



S. No.202

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

CRR No.1612 of 2011

Date of Decision:07.11.2025

Ashwani Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. S.K. Bansal, Advocate for the petitioner.

Mr. Jatinder Pal Singh, Sr. DAG, Punjab.

Yashvir Singh Rathor, J. (Oral)

1. Present revision petition has been filed against the impugned judgment dated 12.10.2004, passed by learned SDJM, Phagwara, whereby the petitioner has been convicted for the offences under Sections 279 and 304-A IPC, and was sentenced to undergo Rigorous Imprisonment for a period of six months for the offence under Section 279 IPC. He was also sentenced to undergo Rigorous Imprisonment for a period of two years besides fine of Rs.1,000/- under Section 304A IPC for causing the death of Balwinder Pal, and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of two months. Besides this, he was also sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1,000/- for the offence under Section 304-A IPC for causing the death of Tara Chand and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of two months, as well as judgment dated 28.04.2011 passed by learned Additional Sessions Judge, Kapurthala in CRA-66/2004, vide which appeal filed



by the petitioner against the judgment dated 12.10.2004, passed by learned SDJM Phagwara, has been dismissed.

2. The present case was registered on the basis of statement given to the Police by Ram Kishan son of Jawara Ram with the allegations that he along with his son-in-law Banarasi Dass was going to Phagwara for their private work while his son Tara Chand and nephew Balwinder Pal were also going to Phagwara on Scooter bearing PB-37-2607 owned by Balwinder Pal which was being driven by said Balwinder Pal while Tara Chand was riding the pillion. He was following the scooter of Balwinder Pal. At about 01:45 PM, when the scooter of Balwinder Pal reached near the Post Office, Satnampura and he was about 20/25 yards behind him, one tractor trolley bearing No.PB-37-2607, make Swaraj came from the opposite side at a fast speed which was being driven rashly and negligently. One Santro Car bearing No.PB-36-B-1501 was also coming from the opposite direction and while overtaking the tractor trolley, the car hit the scooter of Balwinder Pal, as a result of which, the scooter got imbalanced. Balwinder Pal could not control the scooter due to the collision by the car and both the occupants of the scooter fell on the road and they got crushed under the right side tyre of the trolley of the tractor which was also coming at a high speed. The tractor was being driven by Ashwani Kumar – petitioner, who ran away from the spot leaving behind the tractor trolley. The driver of the Santro Car also stopped the car at a little distance but he also ran away whose name later on came to be known as Jagjit Singh. Many persons gathered at the spot and they all took Balwinder Pal and Tara Chand to the hospital for treatment where Tara Chand was declared dead while Balwinder Pal was referred to DMC, Ludhiana but he also died during the treatment. ASI Jatinder Kumar made an endorsement on the said statement and



sent ruqa to the Police Station, on the basis of which formal FIR was registered. Investigating Officer visited the place of accident and prepared the rough site plan and took into possession all the three accidental vehicles vide Memo Ex.PW4/G. Thereafter, all the vehicles were got mechanically examined. The inquest proceedings in respect of the dead bodies of Tara Chand and Balwinder Pal were prepared and the post mortems were got conducted. Rough site plan of the place of accident was prepared. Statement of witnesses were recorded. Accused were arrested and after completion of investigation, final report was presented in the Court for trial.

3. The copy of challan was supplied to the accused free of cost as envisaged under Section 207 Cr.P.C and after hearing the Public Prosecutor and the accused, both the accused were charged for the offences under Sections 279 and 304A IPC.

4. In order to prove its case, prosecution examined PW1 Ram Kishan, PW2 Dr. D.S. Bains, Medical Officer, Civil Hospital, Phagwara, PW3 Head Constable Balwinder Rai, PW4 Asi Jatinder Kumar, Investigating Officer, PW4 (numbered again) Amarjit Kaur, Clerk, D.I.O. Office, Hoshiarpur, PW5 Vikay Singh, PW6 Gurwinder Kaur, Jr. Assistant, Office of SDM Phagwara. Witnesses namely Dr. Gurdit Singh, Ravi Kumar and Raunki Ram were given up as unnecessary. Thereafter, the evidence of the prosecution was ordered to be closed vide order dated 31.08.2004.

