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

**CRR-3309-2009 (O&M)
Date of decision: 06.09.2023**

Harminder Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S.Bal, Advocate,
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Instant revision has been filed by petitioner against the judgments/orders of the Courts below.

2. Petitioner/accused has assailed judgment of conviction and order of sentence dated 04.12.2008 passed by learned Additional Chief Judicial Magistrate, Rupnagar whereby petitioner was convicted for offences under Sections 279, 304-A IPC and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-; and judgment dated 28.11.2009 passed by learned Sessions Judge, Rupnagar vide which appeal of petitioner herein, was dismissed.

3. Brief facts of the case in hand, as recorded by learned Appellate Court in the impugned judgment dated 28.11.2009, are reproduced as under:

“2. FIR in this case registered regarding accidental death of Sukhvir Singh on 9.2.2003 in pursuance of statement of complainant Gurdip Singh, who claims himself to be resident of MohallaMariwala Town, Manimajra UT, Chandigarh and transporter by profession. Sukhvir Singh This complainant along with Sukhvir Singh (now deceased) alongwith and friend Tejinder Singh were going from Manimajra to Morinda on different motor cycle scooter. Sukhvir Singh was going some and what ahead on his scooter of Bajaj Chetak make bearing No. PB-12D-0589,

whereas complainant alongwith Tejinder Singh was chasing him on their motor cycle bearing No. Chandigarh-01- Z-2692. When they reached near village Marauli at about 8.30 p.m., then car bearing registration No.PCF-9522 driven in rash and negligent manner by appellant rammed against scooter driven by Sukhvir Singh after approaching from the side of Morinda. As a result of this striking of the car against scooter of Sukhvir Singh, the latter fell on ground and sustained injuries on head, arms and legs to which he succumbed lateron. Injured was taken by car of complainant and Tejinder Singh during which period appellant fled away from the spot. Injured brought to Civil Hospital, Morinda after arranging ambulance, but here from he was referred to PGI. After recording statement of complainant, endorsement made, on which FIR registered. Site plan of place of accident prepared and statements of witnesses recorded. Photographs of place of accident got snapped and post mortem on dead body of Sukhvir Singh got conducted. Mechanical report of the vehicle involved in accident obtained and thereafter after completion of investigation, challan against appellant presented.”

4. Accused was charge-sheeted under Sections 279, 427, 304-A of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

5. To support the charges, prosecution examined as many as 08 witnesses, namely, complainant Gurdip Singh as PW1, Tajinder Singh as PW2, Dr. Darshan Singh as PW3, Sandip Kumar as PW4, Balbir Singh as PW5, Sukhwinder Singh as PW6, C. Karnail Singh as PW7 and ASI Rampal as PW8.

6. All the incriminating evidence produced by the prosecution was put to the accused in his statement under Section 313 Cr.P.C. He controverted the same and pleaded innocence. However, he did not adduce any evidence in defence.

7. After hearing both the parties, learned trial Court held accused/petitioner to be guilty for the commission of the offences punishable under Sections 279, 304A of the IPC and accordingly convicted and sentenced him as above vide order dated 04.12.2008. It was held no offence under Section 427 was proved against the accused.

8. Aggrieved against the impugned judgment of conviction dated 04.12.2008, appeal was filed by the convict (petitioner herein), which was

dismissed, vide order dated 28.11.2009 passed by learned Sessions Judge, Rupnagar.

9. Learned counsel for petitioner submits that identity of the accused is not established in the present case. As stated by PW-1 and PW-2 in their statements that the accused fled away from the spot. How did the name of accused come forward has not been explained by investigating agency. Identification parade of the accused was also not held. He further submits that accident occurred due to the negligence on the part of Sukhvir Singh-deceased who was carrying television antennas number 25 to 30 as well as cable. The antennas of the television have dimensions of 2-2 ½ feet which were carried by Sukhvir Singh deceased on his scooter bearing No.PB-12-D-0589 and moreover time at which the accident occurred was 8.30 p.m., at which point of time it cannot be expected that visibility adversely affected by the lights of vehicular traffic would be to the extent as can be otherwise exercised during the broad day light.

9.1 Further submits that learned Appellate court should have released the petitioner on probation under section 360 Cr.P.C. If a person was not to be released on probation, it was incumbent upon learned Court below to record special reasons for not doing so, as mandated under Section 361 Cr.P.C. Special reasons have been interpreted to mean that the Court comes to the conclusion that the person is beyond any reformation. But the Courts below did not advert to this aspect of the case. The sentencing part of both the judgments below is vitiated due to non-compliance of section 361 Cr.P.C.

