

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

**CRR-765-2018 (O & M)
Date of Decision: 18.01.2023**

Sher Singh

... Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. H.S. Randhawa, Advocate,
as Amicus Curiae, for the petitioner.

Mr. P.S. Paul, Addl.P.P., Chandigarh.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 24.03.2008 passed by the Additional Sessions Judge, Chandigarh, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 03.11.2006 passed by the Judicial Magistrate, 1st Class, Chandigarh, has been dismissed.

2 Briefly, the prosecution case is that complainant Parveen Kumar s/o Raghbir Singh, r/o Village Uchana Mandi, Distt. Jind, Haryana made a complaint Ex. PW2/A to the police to the effect that on 6.8.1999, he alongwith his mother Sumitra Devi came to Chandigarh to meet his sister Sheela Sharma and at about 2.30 p.m., they alighted from bus no. HR-39-4944 at Bus Stand, Chandigarh and were going towards Haryana Mini Secretariat by passing through a parking space. He was having luggage and his mother was going ahead of him. At the same time, the offending bus no.

HR-39-4944 came from behind being driven in a rash & negligent manner and hit against his mother due to which she fell down and the front left tyre of the said bus ran over his mother. The bus driver stopped the bus and came down who disclosed his name as Sher Singh. His mother was shifted to P.G.I for treatment in police vehicle where she was declared brought dead. The complainant stated that this accident took place due to the rash & negligent driving of the bus driver.

3. During the course of investigation, FIR Ex. PB was registered, rough site plan of place of occurrence Ex. PD was prepared, the accused (petitioner) was arrested vide personal search memo Ex. PW2/B, the offending bus was taken into police possession vide memo Ex. PW2/C. The offending bus was mechanically examined vide report Ex. PW6/A, death report Ex. PC was obtained, death summary of deceased Ex. PG was also obtained, post-mortem on the dead body of deceased Sumitra Devi was done vide post mortem report Ex. PJ, driving licence of accused was taken into police possession vide memo Ex PW1/A which was also verified vide request Ex. PW1/B and its report Ex. PW1/C. A request Ex. PW1/D was made for verification of the ownership of the offending bus and report Ex. PW1/E in this regard was obtained. A request Ex. PW1/F was made for obtaining the duty roster of the accused and report Ex. PW1/G in this respect was also obtained. Photographs of the place of occurrence were taken and statements of the witnesses were recorded. After completion of investigation, the challan against the accused was presented in the Court, copy of which was supplied to him free of costs as is envisaged u/s 207 Cr.P.C.

4. On finding a prima-facie case u/ss 279/304-A IPC against the accused, he was charge-sheeted. He pleaded not guilty and claimed trial.

Thereafter, the prosecution was directed to adduce its evidence to substantiate the charge.

5. To prove its case, the prosecution examined HC Raj Singh as PW-1 who deposed that on 7.9.1999, he took into possession the driving license of accused vide memo Ex. PW1/A. He made an application Ex. PW1/B for the verification of the driving license and proved report Ex. PW1/C. He made an application Ex. PW1/D for verification of the R.C. of bus no. HR-39-4944 and proved report Ex PW1/E. He made an application Ex. PW1/F for obtaining the duty roster of the accused and proved the report Ex. PW1/G.

6. PW-2 Complainant Parveen Kumar deposed on oath that on 6.9.99 at about 2.30 p.m., he alongwith his mother Sumitra Devi came to Chandigarh and they alighted from the bus no. HR-39-4944 at Bus Stand, Sector 17, Chandigarh. He was carrying luggage and his mother went ahead and she was going towards the parking of the Haryana Mini Secretariat. Then, the bus from which they alighted driven by the accused present in the court suddenly drove at a high speed and in a rash & negligent manner and without blowing any horn hit his mother from behind due to which she fell down and the front left side tyre of the bus crushed his mother. On his raising an alarm, the bus driver stopped the bus and came down and apologized. He disclosed his name as Sher Singh-petitioner. The police also reached at the spot and his mother was taken to hospital. He proved his complaint as Ex. PW2/A. He also deposed that the accused present in the court while driving the bus in a rash and negligent manner crushed his mother due to which his mother had died. He further deposed that the accused was arrested vide memo Ex. PW2/B and the bus was taken into

