



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2277-2023 (O&M)
Reserved on:05.09.2024
Date of Pronouncement: 13.09.2024

BILALPetitioner

VERSUS

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kuldeep Sheoran, Advocate,
for the petitioner.

Mr. Raghav Garg, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. The instant revision petition has been filed, throwing challenge to the judgment of conviction, and order of sentence dated 08.03.2017, passed by the learned Judicial Magistrate Ist Class, Khanna, District Ludhiana (hereafter referred to as 'the learned trial court concerned'), whereby, the petitioner has been convicted for the commission of offences punishable under Sections 304-A, 337 and 279 of the IPC and the sentenced as awarded to the present petitioner, reads as under:-

Offences	Sentence
304-A IPC	2 years rigorous imprisonment
337 IPC	6 months rigorous imprisonment

279 IPC	6 months rigorous imprisonment
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2. Further, the challenge is also thrown to the judgment passed by the learned Additional Sessions Judge, Ludhiana (hereinafter referred to as the 'learned First Appellate Court concerned'), dated 24.07.2023, whereby, the statutory appeal against the judgment of conviction/order of sentence (*supra*), preferred by the present petitioner has also been dismissed.

3. It is case of an unfortunate roadside accident, wherein, three persons lost their life, and four persons suffered injuries. On dated 09.05.2012, a telephonic information was received by the MHC Surinder Singh, Police Station Sadar Khanna, that an accident has occurred between a canter bearing no.HR-45A-6918 and a car make Safari bearing no.UP-85-AD-6588, and in that accident seven persons received injuries. Thereupon, the investigating officer, ASI Balwinder Singh, who was later examined as PW2, reached at the spot alongwith other police officials. The passengers who were sitting in the Safari car, were struck inside and the investigating officer with the help of the other people got them out of the car, and got them admitted at the Civil Hospital, Khanna. In the said accident, three persons were declared dead, namely, Nitu, Kartik and Radha. Statement of one Nishi Kant Sharma (complainant), was recorded by the investigating officer. The relevant extract of the statement as recorded by the learned trial court concerned in its judgment, reads as under:-

“.....that on 8.5.2012 at around 5.00/6.00 p.m., he alongwith his wife and two children, friend Kapil and his wife, friend Shekar and his wife and his brother in law Rajesh Sharma and his wife and two children in a Safari car no. UP-85-AD-6588 which was owned by his friend Kapil left for Mata Vaishno Devi; that around 4.00 a.m. when they reached near Khanna. They found construction going on the road on account of which Nishi Kant Sharma who was driving the car slowed down the same and tried to turn the car but in the mean while from the side of Mandi Gobindgarh a canter bearing no. HR-45A-6918 which was being driven in a very high speed without blowing horn hit his car and dragged the car with it to a distance and the car on account of the said collision, hit the wall along side the road and the passengers in the car got stuck in the car; that the passengers were taken out the car by police officials with the help of other people; that they all were taken to civil hospital, Khanna, that on account of the accident, his wife and two children died and the other persons received serious injuries; that the driver of the canter after causing the accident fled away from the spot; that accident has been caused due to rashness and negligence on the part of the driver of the canter namely Bilal.....”

3. In this case, on dated 15.05.2012, the present petitioner was arrested, and he got recovered the registration certificate (RC), of the canter, i.e. the offending vehicle (Ex.P-26) and Driving Licence (Ex.P-27), which were taken in possession by the police agency, vide recovery memo Ex.P-28.

4. The learned trial court concerned, after framing of charges against the present petitioner, recorded the statements of seven prosecution witnesses, as cited in the final report.

5. The complainant-Nishi Kant Sharma, and injured Rajesh, were not examined, as Nishi Kant Sharma, was stated to be unconscious since the date of accident, and Rajesh was unable to come from his house to depose before the court concerned.

6. Finally, the present petitioner was convicted, vide judgment and order of sentence (*supra*), by the learned trial court concerned, and,

furthermore, the statutory first appeal preferred against the said judgment/order, also met the same fate, and was dismissed by the first appellate court concerned.

7. Learned counsel for the petitioner, in asking for the relief (*supra*), in the instant case, submits that the FIR (*supra*), was registered against some unknown person, and the petitioner has wrongly been shown to be arrested in the instant FIR, without conducting any test identification parade. Therefore, the identification of the petitioner by the injured/witness, was for the first time in the witness box only, which is therefore, is a weak piece of evidence. Hence, the evidence of injured/eyewitness namely, Kapil and Shekhar, who were examined as PW-4 and PW-5 respectively, carries less probative value.

