

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRR-3447-2012 (O&M)
Reserved on: 04.05.2023

Date of Decision: May 24, 2023

Shamsher Singh
... Petitioner
Versus
The State of Haryana
... Respondent

CORAM: HON’BLE MR. JUSTICE VIVEK PURI

Present: Mr. Baltej Singh Sidhu, Senior Advocate with
Ms. Gagandeep Kaur Sidhu, Advocate,
for the petitioner.

Mr.Gurbir Singh Dhillon, AAG, Haryana.

Vivek Puri, J.

1. The petitioner has assailed the judgments of the Courts below, vide which he has been convicted under Sections 279, 337, 338, 304-A of the Indian Penal Code (for short ‘IPC’) and sentenced as following:-

Offence	Sentence
279 IPC	Simple Imprisonment for a period of two months and fine of Rs.300/-. In default of payment of fine, to further undergo SI for 15 days.
337 IPC	Simple Imprisonment for a period of two months and fine of Rs.200/-. In default of payment of fine, to further undergo SI for 15 days.
338 IPC	Simple Imprisonment for a period of three months and fine

	of Rs.500/-. In default of payment of fine, to further undergo SI for one month.
304-A IPC	Simple Imprisonment for a period of six months and fine of Rs.500/-. In default of payment of fine, to further undergo SI for two months.

It has been further directed that all the sentences shall run concurrently.

2. The facts, as put forth by the prosecution, are to the effect that on 26.02.2006, Subhash deceased along with his daughter Jyoti had visited village Nuhiyanwali to meet his brother-in-law Madan Lal, complainant. On 27.02.2006 at about 9.30 a.m., Subhash along with his daughter Jyoti left on a motorcycle bearing registration no. HR20E-6205. Madan Lal, complainant also followed them on the jeep bearing registration no. RJ04C-0319 in order to purchase some articles from Sirsa. When they reached in between village Sahuwala and Panniwala Mota, they were proceeding on the correct side of the road and the truck bearing registration no. HR47A-7211 (hereinafter referred to 'offending vehicle') being driven in a rash and negligent manner came from the side of Sirsa and struck with the motorcycle. As a result of collision, both the occupants of the motorcycle fell on the road and sustained injuries. Subhash succumbed to the injuries and the driver of the

offending vehicle slipped away from the spot. On the basis of the statement of Madan Lal, complainant, the case has been registered.

3. On completion of the investigation, the challan was presented in the Court against the petitioner. A prima facie case under Sections 279, 337, 338, 304-A, 427 IPC was made out against the petitioner. The contents of the charge were read over and explained to him to which he pleaded not guilty and claimed trial.

4. To substantiate its case, the prosecution has examined 12 witnesses, besides producing documentary evidence.

5. In his statement recorded under Section 313 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner has denied the correctness of incriminating evidence appearing against him and has pleaded innocence. The petitioner has examined one witness in the defence evidence.

6. In terms of the judgment of conviction and order of sentence dated 24.08.2011, the petitioner was convicted and sentenced as aforesaid by the learned trial Court. The petitioner had preferred an appeal against the said judgment of conviction and order of sentence, but the same has been dismissed by the Court of learned Sessions Judge, Sirsa, vide judgment dated 19.10.2012.

7. The present revision has been preferred by the petitioner assailing the aforesaid judgments vide which the petitioner has been convicted and sentenced and furthermore, the appeal has been dismissed.

8. I have heard learned counsel for the parties and perused the record.

9. While assailing the judgments passed by the Courts below, learned senior counsel for the petitioner has contended that the eye witness count hinges on the deposition of Madan Lal, PW1, Narender Kumar, PW2, who are the brothers-in-law of the deceased and Jyoti, PW9, the daughter of the deceased. Their deposition cannot be relied upon as they are relatives of the deceased. Moreover, the identity of the petitioner as driver of the offending vehicle is not established. No test identification parade has been conducted in the instant case. The presence of Madan Lal, PW1 and Narender Kumar, PW2, at the spot, cannot be termed to be free from doubt as the name of the owner of the jeep is not coming forth. The driver of the offending vehicle was proceeding on the correct left side of the road and no site plan has been prepared by the investigating officer. The version of the prosecution appears to be improbable. It sounds unnatural that a young girl aged about 11 years will be sitting on the pillion, particularly when they were being followed by her maternal uncles in a jeep. It has also been

submitted that even otherwise, the the occurrence took place in the year 2006, the petitioner is first offender, a sum of Rs. 10 lakhs has been paid as compensation and consequently, some leniency may be extended in the matter of sentence. To support his arguments, the petitioner has placed reliance upon a decision rendered in **Ismail vs. Police Sub Inspector, Hospet, 2013(1) RCR (Criminal) 826 (SC).**

10. While supporting the judgments passed by the Courts below, learned State counsel has argued that there is no bar to base the conviction on the deposition of the witnesses, who are relatives of the deceased. Moreover, the presence of the witnesses at the spot is established. Jyoti, PW9, had also sustained injuries in the occurrence and there cannot be any dispute with regard to her presence and the presence of her uncles at the time of occurrence. The eye witnesses to the occurrence have identified the petitioner as driver of the offending vehicle during the course of their deposition in the Court. The case of the prosecution cannot be in any manner termed to be improbable or unnatural. In the occurrence, Subhash had died and Jyoti, PW9, had sustained grievous injuries. The Courts below have already taken a fairly liberal view in imposing the sentence and the judgments do not call for any interference.

