

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-1367-2008(O&M)

Date of Decision:-15.05.2023

Rajesh Kumar.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Dhirinder Chopra, Advocate for the Petitioner &
Mr. Ashish Handa, Advocate Amicus Curiae
for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioner against the judgment dated 16.07.2008 passed by Additional Sessions Judge, Fast Track Court, Ludhiana whereby the judgment of conviction and order of sentence both dated 23.07.2005 passed by the Sub Divisional Judicial Magistrate, Samrala has been upheld.

2. The brief facts of the case are that the present case was registered on 17.02.2022 on the statement of Tara Singh son of Puran Singh. The prosecution case as per the statement of Tara Singh complainant was that on 16.02.2002 he along with Jang Singh, his brother Raj Singh and Santokh Singh and one cousin of Jang Singh were going from Samrala to village Bhani Sahib on their Maruti Car no.PB-10E-0975, which was driven by Jang Singh. He (complainant Tara Singh) and Paramjit Singh were following the above car in Car No.CH-01J-9357. This car was driven by

Paramjit Singh. When they reached near the PSEB Power House, Ghulal at about 8.00 PM then from the side of Ludhiana a Canter No.CH-03E-2706 came at a very high speed in a rash and negligent manner without blowing any horn and directly came and struck the Maruti Car being driven by Jang Singh. As a result of the collision, the Maruti Car was carried away for some distance. Jang Singh as well as the other persons sitting in the car received injuries. Several people gathered at the spot. The Canter driver taking advantage of the huge gathering at the spot fled away. He (Tara Singh) disclosed to the police that he had seen the Canter driver and could identify him when ever he was produced before him. The injured were taken to the Civil Hospital, Samrala from where Jang Singh who had received serious injuries was taken to DMC, Hospital, Ludhiana where he succumbed to his injuries. On the basis of this statement the law was set into motion. The investigation was conducted. On 18.02.2002, the accused was arrested. Subsequently, he was challaned under Section 279/337/338/304-A and 427 IPC.

3. On presentation of the challan, copies of the documents as required under Section 207 Cr.PC were supplied to the accused free of cost.

4. Finding a prima facie case against the accused under Section 279, 337 & 304-A IPC, he was charge sheeted.

5. During the trial, the prosecution examined PW-1 Dr. Kuldip Singh, who had conducted the post mortem on the body of Jang Singh. He explained the injuries present on the body of Jang Singh, proved the post mortem report Ex.P-1 and stated that the death of Jang Singh was caused due to injury no.1 which in the ordinary course of nature was sufficient to cause death.

PW-2 Tara Singh, the complainant furnished the detail ocular

account of the version and proved his statement Ex.P-2, memos Ex.P-3, Ex.P-4 & Ex.P-5.

PW-3 Santokh Singh, the eye witness corroborated the testimony of PW Tara Singh.

PW-4 CII Jasdev Singh took the photographs of the place of accident. He proved the photographs Ex.P-4 to Ex.P-6 and negatives Ex.P-7 to Ex.P-10.

PW-5 Rupinder Singh son of Narang Singh, eye witness was examined in Chief. His cross examination was deferred on 09.04.2004. Thereafter the witness was never produced by the prosecution for cross examination. So in the absence of any cross examination of PW-Rupinder Singh, his statement in examination in Chief could not be considered as evidence as defined under the Indian Evidence Act.

PW-6 ASI Mohinder Singh, the Investigating Officer conducted the investigation and proved his Endst. Ex.P-2/A, FIR Ex.P-2/B, inquest report Ex.P-11, appl. Ex.P-11, statements Ex.P-13 & P-14, Appl. Ex.P-15, site plan Ex.P-16, receipt Ex.P-17, Driving Licence Ex.P-18, RC Ex.P-19, RC of Vehicle No.PB-10E-0975 Ex.P-20, arrest memo Ex.P-21, personal search memo Ex.P-22, memo of photos and negatives Ex.P-24, DL of accused Ex.P-23 and memo Ex.P-25.

