

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3305-2011 (O&M)
Date of Decision: 05.01.2023

JAGIR SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Brijender Kaushik, Advocate for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 16.12.2011 passed by the Additional Sessions Judge, Ambala, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 05.11.2009 passed by the Judicial Magistrate, 1st Class, Ambala Cantt., has been dismissed.

2. As per the case of the prosecution, on 16.05.2000, the complainant and his uncle's son namely Naresh Kumar son of Hukam Singh were going to Barara on motorcycle bearing registration No.HR01F-0276 Marka Yamaha. When they were near Subhari Bus Stand near Raj Model Farm then a tractor bearing registration No.HR07D-0756 was going ahead of them towards Barara, whose driver was driving it at a very fast speed and in a rash and negligent manner. When they reached near the Bus Stand of Raj Model Farm, Subhari and tried to cross the tractor at about 5.15 p.m., then

the accused/petitioner turned his tractor towards the right side without any indication and the front tyre of the right side of the tractor struck the motorcycle of the complainant. The complainant fell down and Naresh Kumar struck a Sheesham tree due to the collision. Naresh Kumar received injuries on his head and other parts of the body. The complainant also received injuries. The accused fled away from the spot leaving his tractor on the spot. The accused was earlier known to the complainant. The complainant went to the Dera of Dev Raj and informed at his house at village Ugala on telephone regarding the accident. Naresh Kumar was taken to hospital at Shahabad in a Maruti Car but he succumbed to his injuries at Shahabad. Thereafter, he was brought to village Ugala at his residence.

On 16.05.2000, ASI Satbir Singh along with HC Sukhbir Singh, UGC Himmat Singh and C. Anoop Singh reached village Ugala after receiving a telephonic message from Hukam Singh, ex. Sarpanch, Ugala regarding the road accident. Thereafter, ASI Satbir Singh reached village Ugala and came to know that the dead body of Naresh Kumar was lying at the house of Hukam Singh, who had expired in a road accident. ASI Satbir Singh reached at the house of Hukam Singh and the complainant Tarsem Singh got recorded his statement Ex. PA. The Ruqa was sent through C. Anoop Singh, upon which, formal FIR EX.PW6/A was lodged on 16.05.2000 at 07.30 p.m.

During investigation, the mechanical report of the tractor bearing No.HR07D-0756 Ex. PW3/A and mechanical report of the motorcycle bearing No.HR01F-0276 EX.PW3/B were obtained. The postmortem report of Naresh Kumar Ex. PW7/A was also obtained. The tractor and the

motorcycle were taken into police custody vide recovery memo Ex. PB. The MLR of the complainant-Tarsem Singh EX.PW5/A was obtained. The accused was arrested on 19.05.2000 and after completion of all other formalities of investigation, the challan was presented in the Court for trial.

3. On finding a *prima face* case, the accused was charge sheeted on 21.05.2001 by the Judicial Magistrate, 1st Class, Ambala Cantt under sections 279, 337 and 304-A IPC to which the accused pleaded not guilty and claimed trial.

4. The prosecution in support of its examined the complainant/injured Tarsem Singh as PW1, Hukam Singh as PW2, HC Subhash Chander as PW3, Dr. Dev Raj as PW4, Dr. Arvinder Samar as PW5, ASI Karamveer as PW6, Dr. Suresh Sharma as PW7. Thereafter, evidence of the prosecution was closed by order of the Court on 24.04.2009.

5. When confronted with incriminating evidence against him, the accused in his statement under section 313 Cr.P.C. pleaded false implication and claimed innocence.

6. The complainant/injured Tarsem Singh while appearing as PW1 stated on oath in his examination-in-chief that on 16.05.2001, he and Naresh Kumar were going to Barara on a motorcycle bearing registration No.HR01F-0276 and that when they reached near Raj Model Farm, Subhari, then a tractor bearing registration No.HR07D-0756 was going ahead of them, which was being driven by the accused Jagir Singh present in the Court. The accused was driving the tractor at a very fast speed and in a rash and negligent manner and that without any indication, accused turned his tractor to the right side. Their motorcycle struck the tractor and he received serious

injuries and Naresh Kumar, who was sitting behind him, struck a Sheesham tree due to the collision and succumbed to his injuries on the spot. The driver of the tractor who was earlier known to him, fled away from the spot and he took Naresh in a car to the hospital. The doctor declared him brought dead. Thereafter, he had taken Naresh Kumar to his house and the police recorded his statement Ex. PA at his house, which bore his signature. The police had taken the tractor and motorcycle into custody vide recovery memo Ex.PB in his presence, which also bore his signature.

7. Hukam Singh while appearing as PW2 identified the dead body of Naresh Kumar. HC Subhash Chander mechanically examined the tractor bearing registration No.HR07D-0756 and the motorcycle bearing registration No.HR01F-0276 and gave is reports Ex. PW3/A and Ex. PW3/B respectively. Dr. Dev Raj PW4 also identified the dead body of the deceased Naresh Kumar.

