

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1067-2019

Date of decision : 12.09.2022

Rijhbhan Mohammad

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Kanwaljeet Singh Derabassi, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

This is a revision filed at the behest of the convict impugning the judgment of conviction and order of sentence dated 27.04.2018 passed by the trial Court, whereby he has been convicted for offences punishable under Sections 279, 304-A of Indian Penal Code (for short 'IPC') and judgment dated 06.03.2019 passed by the Appellate Court whereby the order of conviction has been affirmed and sentence of the petitioner has been reduced to 01 year R.I. from 02 years R.I. under Section 304-A IPC and to 03 months under Section 279 IPC.

2. Shorn of the details the necessary facts that need to be culled out for adjudication of the present case are that an FIR No.98 dated 08.05.2014 was registered under Sections 279, 337 and 304-A of IPC on the statement made by Shyam Rani wife of Daljit Singh, who stated as under:-

“xx xx xx

On 08.05.2014, she along with her husband were going to Swata on a motorcycle bearing

No.CH04F-7647. The said motorcycle was being driven by her husband. When they reached near Jharmari Barrier, then at about 05.05 Pm, the motorcycle was being driven by her husband on her right side. Then one truck/container coming from behind, hit in the motorcycle due to which she fell on the left side of motorcycle and his husband fell in front of the truck /container and the tyre of the said truck/container ran over the head of her husband and her husband died on the spot. On raising raula, people gathered at the spot. The driver of offending truck stopped his truck little ahead and came to her, who told his name as Rijhwan Mohammad. While she was taking care of her husband, the driver ran away from the spot.”

3. Trial Court after considering evidence on record found the petitioner guilty of offences punishable under Sections 279 and 304-A of IPC and ordered him to undergo sentence as under:-

Name of the convict	Sentenced U/s	Period of Sentence	Fine, if any
Rijhbhan Mohammad	279 of IPC	Six months, Rigorous imprisonment	Rs.1000/- in default three days
	304A of IPC	Two years, Rigorous imprisonment	Rs.1000/- in default three days.

4. It was held by the trial Court that mere testimony of Shyam Rani-the complainant, who appeared as PW-5 is enough to hold the petitioner guilty. Her presence on the spot cannot be belied, she being an injured witness. She deposed in clear terms that after causing accident, the driver stopped his vehicle and came back to see the injured and on seeing that her husband Daljit Singh has died on the spot, he ran away from the spot.

5. In the appeal preferred by the petitioner, Appellate Court found that there was no reason to interfere with the judgment of conviction passed by the trial Court and consequently dismissed the appeal.

6. Counsel for the petitioner submits that whole of the trial is vitiated and the petitioner deserves acquittal as the most basic document i.e. post mortem report has not been proved. Thus, it cannot be concluded that the deceased died of the injuries causing in the motor vehicular accident caused by the petitioner. Counsel further submits that in case the Court finds that the petitioner is guilty of the offence punishable under Sections 279/304-A, the sentence of the petitioner be modified to already undergone. He further submits that the petitioner has undergone total sentence of 06 months and 11 days as per the custody certificated dated 28.08.2019 placed on record by the prosecution. He further submits that it is not a case of drunken driving. The petitioner has never misused concession of bail. He is first time offender and has no criminal record. He is the sole bread earner of his family and is merely 35 years of age. Thus he prays that a lenient view be taken against the petitioner.

7. In support of his prayer, counsel for the petitioner relies upon ***Jagdish Chander vs. State of Delhi*** reported as ***AIR 1973 2127*** wherein the Apex Court taking in view the mitigating circumstances, reduced the sentence of imprisonment from six months to a period of three weeks of imprisonment already undergone by the accused. He further relies upon ***Nand Ballabh Pant vs. State (Union Territory of Delhi)*** reported as ***AIR 1977 890*** wherein the accused, convicted under Section 304-A of IPC, was sentenced to two months RI and the same was reduced by Supreme Court to one month and the fine was enhanced from Rs 500 to Rs 1,000.

8. Further reliance has been placed upon the orders passed by Coordinate Bench in ***Criminal Revision No.843 of 1995 titled as Nirmal Singh @ Pappu Vs. State of Haryana*** decided on 04.03.2008, wherein the sentence of convict under Section 304-A was reduced to already undergone. He further relies upon **CRR-1931-2010** decided on 23.07.2019 titled as '**Chander Bhan vs. State of Haryana**' wherein considering the factum of law laid down by Apex Court in **State of Punjab vs. Saurabh Bakshi** reported as **2015(2) RCR Criminal** this Court reduced the sentence to the period actually undergone.

9. I have considered counsel for the parties and have carefully gone through the records of the case.

10. The solitary argument raised by counsel for the petitioner is that in the absence of post mortem report of deceased Daljit Singh having been proved on record, it cannot be said that deceased died on account of injuries sustained. The said argument has been raised on the basis of the fact that the doctor namely, Dr. Monia Nanda summoned to prove to post mortem report did not appear.

11. Reference has been made to the finding recorded by the Appellate Court in para 17 of the judgment to the effect that:

“The principle as emerging in the aforesaid decision titled as State of ***State of M.P. Vs. Dayal Sahu*** can also be invoked in the instant case to base the conviction of the accused as the statement of the complainant is found to be reliable. Moreover, the inquest report Ex.PG also indicates that the deceased had suffered accidental injuries and died as a result thereof. As such, merely because the postmortem report has not been proved, it cannot be concluded that the same is a circumstance for recording a finding of acquittal in favour of the accused.”

12. In the considered opinion of this Court, the Appellate Court erred in relying upon decision rendered by Supreme Court in '**State of M.P. vs. Dayal Sahu (2005) 8 SCC 122**'. Dayal Sahu's case (supra) was a case related to FIR under Section 376 IPC, wherein the doctor who had medically examined to prosecutrix could not be examined. In the absence thereof, Apex Court held that that testimony of the prosecutrix being reliable case of the prosecution does not get emaciated by non-examination of doctor. In this case, definitely the non proof of post mortem report is a vital issue. Shyam Devi may be an eye witness to the accident, but her testimony cannot substitute formal proof of cause of death of the deceased.

13. The reasoning recorded by the Appellate Court that cause of death can be ascertained from inquest report cannot be sustained. Apex Court in the case of '**Brahm Swaroop and another vs. State of U.P.**' reported as **2011 (2) SCC (Cri) 923** while dealing with the issue of inquest report held that:

“The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest.”

14. Thus keeping in view the legal position, the inquest report being not substantive piece of evidence cannot be considered to be a substitute to post mortem report which was required to be proved in accordance of law.

15. As a sequel of the aforesaid discussion, the finding recorded by the Appellate Court cannot be sustained. Consequently, the judgment passed by the Appellate Court is set aside and the matter is remanded back to decide the appeal afresh.

16. Parties are directed to appear before the Sessions Judge, SAS Nagar (Mohali) on 20.10.2022.
17. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

12.09.2022
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No