

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2154-2022 (O&M)
Date of Decision: 05.12.2022

JASPAL SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Kumar, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 01.09.2022 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 22.11.2016 passed by the Chief Judicial Magistrate, Kapurthala in FIR No.01 dated 02.01.2012 under Sections 279, 337, 338, 427, 304-A IPC, 1860 at Police Station City Kapurthala, District Kapurthala, has been dismissed.

2. Briefly, the facts as alleged by the prosecution are that the criminal investigating machinery was set into motion when on 02.01.2012 ASI Balwinder Singh who was posted as ASI at Police Station City, Kapurthala received a medical intimation slip from Civil Hospital, Kapurthala regarding the death in a road accident of Bhupinder Singh son of Dev Parkash and a second chit was also received regarding injured Manjit Singh son of Subeg Singh, residents of village Kokalpur road on which

Balwinder Singh ASI along with other officials went to the Civil Hospital, Kapurthala to take down statements. The injured Manjit Singh was declared fit to make a statement and he got recorded his statement to the effect that on 02.01.2012 he was on basic training as constable at Police Lines, Kapurthala. On that day, he along with C. Bhupinder Singh at about 01.00 PM were going to STC, PAP, Kapurthala from Police Lines on a motorcycle Hero Honda Splendor bearing registration No.PB-09-H-7079. He was driving the motorcycle and Bhupinder Singh was the pillion rider. When their motorcycle reached on the turning point of STC, then from the front side, one vehicle Mahindra No.PB-05-6799 at a high speed in a zig zag manner hit against his motorcycle by coming towards the wrong side of the road, due to which he fell down on *Katcha* path. Bhupinder Singh fell on the metalled road. He sustained injuries, whereas the above mentioned vehicle passed over Bhupinder Singh, who sustained multiple injuries. The motorcycle was severely damaged. After one/two minutes his co-villager Lakhwinder Singh @ Lakha reached at the spot and they were shifted to Civil Hospital, Kapurthala, where Bhupinder Singh succumbed to his injuries. Finding the commission of offences punishable under Sections 279, 337, 338, 427, 304-A IPC a case was registered and the police party carried out the investigations into the matter, during the course of which, the spot was inspected. The offending vehicle was taken into possession. Statements of witnesses were recorded. Special reports were issued. The vehicles were got mechanically tested. RCs were got verified. Postmortem of deceased Bhupinder Singh was got conducted. After completion of investigation and other necessary formalities, challan was presented in the Court against the accused for his

trial. A prima facie case for an offence punishable under Sections 279/304-A IPC was found to be made out against the accused. Accordingly, the accused was charge-sheeted, who pleaded not guilty and claimed trial.

3. In order to prove its case the prosecution examined PW1-Constable Manjit Singh No.747/Kpt., PW2-Major Singh, PW3-Dr. Narinder Kumari, Civil Hospital, Kapurthala, PW4-HC Balbir Singh, PW5-Lakhwinder Singh, PW6-HC Kulwinder Singh, PW7-HC Kulbir Singh and PW8-ASI Balwinder Singh.

4. When the facts and circumstances appearing in evidence against the accused were put to him as required under Section 313 Cr.P.C. the accused denied the allegations, claimed to be innocent and contended that he had been falsely implicated in this case. He further pleaded that he never drove the vehicle in a rash and negligent manner nor on the wrong side of the road. Rather, Manjit Singh complainant and Bhupinder Singh since deceased were negligent and due to the negligence of Manjit Singh who was driving the motorcycle the said accident had taken place. He opted to lead evidence in defence but subsequently did not lead any.

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 22.11.2016 passed by the Court of Chief Judicial Magistrate, Kapurthala as under:-

Name of convict	Section	Sentence	Fine imposed	In default of payment
Jaspal Singh son of Joginder Singh	279 IPC	06 months RI	---	Nil
	304-A IPC	1 ½ years RI	---	Nil

6. Aggrieved by the judgment and order of sentence dated 22.11.2016 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, Kapurthala vide judgment dated 01.09.2022 but the sentence awarded was reduced to 01 year from 1 ½ years under Section 304-A IPC and the remaining sentence awarded by the Magistrate was maintained.

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

7. The learned counsel for the petitioner contends that the identity of the petitioner has not been established. The owner of the vehicle was not examined to establish the identity of the driver. He refers to the cross-examination of the complainant-Manjit Singh, wherein Manjit Singh has stated that he had seen the accused in the Court. He contends that the first time identification in the Court was valueless.

He contends that PW5-Lakhwinder Singh is a close relative of the complainant and therefore was an interested witness. Be that as it may, in his cross-examination while describing the geography of the area, he has stated that the vehicle could not have been very fast and would have been travelling only at the speed of 30-40 Kms per hour and therefore the prosecution version that the accused was driving in a rash and negligent manner was not established from the deposition of PW5.

He lastly contends that there were material contradictions in the prosecution version and therefore the concurrent judgments of conviction cannot be sustained and the petitioner ought to be acquitted.

8. The learned State counsel on the other hand contends that the arguments raised by the petitioner have been conclusively dealt with by the Trial Court and the Lower Appellate Court. The prosecution had established its case beyond any reasonable doubt. Therefore, there is no merit in the present petition and the same ought to be dismissed.

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

10. A perusal of the cross-examination of injured Manjit Singh (complainant) would clearly establish that he had seen the driver of the offending vehicle when after the accident he came out and ran away leaving the vehicle at the spot. Merely because the owner of the vehicle was not examined does not in any manner detract from the testimony of PW1-Manjit Singh who has clearly identified the accused not only at the time of the occurrence but also in the Court. Thus, by no stretch of imagination can it be held that the identity of the petitioner was not established.

The reference to the cross-examination of PW5-Lakhwinder Singh to contend that the geography of the area did not allow the car to speed is fallacious in view of the categorical submission of PW1-Manjit Singh who has stated that the car was being driven in a rash and negligent manner. In fact, PW5-Lakhwinder Singh has also stated in his examination-in-chief that he had seen the offending vehicle going past him at a high speed.

So far as minor contradictions are concerned, it may be pointed out that such contradictions were bound to occur in the testimony of most truthful witnesses as minute details of the occurrence cannot be retained in human memory over a passage of time. Therefore, such minor contradictions in fact would show that the witnesses in question are not tutored witnesses.

11. Thus, the prosecution has established its case against the petitioner beyond any 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, since the petitioner is a first-time offender and the occurrence is almost 11 years old, the sentence of 01 year imposed by the Lower Appellate Court is reduced to a period of 09 months but subject to a payment of Rs.25,000/- as fine to be paid as compensation to the legal heirs of the deceased –Bhupinder Singh. 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 Chief Judicial Magistrate, the same shall be disbursed to the legal heirs of deceased-Bhupinder Singh.

(JASJIT SINGH BEDI)
JUDGE

05.12.2022

JITESH

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