

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

**CRR-1181-2019 (O&M)
Date of Decision: 05.12.2022**

DALER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.K. Arya, Advocate for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 05.02.2019 passed by the Additional Sessions Judge, Gurdaspur, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 04.09.2018 passed by the Judicial Magistrate, 1st Class, Batala, has been dismissed.

2. The prosecution story, in brief, is that on 10.12.2016, ASI Ranjodh Singh was present at the police station, where he received a chit/receipt bearing no. 1709 dated 10.12.2016 from Civil Hospital, Batala regarding the death of Mandeep Kaur wife of Noorpal Singh resident of Sangatpura in an accident in front of Guru Nanak College. ASI Ranjodh Singh alongwith other police officials reached Civil Hospital, Batala, where

the husband of the deceased Mandeep Kaur namely Noorpal Singh met the ASI in front of the Dead House, Civil Hospital, Batala and got recorded his statement to the effect that he was a resident of village Sangatpura and working at the Water Factory at Shahbad. On 10.12.2016 at about 6:00 PM, he alongwith his wife Mandeep Kaur were going on a motor-cycle bearing no. PB-18-Q-2502 from his village Sangatpura towards Batala, Qadian Road for some domestic work. When they reached in front of Guru Nanak College, then a Tipper/Truck came from the back side at a very high speed, without blowing a horn, in a very rash and negligent manner and struck against his motor-cycle from the back side and his wife fell down from the motor-cycle and the tire of the offending Tipper/Truck went over the body of his wife, who died at the spot. He arranged a vehicle and took his wife to Civil Hospital, Batala , where the doctor declared his wife dead. The driver of the truck ran away from the spot alongwith his truck and he (complainant) noted down the number of said offending Tipper/Truck as PB-05-AB-9083 and came to know the name of the driver of said truck as Daler Singh son of Subegh Singh (petitioner) resident of Bahu Hawelian, District Taran Taran. The said accident had taken place due to the rash and negligent driving of the truck driver.

After recording the statement of the complainant, ASI Ranjodh Singh sent a ruqa to the police station, on the basis of which the formal FIR was registered. Then the Investigating officer prepared the inquest report of the dead body of Mandeep Kaur and sent the same for postmortem examination. He also prepared the rough site plan. Statements of witnesses

were recorded. On 12.12.2016 the accused was arrested and the recovery of the offending truck was effected. On the completion of investigation and other formalities, a challan against the accused was presented in the court leading to the framing of charges under Section 279/304-A/427 IPC.

3. To substantiate its case, prosecution examined the following witnesses:-

PW1	Noorpal Singh	Complainant to prove his statement given to police Ex. PA, identification memo Ex. Pb, case property i.e. Truck bearing no. PB-05- AB-9083 Ex. MO1 and motor-cycle Ex. MO2
PW-2	Jaswant Singh	Witness duly supported and corroborated the version of the complainant.
PW-3	ASI Ranjodh Singh	Investigating Officer to prove on record chit Ex.PW-3/A, ruqa Ex.PW-3/B, Fir Ex.PW3/C, Form no. 2535 Ex.PW-3/D, site plan Ex. PW-3/F, application Ex. PW-3/G, memo Ex. PW-3/H, vide which truck was taken into police possession, memo Ex. PW-3/I, vide which driving licence and copy of RC of truck was taken into police possession, arrest memo Ex.PW-3/J, personal search memo Ex. PW-3/K, identification memo Ex. PB, personal bonds Ex. PW-3/L, receipt of handing over of dead body of Mandeep Kaur Ex. PW-3/M, memo Ex.PW-3/N, vide which original RC and permit of tipper was taken into police possession.
PW-4	Dr. Vijay Kumar,	Witness to prove on record his duly sworn affidavit Ex. PW-4/A, PMR of deceased Mandeep Kaur Ex.PW-4/B.

