

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

CRR-2743-2009

Date of Decision: 27.10.2022

RAM AVTAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pritam Saini, Advocate
for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 07.09.2009 passed by the Additional Sessions Judge, Narnaul vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 13.04.2006 passed by the Judicial Magistrate, 1st Class, Mahendergarh has been dismissed.

2. The brief facts of the case of the prosecution are that on 27.02.1999, Balbir Singh ASI along with other police officials was present in the Police Chowki when he received one telephonic message in respect of an accident near the bus stand, upon which he along with other police official visited the bus stand and thereafter the hospital, where the dead body of the deceased Manita was lying. The statement of Lal Singh was got recorded, wherein he stated that he was a resident of village Khayara and was working as an agriculturist. On 27.02.1999 at about 02.00 PM he and Hazari Lal son

of Ranjeet Singh were standing opposite the bus stand, Mahendergarh and were talking to each other. Meanwhile Satender Kumar son of Shri Ram who was riding his scooter and his wife and child were sitting on the rear seat were coming from Rao Tula Ram Chowk towards Mahendergarh. Meanwhile one truck No.HRM-7785, which was being driven by the driver very fast, rashly and negligently came from the side of Mahendergarh towards Rao Tula Ram Chowk. The bumper of the truck collided with the scooter of Satender Kumar and as a result, the brief case on the scooter fell down and Satender Kumar and wife Manita also fell down. The brief case came under the rear tyre of the truck and the clothes of Manita got entangled with the truck and Manita was dragged alongwith the truck and the child fell away. As a result, the child and Satender Kumar also received injuries. Blood came from the mouth and ear of Manita and she also sustained injuries on her waist. In this accident the scooter was also damaged. Manita, Satender Kumar and child were rushed to CHC, Mahendergarh. The child and Satender Kumar were referred to PGIMS, Rohtak and Manita succumbed due to injuries received in this accident. The name of the driver of the truck was Ramavtar son of Ramjilal. This accident occurred due to the rash and negligent driving of Ramavtar, driver of the offending vehicle. His statement was recorded by ASI Balbir Singh. An endorsement was made on his statement and an FIR under Sections 279, 337, 304A IPC came to be registered. The investigation of this case was conducted by ASI Balbir Singh, who prepared the rough site plan and recorded the statements of the prosecution witnesses. He also completed the proceedings under Section 174A Cr.P.C. and the postmortem on the dead body of Manita from CHC,

Mahendergarh. The accused/petitioner was arrested. The vehicle along with documents were taken into police possession. After completion of investigation, the challan was presented in the Court.

3. Pursuant to the framing of charges, to prove its case, the prosecution examined Lal Singh as PW/1, Basti Ram as PW/2, Shiv Veer Singh as PW/3, Satender Kumar as PW/4, Dr. Gaj Raj Singh as PW/5, Bhoop Singh as PW/6, Hazari Lal as PW/7, Krishan Chand as PW/8, Balbir Singh as PW/9, Dharam Pal record keeper as PW/10, Krishan Chand Inspector as PW/11, Dr. A.S. Rathi, PGIMS, Rohtak as PW/12. Thereafter, the prosecution evidence was closed vide order dated 25.03.2006.

4. The statement of the accused under Section 313 Cr.P.C. was recorded in which he pleaded false implication. In defence evidence he placed reliance upon judgment Ex.P/1.

5. In order to prove charges against the petitioner/accused, the prosecution examined Lal Singh as PW/1 who deposed on oath that on 27.02.1999 at about 2.00 PM he and Hazari Lal were standing opposite bus stand, Mahendergarh and were talking. Meanwhile Satender Kumar son of Shri Ram was coming on his scooter with his wife and child sitting on the rear seat from Rao Tula Ram Chowk towards Mahendergarh when one truck No.HRM-7785 which was being driven by the driver at a high speed in a rash and negligent came from the side of Mahendergarh towards Rao Tula Ram Chowk. The bumper of the truck collided with the scooter of Satender Kumar as a result of which the brief case on the scooter fell down and Satender Kumar and his wife Manita also fell down. The brief case came under the rear tyre of the truck and clothes of Manita got entangled with the truck and

Manita was dragged along with the truck. The child fell away, as a result of which the child and Satender Kumar also received injuries. Blood came from the mouth and ear of Manita and she also sustained injuries on her waist. Manita, Satender Kumar and the child were rushed to the CHC, Mahendergarh, and Manita succumbed due to the injuries received in the accident. The name of the driver of the truck was Ramavtar Saini, accused/petitioner who was present in the Court and had caused the accident. He made a complaint to the police which was Ex.PW/1A.

