

239

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1113-2012 (O&M)
Date of decision: 27.07.2023

Satnam Singh

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Narinder Singh Advocate,
for the petitioner.

Mr. Rahul Dev Singh, Addl. A.G., Haryana.

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 dated 21.09.2010 passed by learned Judicial Magistrate First Class, Ambala whereby petitioner was convicted under Sections 279, 337 and 338 IPC (though learned trial Court acquitted petitioner under Section 304-A IPC) and order of sentence dated 22.09.2010 whereby he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/-; and judgment dated 31.03.2012 passed by learned Sessions Judge, Ambala whereby petitioner herein was convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for one year along with fine of Rs.2000/-, in case FIR No.298 dated 11.11.2009, registered under Sections 279, 337, 338, 304-A IPC at Police Station, Mullana, District Ambala.

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

“The prosecution case has been registered on the statement of complainant Akash Kumar son of Pritam Singh recorded on 10.11.2012 alleging that on the aforesaid day, he along with his driver Ramesh Kumar and one Bant Singh was coming to college at

Damala on Van No.DNJ-2622. A Maruti Zen Car bearing No.HR-02-J-8205 was also coming behind their van. When they reached near bus stand village Kapli, a mini truck (Turbo 709E) later on its number known as HR-58-1030 came from front side in a rash and negligent manner and hit their van. Due to which van turned around and left the road. His driver received injuries. In the meantime, the said truck hit the above said Maruti Car-Zen bearing No.HR-02J-8205. Due to which the driver of the said car, two ladies and two children received injuries. The said accident was caused by the driver of truck bearing No.HR-58-1030 by driving his truck in a rash and negligent manner. Thereafter, after the vehicles were arranged ad injured were taken for treatment at Ambala and Yamuna Nagar. On his statement. formal FIR was registered. Investigation was carried out. From his statement, MLR, post mortem reports, offence punishable under section 279, 337 of IPC was made out against accused. Statements of witnesses were recorded. Accused was arrested. Accidental vehicles were taken into police possession vide separate recovery memo. Medical evidence was collected and an offence punishable under section 338 and 304-A of IPC was added. After completion of investigation challan was presented in the court for putting the accused on trial.”

4. Accused was charge-sheeted under Sections 279, 337, 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 14 witnesses, namely, Akash as PW1, Chander Mohan as PW2, victim Promila Rani as PW3, Daya Rani as PW4, Narinder Kumar as PW5, Retd. SI Gian Singh as PW6, ASI Roop Chand as PW7, HC Subhash Chander as PW8, Sunil Kumar as PW9, Ajmer Singh as PW10, ASI Tehal Singh as PW11, Constable Amit Kumar as PW13 and Dr. Pardeep Kumar Kohli as PW14.

6. All the incriminating evidence produced by the prosecution was confronted 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 acquitted him under Section 304-A IPC however held accused/petitioner to be guilty for the commission of the offences punishable under Sections 279, 337 and 338 of the IPC and accordingly convicted and sentenced him.

8. Aggrieved against the impugned judgment of conviction dated 21/22.09.2010, two cross appeals were filed; one by convict/petitioner herein, which was dismissed, and the second by victim Promila Rani, which was allowed vide order dated 31.03.2012 and petitioner herein was sentenced, as aforesaid in para 2 of this judgment.

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

“In view of the above discussion, it is established beyond reasonable doubt that accused Randhir Singh had caused the accident and simple injuries to Daya Rani, Manisha and Anuj as well as grievous injuries to Promila Devi by driving the mini truck bearing registration No.HR-58-1030 in a rash and negligent manner and thereby committed offences punishable under Section 279/337/338 of the IPC. However, prosecution has miserably failed to establish the charge under Section 304-A of IPC against the accused. Hence, accused is hereby held under Section 279/337/338 of the IPC and is hereby acquitted of offence punishable under Section 304-A of the IPC.”

10. Learned First Appellate Court while modifying the judgment of conviction and order of sentence observed as below:

“10. It was argued in the cross-appeal that the Court below acquitted Satnam Singh for the offence under section 304-A IPC because the doctor, who conducted the post-mortem, was not produced. He contended that all the witnesses had stated that Parveen Kumar had died at the spot and therefore, there was no better evidence than that. If he had died on account of the injuries later on, the prosecution was required to connect the death due to the injuries. In support of his arguments, he relied on the authority reported as Jaipal Vs. State of Haryana 2010 (4) Law Herald 3148, wherein it was held that non-examination of the doctor, who conducted the post mortem, was not sufficient to ignore that those persons had not died during accident. If eye witnesses described the occurrence, their presence could not be doubted. In the present case, the persons examined were not only the eye witnesses as passersby but were occupants of the ill-fated vehicle and some of them were also injured. It was held by the Hon'ble Supreme Court in case reported as Akhtar & others Vs. State of Uttaranchal, 2010 (4) RCR (Criminal) 621. that the post mortem report can be read in evidence without the doctor being examined if it is not disputed by the opposite party. Nothing was stated by counsel for the convict that the post mortem report was not correct. The same, therefore, can be read in evidence. which showed that Parveen had died on account of the injuries received in the accident.

11. Regarding the contradictions qua the fact whether the accused had escaped or was apprehended by the complainant at the spot whereafter he ran away, would also be of no consequence in view of the authority reported as **Kewal Singh Vs. State of Punjab 2011 (4) RCR (Criminal) 636**. It was further held that identity of the accused having been established by the witnesses. cest identification parade was not required. All the witnesses have categorically stated that they had not seen the accused and also identified him in court. Reliance may also be placed on the authority reported as *Nirmal Singh Vs. State of Punjab, 1999 (2) RCR (Criminal) 322*, where the accused had run away from the scene, even then the statements of eye witnesses were believed and absence of identification parade was stated to be not fatal.

12. The appeal filed by the convict, therefore, dismissed and the cross-appeal is allowed to the extent that finding of conviction under Section 304-A IPC should have also been returned. However, the cross-appeal, is dismissed regarding enhancement of sentence qua the other offences.

13. The request of the convict for grant of probation is also declined in view of the fact that the convict drove in such a manner as to endanger human life and also caused death of one persons. The number of road accidents is swelling by the day and rash and negligent drivers must be dealt with a heavy hand. The convict is, therefore, ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- under Section 304-A IPC. In default of payment of fine, he shall further undergo imprisonment for a period of two months.”

11. Learned counsel for petitioner submits that in the present accident, three vehicle were involved, two vehicles one van and other Zen Car were coming from one side and one light transport vehicle coming from the opposite side. The occupants of Zen car received injuries and one person died who was also travelling in the Zen Car, therefore, the possibility of collision between van and Zen car could not be ruled out.

11.1. Learned counsel further submits that there is no independent witness to the alleged accident which took place at the night time on the highway pitch. Even no evidence was led by prosecution, which shows that petitioner was driving the truck in rash and negligent manner. 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.

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

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

14. Under the directions of this Court, by an order dated 29.11.2022, the victim was impleaded as respondent no. 2 to whom notice has been duly served through jurisdictional SHO but no one has put in appearance despite service.

15. 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 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 Appellate Court for the offence under Section 304-A IPC, which need no interference of this Court.

16. From the record, it is borne out that the incident took place in the year 2009. The revision petition pertains to the year 2012. The petitioner has already suffered protracted trial of around 14 years. Petitioner was about 41 years of age at the time of conviction and further he has undergone sentence for a period of 3 months 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 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

27.07.2023
'D'vir/R/A

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