11. The version of the prosecution is to the effect that the petitioner was driving the offending vehicle in a rash and negligent manner and struck with the motorcycle being driven by the deceased and her daughter, namely, Jyoti, PW9, was sitting on the pillion. The collision resulted in the death of Subhash and his daughter, aged about 11 years had sustained grievous injuries. The deceased and the daughter who were travelling on the motorcycle were being followed by Madan Lal, PW1 and Narender Kumar, PW2 on a jeep and they have also testified with regard to the mode and manner in which collision took place and have attributed rashness and negligence on the part of the petitioner in driving the offending vehicle. Both of them have specifically and categorically identified the petitioner as driver of the offending vehicle. Their presence at the spot cannot be disputed. It is significant to note that the occurrence took place at about 9.30 a.m. and the first version of the occurrence has been unfolded in the statement (Ex.PA) of Madan Lal, PW1 that has been recorded by the investigating officer. The endorsement of the investigating officer indicates that the same has been recorded at 11 a.m. The statement of the first informant has been recorded soon after the occurrence which rules out the possibility that he has been introduced at a subsequent stage being relative of the deceased. Moreover, Jyoti, PW9, had also sustained injuries

in the occurrence and in such circumstances, her presence at the spot cannot be disputed. Merely because no test identification parade has been conducted, it cannot be construed as a circumstance to dispute the identity of the petitioner as driver of the offending vehicle, particularly because, there are other circumstances appearing on record to indicate that the petitioner was driver of the offending vehicle. SI Satbir Singh, PW12, investigating officer had also conducted the inquest proceedings and prepared the inquest report Annexure Ex.PQ. The site plan prepared during the course of the inquest proceedings indicate that the dead body was lying on the extreme left side of the road. Even the photographs placed and proved on record depict the location of the dead body on the left side of the road. Moreover, after the collision the driver of the offending vehicle managed to slip away.

12. In his statement recorded under Section 313 Cr.P.C., the petitioner has stated that he was not driving the offending vehicle. In fact, the offending vehicle is in the name of his mother Veera Kaur and she has engaged a driver namely Rakesh Kumar @ Happy. The accident might have been caused by Rakesh Kumar @ Happy and his mother is living separately. In these set of circumstances, it is amply clear that the petitioner is not seeking to dispute the fact that the collision had taken place with the offending

vehicle, but has sought to dispute the fact that he was driver thereof. The petitioner has examined Tan Singh, DW1, who has testified to the effect that the petitioner is residing separate from his mother for the last about 7-8 years and they are not on speaking terms. The offending vehicle is owned by Veera Kaur and she is residing with another son Vikramjit. The father of the petitioner has since died and the petitioner never drove the offending vehicle.

13. It shall not be out of place to mention here that in his statement recorded under Section 313 Cr.P.C., the petitioner has not sought to put forth a case to the effect that he was having strained relations with his mother and on that score she was residing with his brother. Even no such version as put forth by the petitioner in the statement under section 313 Cr.P.C. or in the statement of Tan Singh, DW1 has been sought to be put forth in the cross examination of the prosecution witnesses. Even no attempt has been made by the petitioner to examine Rakesh Kumar @ Happy or his mother to dispute the fact that he was not working as a driver of the offending vehicle. In these set of circumstances, the defence version as sought to be put forth by the petitioner in his statement under Section 313 Cr.P.C. and the statement while examining Tan Singh, DW1 appears to be a result of afterthought to evade the criminal liability.

14. In these set of circumstances, the findings of conviction have been correctly recorded by the Courts below and do not call for any interference.

15. With regard to the quantum of sentence, the custody certificate indicates that the petitioner has undergone imprisonment for a period of 02 months and 05 days. Furthermore, he was also involved in another case bearing FIR No. 112, dated 23.09.2011, under Section 304-A IPC, registered at Police Station Malout, District Sri Muktsar Sahib. The ratio of the decision in the case of **Ismail** (supra) relied upon by the petitioner is distinguishable from the facts of the present case. In the said decision, the accused was aged about 74 years and was unable to do any activity. Moreover, undue sympathy in imposing inadequate sentence cannot be extended to the petitioner. In the case in hand, the rash and negligent driving of the offending vehicle by the petitioner has resulted in the death of Subhash and grievous injuries on the person of his 11 years old daughter. An onerous duty is cast upon the driver of heavy vehicle to move on the road with due care and caution and ensure the safety and security of the other persons moving on the road. The Courts below have shown sufficient leniency in the matter of imposing the sentence of imprisonment upon the petitioner which cannot be termed to be excessive and the same does not call for any interference by this Court.

16. For the aforesaid reasons, finding no merit in the present revision, the same is dismissed.

17. The petitioner is on bail and necessary steps be initiated for effecting his re-arrest so that he may undergo the sentence imposed upon him.

May 24, 2023
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(Vivek Puri)
Judge

Whether speaking/reasonable:	Yes
Whether reportable:	Yes