period of 1 ½ years. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

18.10.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No