7. PW-3 Devinder Kumar deposed regarding indentifying the dead body of Sumitra Devi, who is his mother-in-law.
8. PW-4 ASI Nafe Singh, the I.O. of the present case deposed regarding the investigation of the present case and proved his endorsement Ex. PA on the complaint Ex. PW2/A, FIR EX. PB, inquest report Ex. PC, rough site plan of place of accident Ex. PD, personal search memo Ex. PW2/B and seizure memo Ex. PW2/C etc.
9. PW-5 Sunil Sharma, Medical Record Technician, PGI, Chandigarh proved the death summary of deceased Sumitra Devi as Ex. PG.
10. PW-6 C. Mohinder Singh proved the photographs of the place of occurrence as Ex.PW-6/1 to PW-6/4 and its negatives Ex.PW-6/5 to PW-6/8.
11. PW-6 (wrongly numbered) S1 Hari Chand proved the mechanical report Ex. PW6/A vide which he mechanically examined the offending bus.
12. PW-7 Jagjit Singh, Duty Clerk, Haryana Roadways, Fatehabad, Haryana proved the report Ex. PW7/A vide which Sher Singh was deputed as driver on bus no. HR-39-4944 on route from Tohana to Chandigarh.
13. PW-8 HC Yashpal deposed regarding depositing of offending bus with him in the malkhana in case FIR no. 377 of 1999 u/s 279/304-A IPC and proved true copy of entry in register no. 19 as Ex. PW8/A.
14. PW-8 (wrongly numbered) C. Ashwani Kumar, who joined the investigation with the I.O. deposed regarding the investigation of the present case and supported the testimony of the I.O.
15. PW-9 Nachhattar Singh, Clerk, PGI, Chandigarh deposed that deceased Sumitra Devi was declared brought dead and proved the police

ruka in this respect as Ex. PW9/A and the death summary of the deceased as Ex. PG.

16. PW-9A Ami Chand proved application Ex. PW1/D regarding the verification of ownership of the offending bus and the report in this regard as Ex. PW1/E which shows that the offending bus stands in the name of General Manager, Haryana State Transport, Fatehabad.

17. PW-10 Fateh Singh, Sr. Lab Technician, G.M.C.H., Sector 32, Chandigarh proved the post mortem report of deceased Sumitra Devi as Ex. PJ.

18. Thereafter, the APP for the State closed the prosecution evidence. The statement of the accused was recorded u/s 313 Cr.P.C. wherein he pleaded his innocence and claimed false implication.

19. In defence evidence, the accused examined Amrit Pal as DW-1 and then accused himself appeared in the witness box as DW-2.

20. Based on the evidence led, the accused-petitioner came to be convicted and sentenced as under:-

Name of the Convict	Offence under Sections	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Sher Singh	279 IPC	(RI) 03 months	-	-
	304-A IPC	(RI) 01 year	500/-	(SI) 01 month

21. An appeal was preferred and the same was dismissed vide judgement dated 24.03.2008.

The aforementioned judgements are under challenge in the present revision petition.

22. The learned Amicus Curiae contends that the petitioner was a very good driver and had never caused an accident before. Therefore, it can-

not be believed that the petitioner has caused the present accident leading to the death of the deceased. The FIR came to be registered only because the complainant wanted to take a claim for the accident under the MACT. The medical evidence was contrary to the ocular account. As per the case of the complainant, the tyre of the bus went over his mother (deceased). However, as per the post-mortem report, only abrasions were found on the body of the deceased. Further, no photograph of the blood stained place was taken by the police. The entire case of the prosecution was based on the statement of the complainant, who was the most interested witness. Thus, he contends that the petitioner was liable to be acquitted in the present case.

23. 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 a death, the petitioner does not deserve any sympathy whatsoever.

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

25. The arguments raised by the petitioner are fallacious. It does not stand to reason that merely because a person has not caused an accident earlier in his life, he was not likely to cause one subsequently. There is no such presumption in law.

The version of DW-1 Amrit Pal who stated that it was some other bus which had caused the accident cannot be believed. It is evident that the village of this witness was close to the village of the petitioner. The petitioner was well-known to him. He knew that the petitioner had four daughters and a son. Therefore, it is but natural for him to depose in favour of the petitioner. Further, there is absolutely no evidence on the file to show

that this witness had travelled on the same very bus on the day of the accident and therefore, the said testimony cannot be believed.

Similarly, the contention of the learned amicus curiae for the petitioner that Smt. Sumitra was killed by some other bus cannot be accepted. The complainant was very much present at the bus-stand and as per his statement, he also heard the noise of the accident. The same noise was heard by DW-1. It does not stand to reason that neither DW-1 nor the accused would disclose the name of bus and the name of the driver which actually caused the accident in question. Interestingly, there is nothing pointed out by the defence to show prior enmity between the complainant and the petitioner and so the question of the complainant falsely implicating the petitioner and leaving out the real culprit does not arise.

The argument raised by the learned amicus curiae for the petitioner that the statement of the complainant is uncorroborated and was insufficient to convict the petitioner is also fallacious. The complainant is a most natural witness having accompanied his mother and seen the occurrence. The prosecution has taken into possession the record from the office of the Haryana Roadways showing that the bus in question was enroute from Tohana to Chandigarh and departed from Tohana at 9.00 a.m. The document also shows that the Sher Singh-petitioner was the driver of the bus and that the bus in question was detained at Police Station, Chandigarh on account of the accident. The bus, in question, was also deposited in the *malkhana* on that very day which had been proved by H.C. Yashpal. Even the post-mortem report clearly establishes that the cause of death was on account of injuries suffered. Therefore, the culpability of the accused-petitioner (Sher Singh) is clearly established.

26. 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.

27. 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)

28. So far as the present case is concerned, the occurrence pertains to 06.08.1999 and the age of the petitioner was 64 years at that time and he is a first-time offender. Therefore, in view of the aforesaid judgments, I modify the sentence and reduce it to a period of 03 months. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

18.01.2023
sukhpreet

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