

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

**CRR-214-2018
Date of Decision: 23.11.2022**

Hari Kishan

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ram Pal Verma, Advocate for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 26.10.2017 passed by the Additional Sessions Judge, Jhajjar, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 17.11.2016/21.11.2016 passed by the Judicial Magistrate, 1st Class, Jhajjar, has been dismissed.

2. In brief, the facts of the prosecution case as emerging from the report under Section 173 of Cr.P.C. are that on 10.07.2014, a telephonic information was received from Control Room, Jhajjar, in the police station that Subhash and Joginder were brought to General Hospital, Jhajjar. While Subhash had died Joginder had been referred to PGIMS, Rohtak. On that information, HC Satwant with HC Ravinder and Ct. Satish reached at

General Hospital, Jhajjar, and obtained the death ruqa of Subhash and medical ruqa of injured Joginder. There, near the dead body of Subhash, Anil son of Mewal was found present who got recorded his statement maintaining therein that he was a resident of Village Bhateda, District Jhajjar. They were two brothers and both were married and lived together. He was working as a security guard in a Warehouse, Khulana. On 10.07.2014, there was a Bhandara (ceremonial lunch) of Baba Sayad in their village and many villagers were gathered there. He visited Chandpur Petrol Pump on his motorcycle having registration No.HR-14J-4916 to get the petrol for his motorcycle. There the son of his uncle namely, Subhash and Joginder came to get the diesel for the generator on the motorcycle bearing No.HR-14J-1065. When he and Subhash came outside the petrol pump on their motorcycle, they stopped their motorcycle at the gate of the petrol pump, after seeing a vehicle coming from Rewari side. At about 10.30 AM, a *Hyva* dumper came there from Rewari side, which was being driven by its driver at a high speed and in a rash and negligent manner and it struck the motorcycle of Subhash and ran over him. Due to that Subhash and Joginder fell down on the road and sustained many injuries. The driver of said *Hyva* stopped it at some distance. Subhash died at the spot due to injuries sustained in the accident. He inquired about name and address from the driver of the said *Hyva* and he disclosed the same. The registration number of said *Hyva* was RJ-02GA-8330. He brought Joginder and Subhash to General Hospital, Jhajjar, in a private vehicle. The doctor referred Joginder to PGIMS, Rohtak. This accident was caused by the driver of the *Hyva* dumper having No.RJ-02GA-

8330, namely, Hari Kishan, by driving at a high speed and in a rash and negligent manner.

3. Pursuant to the registration of the FIR, the investigation was conducted and the challan was submitted against the accused/petitioner.

4. After having heard the accused on charge, a *prima facie* case punishable under Sections 279 and 304-A of IPC was found to be made out against the accused and he was charge sheeted accordingly vide order dated 02.03.2015 passed by the Judicial Magistrate 1st Class, Jhajjar, to which he pleaded not guilty and claimed trial. Later on, the charge was amended vide order dated 17.11.2016, to which he pleaded not guilty and claimed trial. The APP for the State and the counsel for the accused opted not to recall the prosecution witness for re-examination, after amendment of charge and adopted the examination-in-chief and cross-examination of prosecution witnesses, recorded before amendment of charge, by making separate statements.

5. In order to prove its case, the prosecution examined as many as eight witnesses the gist of which are as under:-

PW1 HC Satwant deposed that on 10.07.2016, he obtained telephonic information that two persons were injured in a road side accident and they were brought to General Hospital, Jhajjar. Subhash was in dead condition and Joginder was referred to PGIMS, Rohtak due to major injuries. On that information, he reached there and obtained the death ruqa of Subhash and medical ruqa of Joginder. In the hospital, Anil was found present, who got recorded his statement Ex.PWI/A, over which he marked his proceedings

Ex.PW1/B and sent the same to the police station through Ct. Satish for lodging the FIR. He got conducted the postmortem of deceased Subhash after moving an application Ex.PW1/C and conducted the proceedings under Section 174 of Cr.PC. He visited the place of occurrence and prepared the site plan Ex.PW1/D. On 11.07.2014, he reached at PGIMS, Rohtak and got conducted the postmortem of deceased Joginder by moving an application Ex.PW1/E and conducted the proceedings under Section 174 of Cr.PC. He got clicked the photographs Ex.PW1/1 to Ex.PW1/7 of the place of occurrence. On 11.07.2014, the accused was arrested and he produced the original RC and insurance of the dumper No. RJ-02GA-8330 and his driving licence and the same were taken into the police possession vide memo ExPW1/F. On 12.07.2014, the mechanical examination of the vehicles involved in the accident were got conducted. The challan was filed by the then SHO Satya Narayan on 08.08.2014, after culmination of the investigation.

PW2-complainant Anil deposed that on 10.07.2014, at about 10.30 AM, there was a *Bhandara* (ceremonial lunch) of *Baba Sayad* in his village and many persons were gathered there. He visited Chandpur Petrol Pump to get petrol for his motorcycle. The son of his uncle namely, Subhash and Joginder were also there to take diesel for a generator being used in the *Bhandara* and when they proceeded towards the main road, a *Hyva* dumper having registration No.RJ-02GA-8330 came there which was being driven by its driver at a high speed and in a negligent manner and it hit the motorcycle on which Joginder and Subhash were riding. Subhash died at the spot due to

the injuries sustained in the accident and Joginder sustained injuries. He brought both of them to hospital at Jhajjar in a private vehicle and Joginder was referred from there to PGIMS, Rohtak, where he died. The police recorded his statement Ex.PW1/A. On that day, the accused was driving the said dumper and on inquiry, he disclosed his name as Hari Singh son of Mukhram, resident of Kanawas Nangal, District Alwar and he was driving his dumper at a high speed and in a negligent manner.