6. Satender Kumar appeared in the witness box as PW/4 and supported the version of PW/1. He categorically stated that he was coming on his scooter from the side of Tula Ram Chowk and his wife along with his child aged 1 ½ years were sitting on the rear seat. When he reached opposite the bus stand, one truck No.HRM-7785 which being driven by the driver very fast and in a rash and negligent manner struck his scooter, as a result of which they fell down and his wife came under the wheel of the front side. His wife died at the spot and he and his child were referred to a Rohtak Hospital. This accident took place due to the rash and negligent driving of Ramavtar accused present in the Court. PW/7 Hazari Lal also supported the version of PW/1 and PW/4.

7. Basti Ram appeared as PW/2 and deposed on oath that it was an incident of 27.02.1999. He was posted as a Lecturer at Government College, Mahendergarh and he received information that Satender Kumar and his wife along with child met with an accident opposite the bus stand. He went there and found that the accident had taken place due to the rash and negligent driving of the driver of the truck. Thereafter, the injured were referred to

Hospital. Manita was declared dead by the doctor and he identified the dead body of Manita. Satender Kumar and his child were referred to Rohtak. Shiv Veer Singh appeared as PW/3 and also supported the version of PW/2. He also identified the dead body of Manita.

8. Dr. Gaj Raj Singh appeared as PW/5 and deposed on oath that on 27.02.1999, on the police request inquest was conducted. He conducted the postmortem examination on the body of Manita wife of Satender Kumar age 24 years female R/o Village Khera. The body was identified by Basti Ram son of Nathu Ram and Somvir Singh son of Ramswoop both R/o village Khera, P.S. Mahendergarh. On examination, the length of the body was 5 ft. The female was well built and was wearing a pink blouse, white bra, printed pink Saree, yellow petticoat and brown underwear. The eyes were semi open and mouth was closed. Dry blood was present on the nostrils. Left ear bleeding was present. Rigormortis was present.

List of injuries.

1. An abraded bruise of size 23x17 c.m was present on it side of chest (tier mark) reddish in colour. Induration was present. On opening the chest and abdomen, a haemothorax and haemoparitonun was present. Tear of diafram it side was present.
2. A lacerated wound of size 2x1 c.m. was present on right elbow.

In his opinion the cause of death in the case was shock (hypovolumic) & Haemorrhage due to excessive blood loss as a result of injury No.1 which was sufficient to cause death in the ordinary course of nature. Both the injuries were antemortem in nature. The duration between

injury and death was within a few minutes and between death and postmortem examination was within 24 hours. Later he handed over the following to the police:-

- 1. A well stitched dead body of the deceased after postmortem examination.*
- 2. Carbone copy of PMR.*
- 3. Police papers No.1 to 10 duly signed by him.*

Police request is Ex.PW5/A and paper of police inquest is Ex.PW5/B and copy of PMR is Ex.PW5/C which bears his signature.

9. Dharampal Record Keeper, PGIMS, Rohtak appeared in the witness box as PW/10 and deposed on oath that he had brought the summoned record of Nilesh son of Sh. Satender Kumar R/o Khera vide C.R. No.78797. Ex.PW10/A was the bed head ticket of the patient Nilesh son of Satender Kumar. He tendered Ex.PW10/A which was objected to as Ex.PW10/A was not a part of file and could not be tendered at that stage.