8. Dr. Arvinder Samar while appearing as PW5 stated on oath in his examination-in-chief that on 16.05.2000, he medico legally examined the complainant/injured Tarsem Singh son of Hem Raj age around 25 years r/o Ugala, who was brought to the PHC by ASI Satbir Singh and that he had a number injuries, the details of which are as under:-

1. There was a reddish bruise around the red eye with defused swelling.

2. There was a reddish bruise on the right shoulder blade. Located swelling was present.

3. Patient complained of pain in the lumber region of the back and was advised X-ray.

4. *Patient complained of pain in the right knee. Movements of the knee were restricted but no mark of any fresh injury was seen. Patient was advised X-ray.*

5. *Complaint of pain in the left ankle joint. Though no mark of injury was seen.*

6. *There was a dressed wound on the right foot medical side proximal to the big toe. On removing the dressing, there was a reddish abrasion measuring 3 cm x 2 cm superficial and that all the injures were caused by the blunt weapon and that injures no.1 and 2 were caused within 24 hours and that for injuries no.3 to 6, time period could not be ascertained and that patient was advised X-ray for injuries no.3 and 4 and that other injures were simple and that patient was referred to General Hospital, Ambala for X-ray and that he had brought the original MLR, the carbon copy of which is Ex. PW5/A.*

9. ASI Karamveer while appearing PW6 stated on oath in his examination- in-chief that on 16.05.2000, he was posted at P.S. Barara as MHC and that he received a ruqa from ASI Satbir Singh through C. Anoop Singh on 16.05.2000, upon which, formal FIR EX.PW6/A was lodged by him with his endorsement Ex. PW6/B.

10. Dr. Suresh Sharma while appearing as PW7 stated on oath in his examination-in-chief that on 17.05.2000, he was posted as Medical Officer at General Hospital, Ambala Cantt. He conducted postmortem on the body of Naresh Kumar son of Hukam Singh r/o Ugala which was allegedly a case of

a road side accident. The injuries had been mentioned in the postmortem report and that in his opinion, cause of death in this case was shock and hemorrhage and injury to the brain. He had brought the original PMR, carbon copy of which was Ex.PW7/A, which was prepared and signed by him.

11. Based on the evidence lead by the prosecution, the accused/petitioner came to be convicted and sentenced vide judgment and order of sentence dated 05.11.2009 passed by the Court of Judicial Magistrate, 1st Class, Ambala Cantt. as under:-

Section	Sentence	Fine imposed	In default of payment
279 IPC	R.I. for 03 months	Rs.500/-	---
337 IPC	R.I. for 03 months	Rs.250/-	--
304-A IPC	R.I. for 01 year	Rs.500/-	RI for 01 month

All the sentences have been ordered to run concurrently.

12. Aggrieved by the judgment and order of sentence dated 05.11.2009 passed by the Trial Court, the petitioner preferred an appeal, where more or less similar grounds were raised. After examining the evidence and the record, the appeal came to be dismissed by the Court of Additional Sessions Judge, Ambala vide judgment dated 16.12.2011.

The instant revision petition has been preferred against the aforementioned two judgments.

13. The learned counsel for the petitioner contends that the Investigating Officer ASI Satbir Singh has not been examined by the prosecution. There was no cogent and reliable evidence on the record to establish that the accident was caused on account of the rash and negligent driving by the petitioner. In fact, the Courts did not record any finding as to

whether the accident was caused on account of the rash driving of the tractor or on account of the negligent driving of the motorcycle by the complainant/Tarsem Singh. He thus contends that the judgments of conviction and sentence ought to be set aside.

14. On the other hand, the learned State counsel has filed a custody certificate as per which the petitioner has undergone 02 months and 23 days out of the substantive sentence awarded of 01 year. He contends that the grounds raised by the petitioner/accused in the present revision petition have been considered by the Courts below and it is only thereafter that the Courts came to the finding that the prosecution had been able to establish its case beyond reasonable doubt.

15. I have heard the learned counsel for both the parties.

16. In the present case, the prosecution has been able to prove its case beyond reasonable doubt. The complainant/injured Tarsem Singh while appearing as PW1 has categorically stated in his deposition that the petitioner was driving his tractor bearing registration No.HR07D-0756 at a fast speed and in a rash and negligent manner. He suddenly turned the tractor towards the right without giving any indication and it struck their motorcycle. He received injuries whereas the deceased Naresh Kumar succumbed to his injuries.

The injuries received by PW1-complainant, Tarsem Singh have been corroborated by PW5-Dr. Arvinder Sammar and the postmortem report of the deceased Naresh Kumar has been duly proved by PW7-Dr. Suresh Sharma. Non-examination of the Investigating Officer ASI Satbir Singh is in no way fatal to the case of the prosecution. In fact, the recovery memo of the tractor and the motorcycle have been proved by the complainant/Tarsem Singh, PW1 and

mechanical reports Ex.PW3/A and Ex.PW3/B have been duly proved by PW3-HC Subhash Chander. Similarly, the lodging of the FIR Ex.PW6/A has been duly proved by PW6-ASI Karamvir Singh. Further, it is not in dispute that the petitioner is the owner of the offending tractor and had got released the same on *Superdari*.

17. Thus, from the evidence on record, it stands established that on 16.05.2000, the petitioner drove the tractor bearing No.HR07D-0756 in a rash and negligent manner and by so driving, caused the death of Naresh Kumar.

18. 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.

19. 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)

20. In the present case, the petitioner is a first-time offender and the occurrence pertains to the year 2000. As many as 22 years have elapsed since then. Therefore, I deem it appropriate to modify the sentence and reduce it to a period of 06 months under Section 304-A IPC. However, the quantum of fine and sentence in default shall remain intact.

(JASJIT SINGH BEDI)
JUDGE

05.01.2023

JITESH

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