PW3 Jai Kishan identified the dead body of deceased Subhash.

PW4 Balle Ram deposed that on 10.07.2014, Subhash and Joginder visited the petrol pump for taking petrol and when they reached there, a dumper coming from behind hit the motorcycle of Subhash and Joginder and due to that, they sustained injuries and Subhash died at the spot. Joginder died in PGIMS, Rohtak, during the course of treatment. He identified the dead body of his son Joginder. The police recorded his statement in PGIMS, Rohtak.

PW5 Dr. Jagjit Singh Sangwan deposed that on 10.07.2014, Subhash died in a road accident and he was brought dead in the hospital. On that day, he conducted the postmortem of deceased Subhash. As per his opinion, the cause of death was the head injury, which was ante-mortem in nature and was sufficient to cause death in the normal course of nature. He proved the postmortem report of deceased Subhash as Ex.PW5/A.

PW6 Dr. Vinod Kumar tendered his affidavit Ex PW6/A in his evidence in which he deposed that on 11.07.2014, he conducted the postmortem of the body of Joginder. The cause of death in that case were

multiple injuries as described in the postmortem report and complications. He further proved the postmortem report of deceased Joginder as Ex PW6/B.

PW7 PSI Seema Devi proved the FIR as Ex.PW7/A and her endorsement on the *tehrir* as Ex.PW7/B.

PW8 EASI Krishan Kumar mechanically examined the accidented motorcycle bearing No. HR-14J-1065 and offending *Hyva* Registration No.RJ-02GA-8330 and proved his reports as EX.PW8/A and Ex.PW8/B, respectively.

6. Based on the evidence lead by the prosecution, the accused/petitioner came to be convicted and sentenced vide judgment and order of sentence dated 17.11.2016/21.11.2016 passed by the Court of Judicial Magistrate, 1st Class, Jhajjar as under:-

Name of convict	Section	Sentence	Fine imposed	In default of payment
Hari Kishan	279 IPC	03 months SI	Rs.500/-	10 days SI
	304-A IPC	02 years SI	Rs.1000/-	20 days SI

7. Aggrieved by the judgment and order of sentence dated 17.11.2016/21.11.2016 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, Jhajjar vide judgment dated 26.10.2017. However, while dismissing the appeal, an amendment was carried out in the order of sentence whereby the simple imprisonment awarded by the Trial Court was converted to rigorous imprisonment and in default of fine, simple imprisonment was converted to rigorous imprisonment as well.

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

8. The learned counsel for the petitioner contends that the statements of the witnesses i.e. PW1, PW2, PW4, PW6 and PW8 are contradictory with each other. PW2-Anil (complainant) is a cousin of Subhash, one of the deceased and is an interested witness. His deposition cannot be relied upon. No independent witness from the petrol pump has been examined to substantiate the prosecution case. Even otherwise, PW2-complainant is discrepant in material particulars and his evidence is not believable as he has given contradictory statements.

9. On the other hand, the learned State counsel contends that the prosecution has established the guilt of the petitioner beyond reasonable doubt. The evidence of the witnesses are consistent in material particulars and minor discrepancies cannot shatter the case of the prosecution. Since it is a case of two deaths, the petitioner does not deserve any sympathy whatsoever.

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

11. PW2-Anil (complainant) is the star witness of the prosecution, he is an eye-witness to the occurrence and has vividly described the manner in which the accident took place deposing that the petitioner was driving the vehicle in a rash and negligent manner. He has deposed about the number of the dumper and identified the convict/petitioner not only at the time of the accident but also in Court. Merely because he is a related witness would not detract from his credibility given the manner in which he has deposed. Even otherwise, minor discrepancies in his statement cannot affect the case of the prosecution.

The medical evidence available in the form of postmortem reports Ex.PW5/A and Ex.PW6/B has clearly established that the death of the deceased Subhash and Joginder took place on account of injuries suffered by them because of the accident. PW2-Anil (complainant) has also clearly described that Subhash and Joginder who were riding together on a motorcycle suffered injuries in the accident when Subhash died at the spot and Joginder succumbed to his injuries later. Thus, the unnatural death of the two deceased has also been clearly established.

The minor discrepancies and contradictions in the statements of the prosecution witnesses would not in any manner affect the prosecution case against the petitioner. The statement of PW2-Anil is in consonance with the deposition of the other witnesses in material particulars. Minor discrepancies are bound to occur in the testimony of any witness given in Court when the statement of the said prosecution witness is made much after the occurrence. In fact, such minor discrepancies do establish that the statement of the witness is not a tutored one.

The argument that some prosecution witnesses were not examined thereby affecting the prosecution case is also baseless. It is the quality and not the quantity of evidence which is a relevant factor. The examined prosecution witnesses are consistent in their deposition and therefore merely because some witnesses were not examined by the prosecution does not detract from the fact that the evidence of those witnesses examined does establish the prosecution case beyond reasonable doubt.

12. 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.

13. 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)

14. In the present case, the petitioner is a first-time offender and the occurrence is almost 08 years old. Therefore, in view of the aforesaid judgments, I modify the sentence and reduce it to a period of 1 ½ years rigorous imprisonment. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

23.11.2022

JITESH

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