

111 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-11612-2023 in/and
CRR-659-2023
DECIDED ON: 14.03.2023**

NAZAM HUSSAIN

APPLICANT-PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mayur Karkra, Advocate
 for the applicant-petitioner.

SANDEEP MOUDGIL, J (ORAL)

CRM-11612-2023

This is an application under Section 482 Cr.P.C. seeking exemption from filing the certified/true typed/ more legible copies of the judgment dated 18.01.2023, Grounds of appeal, judgment passed by JMIC, Fatehabad and Annexures P1-P5 .

Same is allowed as prayed for.

Annexures P1-P5 are taken on record with just exemption.

CRR-659-2023

The instant criminal revision assailing the judgment dated 18.01.2023 passed by the learned Sessions Judge, Fatehabad vide which the order of conviction dated 07.09.2018 and order of sentence dated 11.09.2018 respectively passed by Judicial Magistrate First Class, Fatehabad in FIR No.490 dated 02.12.2014 under Sections 279, 338, 304-A of IPC registered at Police Station Bhuna District Fatehabad has been upheld while dismissing the

appeal awarding sentence as under:-

Sr. No.	Section	Imprisonment	Fine	Sentence in default of payment of fine
1.	279 IPC	Rigorous Imprisonment for a period of One Month	Rs. 500	Simple Imprisonment for two months
2.	337 IPC	Rigorous Imprisonment for a period of Two Months	Rs. 500	Simple Imprisonment for two months
3.	304-A IPC	Rigorous Imprisonment for a period of One Year	Rs. 1,000	Simple Imprisonment for two months

All sentences were ordered to run concurrently and the fine imposed was deposited by the petitioner before the trial Court itself.

The factual matrix leading to the filing of instant petition is that on 01.02.2014 HC Krishan Kumar and HC Rohtash Kumar were present at Old bus Stand, Bhuna in connection with patrolling duty, where they received a telephonic message that Somi son of Daulat Ram and Jaswant son of Dharam Singh were referred from CHC, Bhuna to General Hospital, Fatehabad in case of Road side accident. Thereupon, HC Krishan Kumar and HC Rohtash Kumar reached CHC, Bhuna and obtained Ruqqa and MLR's and thereafter, they went to General Hospital, Fatehabad and moved an application seeking opinion of doctor for recording statement of injured persons and concerned doctor endorsed them to be referred to Higher centre/MAMC, Agroha. On 02.12.2014, upon receiving information regarding admission of injured in MAMC, Agroha, HC Krishan Kumar along with HC Prithvi Singh reached there, where doctor informed that injured Somi had expired, whereas injured Jaswant was not fit for making statement. They went near Mortuary, where Gopi Ram, brother of deceased Somi was found present and said Gopi Ram got recorded his statement alleging therein that he is a labourer. Some days ago, he and his family had gone to village Bighar for

plucking cotton crops and their articles were lying in the Village Bighar. On 01.12.2014, his brother Som and Jaswant Singh after borrowing an assembled Motorcycle (Jugaad) of his uncle Lal Chand, had gone to village Bighar from Village Galad (Punjab) for fetching said articles. Complainant Gopi Ram and his cousin Chand Ram, sonof his uncle Amir Chand were following them on their motorcycle. At about 2:00 pm when they reached about 1 k.m. away from Village Lahriyan towards Bhuna, then a truck bearing registration No. PB 11-BN-4729 which was being driven by its driver at a very high speed, in a rash and negligent manner, came there and struck against assembled motorcycle (Jugaad), which was being driven by Somi and Jaswant Singh was sitting as Pillion Rider. Due to this collision, his brother Somi and Jaswant sustained multiple injuries and in meantime, truck driver along with his truck fled away from the spot. Moreover, they had noticed registration number of the truck and they can identify the said unknown driver, if, brought before them. Thereafter, arranging a vehicle, they shifted Somi and Jaswant to CHC Bhuna, where they were given first aid and were referred to General Hospital, Fatehabad and thereafter from General Hospital, Fatehabad also they were referred to Agroha Medical due to serious condition and thereafter, both the injured were admitted in Agroha Medical, but due to serious condition, his brother Somi was referred to higher centre and when they were shifting his brother Somi to Hisar, his brother Somi breathed his last on the way and then they returned to Agroha medical College.

Mr. Mayur Karkra, learned counsel for the petitioner has submitted that the Courts below erred in believing the half baked story of the prosecution as the evidence on record shows contrary to that clearly

establishing the false implication of the petitioner in the present case. Learned counsel for the petitioner has also submitted that neither the petitioner was present at the spot nor the alleged truck was driven by the petitioner as is crystal clear referring to the testimony of P-10 Baljeet Singh, who is stated to be the owner of the offending truck. He also argued that even the identity of the petitioner-accused has not been proved in accordance with law inasmuch as if according to the prosecution story supported by an alleged eye-witness is that the offending truck fled from the place of occurrence after hitting the motorcycle and, therefore, it is in that eventuality very difficult to ascertain as to who was driving the offending truck.

Another illegality by the trial Court has been pointed out by learned counsel for the petitioner is to the effect that the occurrence took place on 01.12.2014 and on that date deceased and Jaswant were declared unfit for making statement and it was only on 04.12.2014 on the arrest of the petitioner that too without conducting identification parade implicating him as driver of the offending truck despite the fact that the complainant Gopi Ram on 02.012.2014 specifically stated that he did not knew the driver but can identify him if produced but still no identification parade was conducted and, therefore, on this account it is prayed that the impugned judgments be set aside and the present criminal revision petition be allowed.