PW-5	Gurnam Singh, mechanic	Witness to prove one application Ex. PW5/A and test report of truck/tipper bearing no. PB-05-AB-9083 and motor-cycle bearing no. PB18-Q-2502 Ex. PW-5/B.
PW-6	HC Kuljit Singh	Witness to prove on memo Ex. PW-3/F, vide which the accidented motor-cycle was taken into police possession.
PW-7	Gurpreet Singh	Witness to prove on record RC of Truck bearing no. PB-05-AB-9083 as Ex. P1 and report of his office Ex. PW-7/A.
PW-8	HC Gurnam Singh	Witness to prove on record application Ex. PW-3/G, memo Ex. PW-3/H, vide which truck was taken into police possession, memo Ex. PW-3/I, vide which driving licence and copy of RC of truck was taken into police possession, arrest memo Ex. PW-3/J, personal search memo Ex. PW-3/K.
PW-9	HC Dilbagh Singh	Witness has deposed regarding the depositing of case property in the police malkhana.

Thereafter, the APP for the State tendered into evidence the driving license of the accused as Ex. PX and after that, upon the failure of prosecution to conclude its remaining evidence, the evidence of the prosecution was closed vide order dated 21.10.2016.

4. The statement of the accused was recorded in terms of section 313 Cr.P.C, so as to apprise him of the incriminating circumstances appearing against him in evidence led by the prosecution, to which he pleaded his innocence and claimed false implication. The accused closed his defence evidence, without examining any witness, vide separate statement dated 04.09.2018.

5. Based on the evidence lead by the prosecution, the accused/petitioner came to be convicted and sentenced vide judgment and order of sentence dated 04.09.2018 passed by the Court of Judicial Magistrate, 1st Class, Batala as under:-

Section	Sentence	Fine imposed	In default of payment
279 IPC	R.I. for 01 month	---	---
304-A IPC	R.I. for 02 years	Rs.500/-	06 months
427 IPC	R.I. for 06 months	---	---

6. Aggrieved by the judgment and order of sentence dated 04.09.2018 passed by the Trial Court, the petitioner preferred an appeal, where more or less similar grounds were raised. After examining the evidence and the record, the appeal came to be dismissed by the Court of Additional Sessions Judge, Batala vide judgment dated 05.02.2019. However, the conviction under Section 427 IPC was set aside. Accordingly, conviction of sentence under Section 304-A and 279 of the IPC was upheld.

The instant revision petition has been preferred against the aforementioned two judgments.

7. The learned counsel for the petitioner/accused contends that the prosecution has failed to prove the case beyond reasonable doubt as is borne out from the testimony of the complainant/PW1-Noorpal Singh, the husband of the deceased. The identity of the petitioner has not been established as the weather was foggy and it was dark. There was a substantial delay of more than 16 hours in registration of the FIR. The occurrence took place on 09.12.2016 at 06.00 PM whereas the FIR was registered on 10.12.2016 at 10.00 PM. The topography of the area would not have allowed the allegedly offending vehicle to attain speeds

more than 20 Kms an hour. In fact, the accident had taken place due to the fault of the complainant. He thus, contends that the judgments of conviction are liable to be set aside.

8. On the other hand, the learned State counsel contends that the case of the prosecution has been established beyond any reasonable doubt. The grounds raised by the petitioner have been dealt with comprehensively by the Courts below and as such the present petition is liable to be dismissed.

9. I have heard the learned counsel for both the parties.

10. The present FIR was registered at the instance of the complainant PW1-Noorpal Singh who has duly identified the petitioner-Daler Singh in the Court and has clearly stated that the offending vehicle was being driven in a rash and negligent manner and struck against the motorcycle which was being driven by him. The petitioner-accused has taken contrary stands. On the one hand, it is argued that the witnesses had failed to identify him as he said to have ran away from the spot. On the other hand, the contention raised is that the accident took place on account of the fault of the complainant. Therefore, the presence of the petitioner/accused at the time of the occurrence stands established. The minor discrepancies as pointed in the evidence of the prosecution witnesses does not in any manner weaken the case of the prosecution. Human memory would fade with the passage of time and a parrot like repetition of the statement recorded during the course of investigation cannot be accepted from the witness.

11. In view of the aforementioned discussion, 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 hereby 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. In the present case, the petitioner is a first-time offender and the occurrence pertains to the year 2016. As many as 06 years have elapsed since then. Therefore, I deem it appropriate to modify the sentence and reduce it to a period of 01 year under Section 304-A IPC. However, the quantum of sentence under Section 279 IPC, the quantum of fine and sentence in default shall remain intact.

(JASJIT SINGH BEDI)
JUDGE

05.12.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No