10. Dr. A.S. Rathi, PGIMS, Rohtak appeared in the witness box as PW/12 and deposed on oath that he medico-legally examined Nilesh son of Satender Kumar 1 ½ years male child r/o Khera, District Mahendergarh on 27.02.1999 and found the following injuries:-

- 1. Diffuse swelling over the right temporal region of the scalp of size 10x9 c.m above the right pinna. No external mark of injury seen.*
- 2. Lid swelling both upper and lower lid of right eye with eonmyosis of right lower lid, with conjunctive chemmosis right lower conjectiva.*

3. *Diffuse swelling 3x2 c.m. over the forehead 1 c.m. above the left eyebrow.*

4. *Contusion of 3 c.m x 3 over the right maxillary region just below the right lower back.*

Injuries No.1, 3 & 4 were kept for the surgeon opinion, No.2 was kept for eye surgeon opinion. They were caused by blunt weapons within a duration of 12 hours. Ex.PW12/A was the carbon copy of the MLR which bore his signature. Ex.PW12/B was the ruqa sent by him to police post PGIMS, Rohtak regarding admission of the patient.

On the same day, he medico-legally examined Satender Kumar son of Shri Ram 27 years male, r/o Khera, District Mahendergarh and found the following injuries:-

1. Abrasion of 1.5 x 1.5 C.M. over the anterior aspect of right knee joint, no restriction of movement n right knee joint, caused by blunt weapon, within duration of 12 hours and it was simple injury. Ex.PW/12C is the correct carbon copy of his MLR which bears his signature. Ex.PW12/D is the ruqua sent by him to Incharge police post PGIMS, Rohtak.

11. Bhoop Singh appeared in the witness box as PW/6 who deposed on oath that he conducted the mechanical examination of truck bearing registration No.HRM-7085 on the request of the police on 28.02.1999. His report was Ex.PW6/A which bore his signatures. PW/8 Krishan Chand Retired Inspector appeared in the witness box who deposed on oath that he was posted at Police Station, Mahendergarh on 15.09.1999 and after completion of investigation, he prepared the report under Section 173 Cr.P.C. which bore his signature. PW/9 Balbir Singh retired ASI appeared in the

witness box and deposed on oath that he was Incharge of the Police Station, Mahendergarh on 27.03.1999 and he received one telephonic message in respect of an accident in the Chowki at 2.00 PM upon which he and Head Constable Dharambir and others went to the hospital and found the dead body of Manita. Lal Singh, Hazari Lal and other persons were present there. He recorded the statement of Lal Singh Ex.PW9/A and he conducted proceedings under Section 174 Cr.P.C. and got the postmortem of the dead body done. He recorded the statement of prosecution witnesses. He prepared, the site plan Ex.PW9/B. The scooter and truck were taken into police possession vide recovery memo and accused Ramavtar was arrested.

12. Krishan Chand Inspector appeared in the witness box as PW/11 (this witness had already been examined as PW/6) who deposed on oath that after completion of necessary investigation, he prepared the report under Section 173 Cr.P.C. which bore his signature.

13. Based on the evidence led, the petitioner/accused came to be convicted and sentenced by the Court of learned Judicial Magistrate, 1st Class, Mahendergarh as under:-

Sections	RI	Fine	In default of payment
279 of the IPC	RI for 03 months	Rs.500/-	RI for 15 days
337 of the IPC	RI for 03 months	Rs.500/-	RI for 15 days
304-A of the IPC	RI for 02 years	Rs.1000/-	Imprisonment for 01 month

14. Aggrieved by the judgment and order of sentence dated 13.04.2006 passed by the Trial Court, an appeal was preferred which came to be dismissed by the Court of Additional Sessions Judge, Narnaul but the

sentence awarded was reduced from 02 years to 01 year under Section 304-A IPC and the remaining sentence awarded by the Magistrate was maintained.

Still aggrieved, the present revision petition has been preferred against the aforementioned two judgments.

15. The learned counsel for the petitioner contends that it is a case contributory negligence inasmuch as the scooter driver was also negligent.

The Investigating Officer has stated in his cross-examination that the accident was caused by the rear wheel of the truck, whereas PW1-Lal Singh and PW4-Satender Kumar have stated that Smt. Manita (deceased) was crushed under the front wheel of the truck. This was a material contradiction in the statement made by the Investigating Officer and the injured witnesses.

From the evidence on record it has not been proved that the petitioner was driving the truck at a high speed and therefore, it cannot be stated that the petitioner was negligent in any manner.

All the prosecution witnesses were related to the injured as well as the deceased and thus could not be believed being interested witnesses.