Going further, learned counsel for the petitioner asserts that the witness deposing before the trial Court has specifically stated that the Investigating Agency has no cogent evidence to connect the petitioner with the alleged occurrence of accident and merely on the basis of disclosure statement of owner of the offending truck, implicated the present petitioner. In

support of this contention PW-1 Krishan Kumar's examination to the fact that Nazam Hussain has been introduced as one of the accused only on the statement of the owner of the truck, apart from this "we had no prove or witness against the accused Nazam Hussain."

Further, the discrepancy in the statement has also been pointed out that the complainant Gopi Ram who deposed in contradiction before the trial Court to his initial statement recorded with the police officials and such improvisation has been totally ignored along with testimony of injured witness-Jaswant Singh, by the Court below, according to which, the weather was foggy in the winter season and, therefore, identity of the driver cannot be taken as gospel truth.

Looking into cumulative effect of evidence on record and the factual aspects the argument raised by Mr. Karkra revolves around disputing the identity of the petitioner as to whether he was actually driving the offending truck, which needs to be examined from the evidence and how the trial Court has dealt the same.

The trial Court having examined the contentions of respective parties and the evidence on record passed the judgment of conviction against the accused-petitioner which was also upheld by the Court of Sessions Judge at Fatehabad in Criminal Appeal No.43 of 2018 along with the order of sentence and judgment of conviction dated 11.09.2018 and 07.09.2018 respectively.

This Court is oblivious of the proposition that in a case under Section 304-A along with Sections 279 and 338 of IPC, the rash and negligent driving of the offending vehicle by its driver, identity of the driver and false

implication of the petitioner-accused are the issues to be examined apart from any serious error of law considering the discrepancies and contradictions, if any, among the prosecution witnesses has to be looked into.

Section 279 stipulates essential ingredient of rash or negligent manner of driving on any public way as to endanger him in life or to be likely to cause hurt or injury to any other person whereas Section 337 describes the punishment for accused who causes hurt to any person by doing an act in a rash and negligent manner as to endanger him in life or the personal safety of others and Section 304-A envisages imprisonment of either description which may extend to two years or with fine or both to an accused who ever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide.

The admitted fact on the record is that deceased Somi and injured Jaswant were riding on a motorcycle, which was assembled being hit by the offending truck identifying its registration number with the support of complainant who appeared in the witness box as PW-2 as well as injured Jaswant deposing as PW-3 both were in rhythm with each other to testify that the said truck was being driven at a high speed in a rash and negligent manner. It is the said truck which rammed in the motorcycle causing serious injuries and both PW-2 and PW-3 identified the petitioner-accused who was present in Court as driver of the said truck. These two witnesses have been consistent even during the cross-examination conducted by the PW-7 Chand Ram, an eye witness to the occurrence. Therefore, the question of rash and negligent driving of this offending vehicle i.e. truck bearing registration No. PB11-BN-4729 and the identity of the petitioner as a driver of the said truck

at the time of occurrence of accident stands established. The trial Court has well discussed the issue of identification parade as not being a substantive evidence also and even if no such test is conducted dock evidence is conclusive as was held by the Supreme Court in '*Mukesh and another V. State (NCT of Delhi) and others (2017) 2 SCC (Criminal) 673.*

This Court is also sanguine of the proposition that identification of the accused either by way of test identification parade or in Court is not a *sine-qua-non* in every case if, from the circumstances, the guilt is otherwise established and in the instant case the occurrence is proved and there are two eye witnesses in the form of PW-2 and PW-7 apart from PW-3 Jaswant Singh who have corroborated with each other quite well to establish that the offending vehicle was being driven in rash and negligent manner by the petitioner being driver of the same at that relevant time.

As far as the argument raised with regard to the discrepancies and contradictions in the statement apart from the argument that PW-2 Gopi Ram, Pw-3 Jaswant Singh and PW-7 Chand Ram are related witnesses and no independent witness has been joined by the police, it is an established law that relationship of witnesses is not a factor to affect credibility of witnesses wherein it is the contention regarding interestedness of the witnesses for furthering prosecution version is to be dealt with. Such plea may be raised if there is a case of false implication and a careful approach must be adopted by analysing evidence and its credibility. In the present case after scrutinizing the evidence of these witnesses cannot be disbelieved merely on account of their relationship with each other as well as with the deceased who are categoric and consistent in duly identifying the driver-petitioner of the offending truck

along with rash and negligent driving on his part. It is time and again in plethora of judgments has been held by the Apex Court that minor contradictions, discrepancies, variations and improvements do occur with the passage of time if the same are neither vital nor significant and in the light of such circumstance no adverse inference is to be drawn. I have no hesitation in holding the testimonies of PW-2 Gopi Ram, PW-3 Jaswant Singh and PW-7 Chand Ram as reliable and trustworthy who are consistent and corroborating the version of each other and there is no such omission or improvement of any manner. In the light of the same, I am fully in consonance with the judgment of conviction and order of sentence dated 07.09.2018 and 11.09.2018 passed by Judicial Magistrate First Class, Fatehabad which has been upheld by the Sessions Judge, Fatehabad vide its judgment dated 18.01.2023.

In the light of the aforesaid discussions and scientific scrutiny of evidence on record, this Court does not find any perversity or legal infirmity, to interfere with the impugned judgment of conviction and order of sentence along with the judgment passed by the appellate Court 07.09.2018 and 11.09.2018 respectively.

Hence, the present petition being devoid of merit stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

14.03.2023
pchawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No