8. He submits that infact it was the complainant, who was negligent while driving his car, as he suddenly entered the National Highway-I, on which the present petitioner was driving the canter on his own side.

9. His second argument is that both the courts below have not appreciated the fact that the prosecution is unable to prove the act and conduct of the petitioner as rash and negligent, at the time of accident. It is merely the deposition of PW-4 and PW-5, upon which the courts below placed reliance, and held the petitioner guilty for the commission of offences, under which charges were framed against the petitioner.

10. Finally, he submits that the petitioner is facing protracted trial since 2012, and he has already undergone custody for more than one year, as on today, therefore, if, in case petitioner fails to succeed on merit

in the instant revision petition, the case of the present petitioner may be considered by this Court for reduction of the sentence.

11. This Court has considered the submissions made by learned counsel for the petitioner, and has examined the lower courts record, as well as the judgments passed by the courts below.

12. So far as the first submission as raised by learned counsel for the petitioner, is concerned, this Court does not find any merit in the same. In the instant case, it is not under dispute that the offending vehicle, is a canter having Registration No.HR-45-A-6918, and it was confiscated from the spot itself, by the investigating officer, who has been examined as PW-2, and the Registration Certificate (Ex.P-26), of the said vehicle, and the driving licence, were produced by the petitioner himself which were also taken into possession vide recovery memo Ex-28. Therefore, there cannot be any dispute, with regard to the fact that the offending vehicle was being driven by the present petitioner, as otherwise there was no occasion for the petitioner, to have access or possession of the Registration Certificate (RC), of the offending vehicle.

13. Further, during cross-examination the investigating officer-PW-2, categorically submitted that he felt no necessity to conduct test identification parade, as the accused/petitioner was already identified by the complainant immediately after the accident. The injured/eyewitness who stepped into the witness box as PW-4 and PW-5, also established the identity of the petitioner in the witness box. They were put to lengthy cross-examination, however, the defence could not elucidate anything which could breach the credibility of the eyewitness.

14. Further, there is no reason for the injured/eyewitness, who lost three members of his family, in the instant occurrence, to implicate the present petitioner falsely. Therefore, there is no merit in the first submissions made learned counsel for the petitioner.

15. So far as the second issue is concerned, that is also considered by this Court, as PW-4 who is injured/eyewitness, who was sitting on the front seat besides the driver seat, i.e. Kapil (PW-4), categorically submitted that it was the same canter vehicle, which has hit on the back side of the Safari car at a very high speed. The relevant extract of his statement reads as under:-

“...We started at about 6:00 pm from Govardhan. At about 4:30 am we reached near Kabja Factory Khanna. Our vehicle was moving on the road. One canter bearing no.HR-45A-6918 came from back side with the very high speed. The driver of the above said canter did not blow any horn or gave any light and he struck his canter into our tata safari from backside. The canter driver dragged our vehicle to some distance and then our vehicle stopped....”

16. In the cross-examination, except the bold suggestion of denial, there is nothing from which this Court could draw an inference that it was the complainant, who was responsible for causing the instant accident.

17. The other eyewitness PW5-Shekhar, also deposed on the same line as deposed by aforesaid PW-4/Kapil, and corroborated the case of the prosecution.

18. The Courts below after examining the statements of eyewitnesses, and investigating officer, clearly concluded that it was the present petitioner who was driving the offending vehicle, i.e. Canter bearing no.HR-45A-6918, in a very rash and negligent way, and

furthermore, there is no illegality or perversity in the observation made by the courts below. Therefore, this Court does not find any merit in the instant petition, which is consequently **dismissed**.

19. The request made by learned counsel for the petitioner to reduce the sentence of the petitioner to the period already undergone, cannot be accepted, considering the gravity of the offences for which the petitioner has been convicted and sentenced.

20. In the instant case due to the rash and negligent driving of the present petitioner, one woman and two children lost their life on the spot, and four persons suffered injuries, and out of them two are still stated to be suffering, therefore, the trial court concerned, passed the order of sentence aptly, which was affirmed by learned first appellate court concerned, requires no interference by this Court.

21. All pending application(s), if any, stand **disposed** of accordingly.

September 13, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

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