9.2 Learned counsel for the petitioner further submits that now petitioner is 56 years old and is the only breadwinner of his family. Said case is more than 20 years old and he has already suffered mental agony. Moreover, bereaved family of the deceased has already been compensated in the MACT

claim. He further submits that petitioner is also undergoing treatment of cancer in Sector 32, Government Medical College and Hospital, Chandigarh. Copy of medical test is attached as Annexure P-1.

9.3 He relies on the judgment of this Court passed in CRR-2879-2018 dated 06.12.2018 in case titled '**Gurmit Singh alias Balwinder Singh Vs. State of Punjab**'.¹

10. Per contra, learned counsel appearing for the State contends that learned Sessions Judge, Rupnagar after considering the evidence and material on record rightly convicted and sentenced the petitioner.

11. I have heard the rival contentions of learned counsel for the parties and have perused the case file.

12. Learned trial Court, *inter alia*, has held as under:

"18. It was further strongly contended by the learned defence counsel that the accident occurred due to negligence on the part of Sukhvir Singh whom was carrying on television antennas number 25 to 30 as well as cable. The have dimensions antennas of the television of 2 ½ feet which were carried by Sukhvir Singh deceased on his scooter bearing No. PB-12-D-0589 and moreover time at which the accident occurred was 8.30 p.m at which point of time it cannot be expected for visibility in the lights of vehicular traffic is not to that extent which is otherwise exercised during the broad day light. This contention of the learned defence counsel was refuted by the learned APP for the State that merely carrying on television antennas by the deceased Sukhvir Singh does not discharge the liability of the accused when it is proved otherwise from the prosecution evidence that the accused drove the offending car bearing No. PCF-9522 in rash and negligent manner.

19. In order to appreciate the above point strongly contended by the learned defence counsel, it is observed that the F.I.R. in this case resulted on the statement ExPa of Gurdip Singh. PW-1 has disclosed during his cross examination that PW-1 alongwith PW-2 Tajinder Singh and Sukhvir Singh started from their residence at about 7.00 p.m. from Manimajra to Morinda Sukhvir Singh stated to be going little ahead of them while driving his scooter bearing No. PB-12-D-0589, whereas, the complainant Gurdip Singh, PW-1 and Tajinder Singh PW-2 were chasing on their

¹2019 (196) AIC 847

motorcycle bearing No. CH-01-Z-2692. PW-1 and PW-2 disclosed during their cross examination that brother of PW-1 loaded television antennas having length 2 ½ feet. PW-1 stated that the antennas were numbering 30-35, whereas, PW-2 stated the same to be 5-7. PW-2 further disclosed that Sukhvir Singh also loaded cable weighing about 4 KGs. However, it is observed that no suggestion was put to PW-1 and PW-2 that the accident occurred due to negligence of Sukhvir Singh while driving his scooter No. PB-12-D-0589 loaded with antennas of television and cable. In the statement of accused under Section 313 Cr.P.C. the defence of the accused is that he has been falsely implicated in this case, whereas, he did not cause any accident. Therefore, this point strongly contended by the learned defence counsel is of no consequences and does not make the prosecution case doubtful in any manner.

20. The last point contended by the learned defence counsel is that the time at which alleged accident took place was 8.30 p.m. on 9.2.2003 whereas, at that point of time it was pitch dark and it is not possible for an ordinary person to get note down the number of the vehicle and to identify the accused in the lights of vehicular traffic flow. Likewise, PW-1 has admitted that there was no light on the place of accident. However, PW-1 categorically stated that he identified the accused. It is observed that as per version of PW-1 and PW-2 after the accident the accused stopped his car and when PW-1 and PW-2 became busy in taking care of injured Sukhvir Singh, he finding opportunity whisked away from the spot PW-1 and PW-2 have identified the accused present in the court at the time of their deposition. As such, the prosecution has successfully proved that the accused was driving the offending car at the time of accident.

21. On the basis of above discussion in the preceding paras, all these points are decided against the accused and in favour of the prosecution.

22. On the basis of the above discussion, I observed that the prosecution has proved the guilt of the accused beyond shadow of all reasonable doubt. The prosecution has proved the rash and negligent driving of the offending car No.PCF-9522, by the accused which caused the death of Sukhvir Singh. Hence the accused is ordered to be convicted under Section 279/304-A IPC, whereas no offence under Section 427 is proved against the accused.

