

(229)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3707-2018
Date of Decision: 13.06.2022

Munish Kumar

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dinesh Sharma, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 12.09.2018 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 06.01.2015 passed by learned Chief Judicial Magistrate, Mansa, has been dismissed.

2. Briefly, the facts as narrated in the report under Section 173 Cr.P.C. are that on 28.01.2011, ASI Raj Singh along with police officials was present at Bus Stand Mansa regarding patrolling duty, where he received information regarding an accident on the Court road, Mansa. Then he along with police party reached the spot from where three injured were admitted to Civil Hospital Mansa. He moved an application to the doctor regarding the fitness of the injured. The doctor opined that injured Laddi Singh and Paramjit Singh were unfit to make statements and injured Malkiat Singh was very serious and he had been referred to a higher institute. On 29.11.2011 ASI Raj Singh along with other police officials went to Civil Hospital, Mansa and moved an application

before the doctor regarding the fitness of the injured and the doctor declared that the injured were fit to make the statement. Then Laddi Singh got recorded his statement to the effect that he was working with Surinderpal at Mansa. Malkiat Singh son of Jaila Singh and Paramjit Singh son of Gurcharan Singh also worked there. On 28.01.2011 at about 6.30 PM he along with Malkiat Singh and Paramjit Singh were going to their village on a motorcycle bearing No.PB-31-F-9093 which was being driven by Malkiat Singh. When they reached near the gate of Kacherian (Tehsil Complex), Mansa then a car which was driven in a rash and negligent manner came and struck the motorcycle, due to which they fell down on the ground and they suffered injuries. His motorcycle was also damaged. Then he stood up and he inquired about the name of the driver who told that his name was Munish Kumar alias Babbu son of Vinod Kumar, resident of Labh Singh Wali Gali, Mansa. Thereafter the driver of the car fled away from the spot. The complainant further stated that the police reached at the spot and took them to the Civil Hospital, Mansa, where Malkiat Singh was referred to Chandigarh where he died. After recording the statement, Laddi Singh complainant signed his statement after admitting the same to be true and correct and ASI made his endorsement on the same and sent the same to the Police Station on the basis of which the FIR was registered.

3. Thereafter, the ASI along with other police officials reached at the spot and conducted the investigation. The accused was arrested in this case. The statements of the witnesses were recorded under Section 161 Cr.P.C. On completion of the investigation, the challan was presented in the Court for the trial of the accused for the offences punishable under Sections 304-A, 279, 337, 427 of Indian Penal Code. As there existed a prima facie case under Sections,

279, 337, 304-A, 427 of the Indian Penal Code against the accused, a charge for the said offences was framed against him to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove the charge against the accused examined Laddi Singh-complainant-injured as PW1, Paramjit Singh eye-witness as PW-2, Dr. Utkarsh Singh as PW-3, ASI Raj Singh, Investigating Officer as PW-4, Sahil Kumar Clerk, DTO Office, Mansa as PW-5 (but inadvertently written as PW-4), ASI Dalel Singh recovery witness as PW-6 (but inadvertently written as PW-5), Dr. Jagsir Singh, Assistant Professor, Adesh Hospital, Bathinda as PW-7 (but inadvertently written as PW-6), Jaswinder Singh as PW-8 (but inadvertently written as PW-7). Thereafter, the learned APP for the State gave up PWs Kewal and Inspector Dhian Singh being unnecessary.

5. After the evidence of the prosecution, the statement of the accused under Section 313 Cr.P.C. was recorded, in which the accused denied all the allegations of the prosecution and further stated that he has been falsely implicated in the case and he opted to lead defence evidence but thereafter closed the same without examining any witness.

6. Based on the evidence led by the prosecution, the accused came to be convicted and sentenced vide judgment and order of sentence dated 06.01.2015 as under:-

Sections	Sentence	Fine imposed	In default
279 IPC	06 months RI	--	--
304-A IPC	02 years RI	Rs.5000/-	SI for 01 month
337 IPC	06 months RI	Rs.500/-	SI for 07 days

7. Aggrieved by the judgment and order of sentence dated 06.01.2015 passed by the learned Chief Judicial Magistrate, Mansa, the petitioner/accused

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.

8. The learned counsel for the petitioner has firstly argued that the prosecution could not establish that the accused/petitioner was driving in a rash and negligent manner. He contends that the ownership of the car has not been established and it was not produced in Court and therefore, the link evidence was missing. He further contends that the doctor who conducted the postmortem examination of the deceased has not been examined. In fact the son of one police official was driving the car but the name of the petitioner had been wrongly incorporated to save the said accused.

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

10. So far as the accident having been caused on account of the rash and negligent driving on the part of the petitioner is concerned, Laddi Singh, the complainant/eye-witness/injured has clearly testified while appearing as PW-1 that it was the rash and negligent driving on the part of the petitioner/accused that had led to the occurrence. The eye-witness/injured Paramjit Singh PW-2 has corroborated the statement of the complainant. These witnesses have therefore categorically proved on the record that the petitioner had caused the accident by his rash and negligent driving of the Maruti Zen car in which Laddi Singh and Paramjit Singh received simple injuries, whereas Malkiat Singh died.

The Hon'ble Supreme Court in **Ravi Kapur Versus State of Rajasthan, 2012(4) R.C.R. (Criminal) 245**, held as under:-

“11. ‘Negligence’ means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing

something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

13. The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred.

The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the Indian Penal Code that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of 'culpable rashness' and 'culpable negligence' into consideration in cases of road accidents. 'Culpable rashness' is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010)].

11. So far as the ownership of the car is concerned, the same has been released on *superdari* to the registered owner and therefore, the ownership was clearly established on the file and there was no requirement

for the prosecution to examine the witness regarding the registered owner and to prove the ownership of the car. Merely, because the car has not been produced in the Court does not mean that the accident did not took place. Moreso, when the accident has not been denied by the petitioner and his only contention was that the car was being driven by the son of some police official whose name he has failed to disclose.

12. So far as the conducting of the postmortem examination on the dead body of Malkiat Singh is concerned, summons had been sent to Dr. Karan Sher Singh. But since he had died, the inquest report was proved on the file by the Investigating Officer ASI Raj Singh PW-4 as Ex.PW4/K. Further the medical certificate of the cause of death of Malkiat Singh-deceased is also proved on the record as Ex.PW4/J, which shows the immediate cause of death to be head injury. Therefore, mere non-examination of the doctor who conducted the postmortem examination of the deceased does not in any way benefit the accused/petitioner.

13. Keeping in view the aforesaid facts, it's stands proved without any doubt whatsoever that the death of the deceased and injury to the two witnesses was caused on account of the rash and negligent driving of the petitioner and he has been duly and properly identified by the witnesses.

14. Thus, the offence having been clearly established from the version of the eye-witnesses as also the material on record, I find no reason to interfere with the well-reasoned judgments of the Trial court and learned Lower Appellate Court. Hence, this revision petition is hereby dismissed.

15. 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)

16. In the present case, the petitioner is a first-time offender and the occurrence is almost 11 years old, therefore, in view of the aforesaid judgments, 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

13.06.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No