

**112 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CRR No. 1172 of 2023 (O&M)****Date of Decision: 04.05.2023**

Bijender

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGILPresent: Mr.Ravinder Singh, Advocate,
for the petitioner.

Mr.Gagandeep Singh Chhina, AAG, Haryana.

SANDEEP MOUDGIL. J.

1. This revision has been filed against judgment of conviction dated 10.02.2020 and order of sentence dated 13.02.2020 passed by Judicial Magistrate Ist Class, Bahadurgarh whereby petitioner/accused was convicted under Sections 279 & 304-A IPC and sentenced to undergo imprisonment for six months and fine of Rs.1000/- under Section 279 IPC and imprisonment for two years and fine of Rs.1000/- under Section 304-A IPC with default stipulation and; judgment dated 18.04.2023 whereby appeal filed by petitioner/accused was dismissed by Learned Sessions Judge, Jhajjar.

2. Case of the prosecution in brief as narrated in the can be summed up as under:-

“That on 29.05.2025, Ram Kunwar son of Ram Chander r/o 655/5, Friends Colony, Line Paar, Bahadurgarh (for short ‘the complainant’) got his statement Ex.PW1/A recorded to the Police alleging therein that on 29.05.2015 at about 2.15 pm, he (complainant) was bringing his grandson Gaurav son of

Krishan Kumar, age 8 years to their house from the school. When they reached near PANCHMUKHI Chowk in front of Dhaka electronics shop, accused Bijender s/o Ram Kumar R/o Pahladpur came there on his blue colour Sonalika tractor along with safety tank of blue colour. The accused was driving his tractor at a high speed, rashly and negligently and straightway hit his grandson Gaurav with the tractor due to which Gaurav fell down on the road and the tyre of safety tank run over him. The driver of the tractor, namely, Bijender fled away leaving the tractor and the safety bank at the spot. The complainant with the help of his neighbor Dhirpal S/o Dharam Singh shifted Gaurav to General Hospital, Bahadurgarh where he was declared dead by the doctor. The complainant alleged that the accident in question resulting into the death of his grandson Gaurav was caused by accused Bijender by driving his tractor at a high speed, rashly and negligently. It was prayed that legal action be taken against accused Bijender.”

3. After registration of FIR, the investigation was carried out by Head Constable Sandeep. Report under Section 173 Cr.P.C. was presented in the Court of competent jurisdiction. Copy of challan and other documents were supplied to the accused free of costs. Accused was charge-sheeted under Section 279 & 304-A IPC to which he did not plead guilty and claimed trial.

4. In order to prove its case, prosecution examined PW-1 Ram Kumar, PW-2 Narender, PW-3 ASI Hariom, PW-4 SI Ramesh Kumar, PW-5 Constable Sandeep, PW-6 EASI Krishan Kumar, PW-7 Inspector Ombir Singh, PW-8 HC Sandeep, PW-9 Dr.Akriti, Medical Officer, Government Hospital, Bahadurgarh and closed its evidence.

5. Statement of accused under Section 313 Cr.P.C was recorded in which all the incriminating evidence was put to him. He denied the same and pleaded false implication, but did not led any evidence in defence.

6. After hearing both sides and appreciating evidence produced on record, the Judicial Magistrate Ist Class, Bahadurgarh convicted the petitioner vide judgment dated 10.02.2020 and sentenced him under Section 279 of IPC for six months rigorous imprisonment and Section 304-A for two years rigorous imprisonment with a specific order that both the sentence shall run concurrently.

7. Feeling dis-satisfied against the aforesaid judgment dated 10.02.2020, petitioner/accused preferred an appeal before the District & Sessions Judge, who concurred the order of conviction and upholding the same alongwith the sentence, dismissed the appeal vide its judgment dated 18.04.2023. It is against these concurrent finding of conviction and sentence, the jurisdiction of this Court has been invoked under Section 401 Cr.P.C., by way of instant criminal revision petition.

8. While referring to statement of PW-1 Ram Kunwar recorded under Section 161 Cr.P.C and the statement recorded in the Court, learned counsel for petitioner has contended that there is a material contradiction with regard to the time of occurrence inasmuch in the statement under Section 161 Cr.P.C., he has stated that occurrence took place around 2.15 PM whereas in the Court he deposed that he reached on the spot at 1.20 pm.

9. It is further contended that in the FIR it is mentioned that deceased came under the tire of safety tank whereas in the Court he deposed that deceased died after the tractor tyre ran over him.

10. It is also averred that there is contradiction material discrepancies in the statement of PW-1 Ram Kunwar and PW-2Narender as PW-1 deposed that deceased was taken to hospital in three-wheeler and contrary to this, PW-2 stated that they took the deceased to hospital on motorcycle and referred to his statement, where it is recorded under Section

161 Cr.P.C that accused fled away from the spot in the Court he deposed that accused was caught by the public.

11. It is also contended that as per mechanical report (Ex.PW-6/A), one of the tyre of safety tank was deflated, therefore, deceased could not have come under the same.

12. It is further contended that the road on which accident took place is full of speed breakers and there is no possibility that vehicle could be driven rashly and negligently and also argued that owner of Subhash Kiryana Store was not examined as witness by the prosecution whereas as per site plan alleged accident took place near Subhash Kiryana Store.

