

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

**Reserved on 17th of November, 2022
Pronounced on 11th January, 2023**

CRR No.2603 of 2017 (O&M)

Gurmeet Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Mohit Jaggi, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, Dy. Advocate General, Punjab.

PANKAJ JAIN, J.

CRM-23644-2017

Application is allowed as prayed for.

CRR No.2603 of 2017

Present revision petition is directed against the judgment passed by Sessions Judge, SAS Nagar, Mohali dated 1st of June, 2017 whereby appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 5th of November, 2016 passed by the Court of SDJM, Derabassi stands dismissed.

2. Petitioner was booked in FIR No.239 dated 13th of September, 2014 registered for the offences punishable under Sections 279, 337, 338 of the IPC.

3. As per the case of the prosecution on 12th of September, 2014

at about 8.15 pm, victim-Ramu who was standing on the road for crossing slip road was hit by the offending vehicle being driven in a rash and negligent manner. Later on number of the offending vehicle was discovered to be PB-65T-1477 and the petitioner was put to trial. Complainant/victim Ramu appeared as PW-3 and fully supported the case of the prosecution. Trial Court after analyzing the evidence came to the conclusion that the petitioner was guilty of having committed offences punishable under Section 279 and Section 338 IPC and sentenced him as under :-

Under Section	Rigorous Imprisonment	Fine	In default
279 IPC	6 months	Rs.1000/-	1 month
338 IPC	2 years	Rs.1000/-	2 months

4. The appeal preferred by the petitioner was dismissed leading to the present revision.
5. Ld. Counsel for the petitioner has argued that neither the number of offending vehicle finds mention in the FIR nor the name of the petitioner. There is no independent witness to establish the identity of the petitioner. He further submits that admittedly the offending vehicle is in the name of one Amarjeet Singh son of Narinder Singh who has not been examined during the trial and, thus, the evidence on record is discrepant to sustain the finding of guilt *qua* the petitioner. He further submits that merely on the statement of victim, the petitioner cannot be held guilty and that too when the statement of victim-Ramu suffers from material

discrepancies.

6. Per contra, Ld. State Counsel has argued that the injured has supported the case of the prosecution and from bare perusal of his statement it is evident that the same is of sterling quality. Both the Courts below having rightly concluded the petitioner to be guilty, no fault can be found with the judgment of conviction and order of sentence.

7. I have heard counsel for the parties and have carefully gone through the evidence on record.

8. In whole of the evidence, the most material evidence on record is in form of statement of victim/complainant-Ramu who appeared as PW-3. His statement reads as under :

“I am a daily wager. On the day of occurrence, I was engaged in work at village Bhankharpur and I was returning to my house. I was working with Ramu Thekedar on daily wages. My working hours are from 9-9 % AM to 6- 6% PM. It takes me 15 minutes to reach home from work place. Sadhu Nagar Colony falls on left side while going from Bhankharpur to Mubarakpur. It is incorrect that I was not going through slip road cross. It is also incorrect that I have not crossed the road carefully. It is correct that slip road is a small road, but traffic was running from both the side on it during occurrence. It is correct that vehicles used to pass slowly on that road. I cannot tell about directions of the occurrence. it is correct that there are five/seven shops at the place of occurrence. It is correct that there is no light at the place of occurrence. Voluntarily said that there are five/seven shops. There was lightening of those shops. The shops are situated exactly adjacent to the place of occurrence near the chowk. It is correct that the truck was coming in a proper manner on its left side. Voluntarily

said that it was coming at fast speed. The front side of the truck hit me on my right side. It is incorrect that I have concocted and planned a false story regarding accident with truck. It is incorrect that I use to have liquor. I was informed about the name of the truck driver and number of the truck by a person out of persons gathered there, but I cannot tell his name. Again said, I don't know his name. It is correct that the identification of the driver was not got made through me by the Police officials while calling me at the Police Station. Voluntarily said that even today, I have seen him in the court. Earlier also, I had seen him for two/three times when he had visited the court. I had studied upto sixth standard. Truck had stopped after going at a distance of 100-150 yards from the place of occurrence. I remained present at the spot for 10-15 minutes. I was got admitted in the hospital by my mother Soma Devi. I was discharged from the hospital on 15. It is incorrect that I have not seen the driver at the spot. It is also incorrect that I have concocted a false story against the accused regarding visiting me by the driver. It is also incorrect that I have sustained injuries on account of using negligence while crossing road I don't know who had informed the police about the occurrence. It is incorrect that I have got registered a case against the accused in a false manner in order to get claim after having connived with the police. It is incorrect that I have deposed falsely.”

(emphasis supplied)

8. From the bare perusal of statement of Ramu, it is evident that he is not sure about negligence on part of the petitioner. Apart from bald statement that the petitioner was driving vehicle at a high speed, there is nothing on record that could be pointed out to attribute negligence to the petitioner. Ramu admits that the offending vehicle was coming on correct side.

9. Sections 279 and Sections 338 IPC read as under :

“279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

10. From the bare perusal of the aforesaid provisions of law, it is evident that the negligence is *sine qua non* and is an essential ingredient to constitute the offence. It would be manifest that in order to constitute an offence under Section 279 of the IPC there must be an allegation of driving of a vehicle, or riding on a public way and such driving or riding must be so rash and negligent as to endanger human life or to be likely to cause hurt or injury to any other person. As regards offence punishable under Section 338, the act must be rash or negligent as to endanger human life or personal safety responsible for causing grievous hurt. To establish the offence either under Section 279 of Section 338, the commission of a rash and negligent act has to be proved. The only distinction being that in Section 279, rash

and negligent act relates to the manner of driving or riding on a public way while the offence under Section 338 extends to any rash and negligent act causing grievous hurt. The rashness or negligence which needs to be established is something more than a mere error of judgment. There is also a distinction between rashness and negligence. In that, rashness conveys the idea of doing a reckless act without considering any of its consequences whereas negligence connotes want of proper care. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence.

11. In the case on hand, apart from a bald statement made by a witness that the vehicle was being driven at a high speed, there was no attempt made to establish that there was any rash or negligent act on the part of the petitioner. The Apex Court in case titled as **State of Karnataka vs. Satish, 1998 (8) SCC 493** held as under :

“4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is

no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.”

12. Rashness or negligence can't be presumed. Onus is always upon the prosecution to prove beyond reasonable doubt that vehicle in question was being driven rashly and negligently. Apex Court in case titled as **State of H.P. vs. Manpreet Singh, Latest HLJ 2008 (HP) 538** held as under:-

“4. Legally, in a case of rash and negligent, if the prosecution is able to prove the essential ingredients of the offence, the onus to disprove it shifts upon the respondent to show that he had taken due care and caution to avoid the accident...”

13. Once the complainant-victim, who is the most material witness himself is at sea w.r.t negligence on part of the petitioner, the order of conviction *qua* the petitioner cannot be sustained.

14. Resultantly, the present revision petition is allowed. Judgment of conviction and order of sentence dated 5th of November, 2016 passed by SDJM, Derabassi is hereby set aside.

ORDER

- (i) CRR No.2603 of 2017 is allowed.
- (ii) The impugned judgment of conviction/order of sentence dated 5th of November, 2016 passed by SDJM, Derabassi whereby the petitioner-Gurmeet Singh has been convicted for offences punishable under Sections 279 and 338 IPC and has been awarded substantive sentence of 2 years R.I., is set aside.
- (iii) Petitioner Gurmeet Singh is acquitted of the charges that were framed against him.
- (iv) Fine, if paid, be refunded to him.

January 11, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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