5. Statements of the accused under Section 313 Cr.P.C were recorded wherein the entire incriminating material was put to them but the same was denied by accused to be wrong. In defence, accused did not choose to lead any evidence.



6. After hearing the parties, learned trial Court held both the accused guilty and convicted and sentenced as mentioned in opening para of the judgment.

7. Feeling aggrieved, the petitioner preferred an appeal but the same was also dismissed vide order dated 28.04.2011 by the Court of learned Additional Sessions Judge, Kapurthala. Thereafter, the present revision petition was instituted. The trial Court record has been received and perused and learned counsel for the petitioner as well as learned State Counsel have been heard.

8. Learned counsel for the petitioner argued that the judgments passed by both the Courts below are based on conjectures and surmises and grave error has been committed while convicting the petitioner for the offence under Sections 279 and 304-A IPC. Learned counsel contended that as per allegations in the FIR, as also deposed by PW Ram Kishan, the ill fated scooter was going towards Phagwara while petitioner was coming from the opposite direction while driving his tractor trolley allegedly at a high speed. One car being driven by co-accused Jagjit Singh overtook the tractor trolley and while overtaking the tractor trolley, it had hit the scooter from its side as a result of which scooter got imbalanced and the occupants of the scooter fell on the road and they got crushed under the tyres of the trolley. Learned counsel contended that the accident had not taken place on account of rash and negligent driving on the part of the petitioner, who was driving his tractor trolley on the left side of the road and it is the offending car which overtook the tractor that had hit the scooter. After the scooterist fell on the road, petitioner had no time to apply the brakes and they got crushed under the right side tyres of the trolley. Learned counsel next contended that mere fast driving is not sufficient to come to the conclusion that the tractor was being driven rashly and negligently. Infact, tractor was being driven on its left side at a normal



speed and petitioner thus cannot be held liable for the accident as both the deceased fell on the road after the scooter was hit by the car and they got crushed under the right side tyres of the trolley. Learned counsel contended that the necessary ingredients to establish rash and negligent driving are altogether missing but both the Courts below have committed grave error while coming to the conclusion that petitioner too contributed in causing the accident but the said finding is perverse and not based on any evidence and the impugned judgments are liable to be set aside and petitioner deserves to be acquitted of the charge.

9. On the other hand, learned State Counsel has opposed the contentions raised by learned counsel for the petitioner. Learned counsel contended that petitioner too should have been vigilant and should have applied the brakes when the car was overtaking the tractor and had hit the scooterist. The petitioner could not control the tractor trolley after the car collided with the scooter as a result of which both the scooterist got crushed under the right side tyres of trolley resulting in their death after falling on the road. Learned counsel contended that the judgments passed by the Courts below do not suffer from illegality or infirmity, much less perversity and petition in hand be dismissed.

10. After going through the material on the file and hearing the parties, I am of the considered opinion that petition deserves to be allowed and accused is entitled to be acquitted of the charge under Section 279 and 304-A IPC for the reasons discussed hereinafter.

11. As per prosecution case, the ill fated scooter was going towards Phagwara while petitioner was coming from the opposite direction while driving his tractor trolley allegedly at a high speed. One car being driven by co-accused Jagjit Singh overtook the tractor trolley and after overtaking the tractor trolley, it



hit the scooter from its side as a result of which scooter got imbalanced and the occupants of the scooter fell on the road and they got crushed under the tyres of the trolley.