13. Learned First Appellate Court while hearing the appeal observed as below:

“13. Accident in question took place on 09.02.03 at 8.30 p.m., but statement Ex. PA of PW-1 was recorded at 9.25 a.m of 10.2.03 and as such the same establishes as if this statement recorded at the earliest on day of accident next because on the previous night, PW-1 and PW-2 remained busy in taking steps to ensure that Sukhvir Singh does not die for want of proper

treatment. Rather Sukhvir Singh was taken first to CH Morinda and there from to PGI, Chandigarh and as such the same enough to establish as if the FIR could not be lodged at the earliest because of serious condition of Sukhvir Singh. So even if PW-1 claimed that police came on the spot despite that in after fifteen minutes, view of the unconscious conditions of Sukhvir Singh, it can be said that PW-1 being in shock was not in a position to suffer statement before police at the earliest. This police did not accompany Sukhvir Singh and PW-1 to hospital are also versions of PW-1 and as such it is obvious that police was not accompanying PW- 1 and PW-2 to hospital and that is why they i.e. PW-1 and PW-2 remained unable to suffer statement before police at the earliest after accident. Existence of police station a distance of 20-25 yards away not enough to establish that case is planted to against appellant because PW-1 and PW-2 did not know appellant and they have no enmity to depose falsely against appellant. Rather presence of PW-1 and PW-2 on the spot is believable and as such findings of learned trial court qua recording of conviction of appellant qua commission of offence punishable under Section 279 and 304-A IPC being perfectly legal and valid liable to be upheld and the same are hereby upheld.

14. It is contended by appellant that appellant may be counsel for granted of probation because the same was also granted in case Krishan Kumar Vs. State of Punjab, 2005 (4) Criminal Court Cases 765. the reported in the However reported case sword of conviction remained hanging on head of accused for 14 years during which period period the criminal revision of accused remained pending in the Hon'ble High court and that is why benefit of probation was granted to accused of reported case. That is not the position in the case before me, particularly, when after dismissal of first appeal, convict has to remain in custody for some time which position yet to emerge. However, this case decided within 7 years of accident and as such facts of the reported case are quite distinct than those of facts of the case before offence, me. Keeping in view the nature of offence, facts and circumstances of the case, benefit of probation cannot be allowed to appellant and as such prayer in that respect not accepted.

15. No other point argued.

16. Resultantly appeal of appellant being devoid of force merits dismissal and the same is hereby dismissed. Record of trial court be returned along with copy of this judgment and appeal file be consigned to Record Room."

14. Having perused the impugned judgments, my considered opinion is that the prosecution witnesses withstood the test of cross-examination and nothing could be elicited in favour of petitioner. The submissions made before learned trial court and Appellate Court were duly considered and rightly

repelled by recording sound and sufficient reasons consistent with the trustworthy evidence on record. I am inclined to agree with the findings of conviction recorded by learned trial Court, as upheld by learned Appellate Court, for the offences punishable under Sections 279 and 304-A IPC, which need no interference by this Court.

15. So far as releasing the petitioner on probation is concerned, I have considered the question of applicability of the benefits of Sections 360, 361 Cr.P.C. and the Probation of Offenders Act to the convict. The concept of fairness as a goal of punishment means that the punishment ought to commensurate with the offence. Also, sentences are intended at dissuading not only the actual offender from further offences but also probable offenders from breaking the law. Considering the act of the accused and facts and circumstances, I am not inclined to give the benefit of Sections 360, 361 Cr.P.C. and Probation of Offenders Act. Bearing in mind the growing trend in road accidents in India and the overwhelming consequences on the victims and their families, Courts cannot treat the offence under Section 304-A IPC as attracting the generous provisions of Section 360 Cr.P.C. and/or Section 4 of Probation of Offenders Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of vehicles, one of the leading considerations ought to be deterrence.

16. From the record, it is borne out that the incident took place in the year 2003. The revision petition pertains to the year 2009. The petitioner has already suffered protracted trial of around 20 years. Petitioner was about 40 years of age at the time of conviction and further he has undergone sentence for a period of 1 monts and 17 days. Petitioner is a poor person and his antecedents are clean.

17. Learned State counsel has though been able to defend this case on merits, but insofar as reduction of sentence imposed upon petitioner is concerned, I am of the opinion that no useful purpose would be served by sending the petitioner to jail at this point of time to undergo the remaining period of sentence. Given the overall scenario, in my view, ends of justice will be met if the substantive sentence of imprisonment is reduced to period of detention already undergone by the petitioner.

18. Consequently, the conviction of the petitioner, as mentioned above, is maintained. However, the sentence of rigorous imprisonment is reduced to the period of detention already undergone by him. Order of payment of fine and so also consequences in default thereof are, however, maintained. Learned counsel for petitioner informs that fine has already been paid.

19. The impugned order of sentence stands modified to the extent indicated above. Accordingly, the present revision is partly allowed. The petitioner is stated to be on bail. His bail bonds shall stands discharged.

20. Pending application(s), if any, shall stand disposed of.

(ARUN MONGA)
JUDGE

06.09.2023
vandana

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