PW-7 Dr. V.P. Soni, MO, Civil Hospital, Samrala medico legally examined Raj Singh and proved his medical legal report Ex.P-7/A.

6. Based on the evidence led the petitioner/accused was convicted and sentenced as under:-

Name of Convict	Offence	Imprisonment	Fine	In default of payment of fine
Rajesh Kumar	U/S 279 IPC	Three Months RI	-	-
	U/S 304-A IPC	One Year RI	Rs.5,000/-	Three Months RI
	U/S 337 IPC	Three Months RI	-	-

All the aforesaid sentences were ordered to run concurrently.

7. The accused preferred an appeal against the judgment of conviction and vide judgment dated 16.07.2008 the same came to be dismissed.

8. The present petition has been filed on behalf of the convicted accused against the aforementioned judgments of conviction.

9. The Counsel for the petitioner contends that the identity of the petitioner has not been established beyond reasonable doubt as no test identification parade had been held. The rashness and negligence could also not be proved from the deposition of the witnesses. Therefore, the findings recorded by the Trial Court and affirmed by the lower Appellate Court were perverse. Alternatively, he prays that since the petitioner was a first time offender, he may be released on probation if this Court came to the conclusion that no interference was called for in the judgments of the Courts below.

10. The Counsel for the State on the other hand contends that the arguments raised by the petitioner have been dealt with in their proper perspective by the Trial Court and lower Appellate Court. Therefore, there was no merit in the instant revision petition and the same was liable to be dismissed. He further relies upon the judgment of Hon'ble Supreme Court in *State of Punjab Vs. Dil Bahadur Criminal Appeal No.844 of 2023 @ SLP (Crl.) No.2984 of 2018* Decided on 28.03.2023 to contend that even the sentence imposed upon the petitioner cannot be reduced and the question of grant of probation does not arise.

11. I have heard counsel for the parties at length.

12. Initially, vide order dated 30.07.2008 the appeal had been admitted on the question of quantum of sentence only. However, at the

instance of the counsels for the petitioner arguments have been heard on merits as well.

From the deposition of PW-1 Dr. Kuldeep Singh it is clearly established that the deceased Jang Singh had died an unnatural death on account of injuries suffered in the accident. PW-2 Tara Singh the star prosecution witness has described in detail the manner in which the accident took place. He has specifically stated that the Canter in question was being driven by the petitioner/accused Rajesh Kumar in a rash and negligent manner. The petitioner had stopped the canter and thereafter taking advantage of the crowd gathered at the spot had fled away from the spot. However, PW-2 Tara Singh had clearly identified the accused. This version of PW-2 Tara Singh had been reiterated by PW Santokh Singh as well. The investigating officer ASI Mohan Singh had also stated that after the petitioner was arrested the complainant Tara Singh had come to the police station and had identified by the accused. Therefore, it is established beyond reasonable doubt that it was the petitioner/accused who was driving the offending canter in a rash and negligent manner resulting into the accident being caused.

PW-Jagdev Singh has taken photographs of the spot and damaged vehicles which corroborates the prosecution case.

Similarly, PW-7 Dr. V.P. Soni has proved that Raj Singh, Santokh Singh and Ravinder Singh had received injuries in the accident. Therefore, there is independent corroboration of the accident having taken place in the manner as suggested.

13. 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 and therefore, the present petition is hereby **dismissed**.

14. As regards the question of reduction of sentence it may be pointed out that as against the maximum sentence of 02 years the petitioner has already been awarded a sentence of 01 year only. The Hon’ble Supreme Court in *State of Punjab Vs. Dil Bahadur Criminal Appeal No.844 of 2023 @ SLP (Crl.) No.2984 of 2018* Decided on 28.03.2023 has categorically held that undue sympathy cannot be expressed by the High Court by reducing the awarded sentence. Therefore, the prayer of the petitioner for releasing him on probation also cannot be accepted.
15. Disposed of with the aforesaid observations.

(JASJIT SINGH BEDI)
JUDGE

May 15, 2023
Vinay

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