13. Lastly, it is submitted that as grandfather of deceased did not reach to pick him up on time and the school authority let the child go before time without the custody of the guardian, thus petitioner has been falsely implicated in the present case.

14. On the other hand, it is contended by the learned State counsel that petitioner/accused has been rightly convicted and sentenced by both the Courts below and exerts that there is no scope for interference in the well, reasoned judgments. Thus he prayed for dismissal of present revision petition.

15. I have heard learned counsel for the parties and have gone through the case carefully.

16. Before proceeding further, it is necessary to recapitulate the case of prosecution which in nutshell is that on the relevant date and time, Bijender was driving Sonalika tractor negligently in a zig-zag manner and straightway hit his grandson Gaurav despite the fact that they were going on the left side of the road. Gaurav fell down due to the hit given by the tractor and he came under the tyre of the tractor. It is further the case of prosecution

that accused would come in their colony along with tractor and safety tank. Gaurav was shifted to General Hospital, Bahadurgarh where he was declared brought dead.

17. Dr. Aakriti while appearing as PW-9 deposed that on 29.05.2025 she conducted post mortem examination on the dead body of Gaurav vide report Ex.PW-9/A. She had noticed following injuries on the dead body of Gaurav:-

- (i) *Bruise present on right arm near elbow joint of 5 x 3 cm.*
- (ii) *Bruise of 36 x 6 cm width variable present on right lower limb.*
- (iii) *Upper incisor loosened.*
- (iv) *Multiple abrasions present on lower abdominal region. They were of variable size, same as multiple abrasions present on iliac crest.*

18. From the medical evidence on record, it stands proved that on the relevant date, Gaurav, grandson of complainant Ram Kunwar was killed and multiple abrasions were found on his dead body.

19. I can't ignore the ocular evidence in the shape of witness PW-1, Ram Kunwar, who is none else than the grandfather of the deceased. The statement of PW-1 is corroborated by the testimony of PW-2 Narender another eye witness of the occurrence. Both the witnesses have deposed in one voice that on 29.05.2015, accused present in the Court, namely, Bijender was driving a tractor along with safety tank. The tractor was being driven in a rash and negligent manner and as a result, it ran over Gaurav, who was a child of 8 years. The child succumbed to the injuries on the spot. On hearing cries of the child, public including PW-2 Narender was attracted to the spot. The child was taken to the General Hospital, Bahadurgarh, but he was declared brought dead. Both these witnesses were cross-examined at length but nothing could be elicited from their testimonies which could shake their

version to raise any iota of doubt to my mind. As such, the case of prosecution has been proved to the hilt and there is nothing on record to discard the testimonies of both these eye witnesses.

20. This Court is also sanguine of the fact that the first contention raised by learned counsel for the petitioner that there is variation of time in the statements of PW-1, and hence I am of the opinion that such variation is liable to be ignored in view of the cogent and clinching evidence that the petitioner is the person who has caused the death of deceased Gaurav by rash and negligent driving. Such minor variations are bound to come when the second testimony is recorded after a considerable gap.

21. Now coming to the second contention that there is contradiction in the statement of PW-1 with regard to the fact that deceased died as he came under the tyre of safety tank or that tractor ran over him, this Court is of the opinion that such contradiction does not hold much water inasmuch as one child aged 8 years has lost his life and there is direct evidence on account of PW-1 and PW-2 who saw the occurrence and clearly identified the accused as the petitioner. In the face of such clinching evidence, the argument is liable to be rejected.

22. The fact that deceased was taken to the General Hospital, Bahadurgarh on two wheeler or three-wheeler, the same hardly affects the case of prosecution. PW-1 Ram Kunwar had lost his grandson, at that moment of time, a normal person does not remain in his senses as to which vehicle is to be opted for taking the child to the hospital. The fact that there were speed breakers and that due to this reason, the vehicle could not be driven on speed, does not mean that the same cannot be driven negligently. Even a vehicle on moderate speed can be driven with negligence and can cause harm to another.

23. The next argument raised by learned counsel that owner of Subhash Kiryana Store was not examined as a prosecution witness and therefore, the prosecution case becomes doubtful, is liable to be rejected because Evidence Act insists on quality of evidence and not quantity of evidence. When there is evidence of PW-1 and PW-2 to the effect that petitioner caused death of Gaurav, there is no requirement of examining more witnesses to that effect. Moreover, if the accused had expectation that he would depose in his favour, he could have examined him as his defence witness. Therefore, the contention is rejected.

24. Last submission of learned counsel for the petitioner that since the grandfather of Gaurav (deceased) did not reach the school in time, therefore, the school authorities let the child go on his own and as such, the accident has taken place due to this reason, is also liable to be rejected. The obvious reason is that PW-1 had lost his grandson, had he been killed by some one else, the grandfather would have no reason to implicate the accused falsely and to let the real culprit go scot-free. Moreover, while recording statement under Section 313 Cr.P.C, accused had not taken any plea to that effect.

25. In view of the observations made hereinabove, present revision petition is dismissed having no merit.

04.05.2023.

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*