All the incriminating evidence was not put to the petitioner while recording his statement under Section 313 Cr.P.C. Thus, the said evidence could not be read against the petitioner and therefore, the judgments of conviction were liable to be set aside.

Lastly, it is contended that the petitioner being a first-time offender and only bread-earner of the family has faced the agony of a protracted Trial since 1999 and thus ought to be granted the benefit of probation moreso, when the injured had already received compensation under

the Motor Vehicles Act in the claim petition filed before the Motor Accident Claims Tribunal.

16. The learned State counsel on the other hand contends that the grounds raised in the present petition have been dealt with in detail by the Courts below. There is no legal infirmity pointed out by the learned counsel for the petitioner. The evidence of PW1-Lal Singh and PW4-Satender Kumar clearly established the guilt of the petitioner. The identity of the driver of the truck in question (petitioner) has also been established. In fact, the petitioner has not disputed the factum of the accident having taken place but only states that it is a case of contributory negligence. Merely because the mechanical report does not show any dent or damage to the front side of the truck would not in any manner demolish the prosecution case.

17. I have heard the learned counsel for the parties at length.

18. In the present case, PW1-Lal Singh has categorically deposed that PW4-Satender Kumar along with his wife and child were going towards Mahendergarh on a scooter when a truck came from the side of Tula Ram Chowk and struck against the scooter causing the death of Manita wife of Satender Kumar and injuries to Satender Kumar and his child. Thus, it is clearly established that the occurrence in question did take place. PW1 and PW4 have categorically named the truck driver as Ram Avtar, the present petitioner. PW4-Satender Kumar, injured, husband of the deceased has also clearly described the manner in which the occurrence took place and has stated that it was the petitioner, being the truck driver who was responsible for causing the accident and has identified him in Court. Thus, the identity of the petitioner is clearly established beyond doubt.

So far as negligence is concerned, PW1-Lal Singh and PW4-Satender Kumar have clearly stated that the truck was being driven in a rash and negligent manner and struck against the scooter. The wife of PW4-Satender Kumar namely, Manita was crushed to death under the tyre of the aforesaid truck. The unnatural death on account of injuries has been proved by Dr. Gaj Raj Singh. Injuries on the person of PW4-Satender Kumar and Nilesh have also been proved. Thus, it is established that the death of the deceased took place on account of the rash and negligent driving of the petitioner.

The contention of the counsel for the petitioner that there was no dent or damage to the front side of the truck as per the mechanic report would not demolish the prosecution case. It would be pertinent to mention here that the truck struck against the scooter. The scooter is a very small vehicle in comparison to the truck and therefore, there was less likelihood of damage to the truck in such a situation.

Thus, it is clearly established that the occurrence in question took place on account of the rash and negligent driving of the petitioner who has been duly identified at the spot by the witnesses who are the most natural witnesses.

19. The discrepancies in the testimonies of the witnesses as pointed out by the learned counsel for the petitioner are minor and do not affect the prosecution case which stands proved beyond a shadow of doubt.

In view of the above, I find no merit in the present revision petition and the same is therefore dismissed.

20. With regard to the imposition of sentence, the Hon'ble Supreme Court in **Chandramohanan Nair Vs. State of Kerala 1994 SCC (Cri) 1750** has reduced the sentence to 03 months rigorous imprisonment on account of the fact that the occurrence had taken place in the year 1981.

This Court in **Pawan Kumar Versus State of Haryana, CRR-1988-2008, decided on 18.10.2022** has reduced the sentence to a period of 03 months where the occurrence had taken place in the year 1997 and in **Bhagwant Singh Vs. State of Punjab 2010(1) RCR (Criminal) 435** has reduced the sentence to a period of 03 months and 10 days where the occurrence had taken place on 08.02.1987.

The Rajasthan High Court in the case of **Ramsahai Vs. State of Rajasthan 2020(2) CrL. L.R.(Raj.)665** has reduced the sentence to a period of 03 months and 07 days.

21. Keeping in view the aforementioned precedents, since the occurrence in the present case pertains to the year 1999 and the petitioner is a first time offender, I modify the sentence and reduce it to a period already undergone (03 months and 17 days as per the custody certificate). The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

27.10.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No