12. In order to prove its case, the only material witness examined by the prosecution is PW1 Ram Kishan who deposed that he along with his son-in-law Banarasi Dass was going to Phagwara from Village Kot Rani on his scooter while his son Balwinder Pal and nephew were also going to Phagwara on a separate scooter ahead of their scooter. At about 01:40 PM, when the scooter of Balwinder Pal reached near Police Station Satnampura, one Santro Car No.PB-36-B-1501 came from the right side of the Phagwara at a high speed which was being driven in a rash and negligent manner and while trying to overtake the tractor trolley, make Swaraj, the car hit on the side of the scooter being driven by Balwinder Pal, as a result of which Balinder Pal and Tara Chand fell on the road and thereafter, the tractor trolley ran over both of them. He stopped his scooter on the road side. The car driver also stopped and disclosed his name as Jagjit Singh. The tractor trolley also stopped and the driver came and disclosed his name as Ashwani Kumar and thereafter, they fled away from the spot leaving behind the offending vehicles. Thereafter, he took both the injured to the hospital but Tara Chand was declared dead while Balwinder Pal died subsequently during the treatment. He got recorded his statement Ex.PA before the Police which bears his signatures. He deposed that the accident took place due to rash and negligent driving of car driver as well as tractor trolley driver. During cross-examination, he admitted that the tractor trolley was coming from the side of Phagwara to Hadiabad on its own left side. He stated that the speed of the tractor trolley was about 25 to 30 km per hour and the trolley was empty. In this way, as per his testimony, tractor trolley



was being driven on its left side at a slow speed of 25/30 km. per hour and his assertion in the examination-in-chief that the tractor trolley was being driven at a high speed and in a rash and negligent manner thus stands falsified. It is thus established that car coming from the opposite direction overtook the tractor trolley which was being driven on its left side and after overtaking or while overtaking the tractor, it had hit the scooterist as a result of which scooter got imbalanced and both the scooterists fell on the road and got crushed under the right side tyres of the tractor trolley and in these circumstances, the tractor trolley driver has not directly contributed to the accident as the tractor had neither hit the car nor the scooter. Both these scooterists fell on the road after the car hit their scooter and unfortunately, they came beneath the right side tyres of the trolley and got crushed for which the tractor trolley cannot be held at fault and rash and negligent driving on his part is not established. However, the trial Court as well as the Appellate Court have not appreciated the facts of the case and material on file in the correct perspective. Rather, both the Courts below have committed grave error in appreciating the facts of the case and the judgments passed by both the Courts below are perverse which has resulted in miscarriage of justice and are liable to be set aside on this score.

13. Testimony of remaining witnesses is formal in nature. PW2 Dr. D.S. Bains had conducted the post mortem examination on the dead bodies of Tara Chand and Balwinder Pal and has proved the post mortem reports Ex.PW2/A and Ex.PW2/B respectively according to which they died due to the injuries suffered on the vital organs. PW3 HC Balwinder Rai had got conducted the post mortems. PW4 ASI Jatinder Kumar had conducted the investigation and has deposed about the various steps taken by him during the investigation. Another PW has been



numbered as PW4 namely Amarjit Kaur and she has proved the registration certificate of the scooter No.PB-07-3622 Ex.PW4/1 in the name of Balwinder Ram. PW5 Vijay Singh had identified the dead bodies vide Memos Ex.PW5/A and he has also proved the inquest proceedings Ex.PW4/D. PW6 Gurinder Kaur, Junior Assistant, Office of SDM, Phagwara has proved the ownership of the offending car in favour of Bhalla Ball Bearing Industry, Hadiabad.

14. As a result of afore-said discussion, impugned judgment dated 12.10.2004 passed by Sub Divisional Judicial Magistrate, Phagwara, District Kapurthala as well as the impugned judgment dated 28.04.2011 passed by Additional Sessions Judge, Kapurthala are hereby set aside and petitioner is acquitted of the charge under Section 279 and 304-A IPC. Petitioner along with his surety is discharged from the bonds of appearance. Accidental vehicles, alongwith RC & driving licence be returned to lawful owners. Copy of the judgment be sent to Courts below for compliance.

(Yashvir Singh Rathor)
Judge

November 07, 2025
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No