

(2009) 1 RCR(Criminal) 383**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Revision No. 960 of 1996

Rohtash Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Feb. 22, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Penal Code, 1860 (IPC) - Section 279, 304A, 337, 338, 379

Citation: (2009) 1 RCR(Criminal) 383**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench**Advocate:** A.P.S. Isher, for the Appellant; Manmohan Sikka, Assistant Advocate General, Haryana for the State, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Rohtash Kumar son of Sardar Singh was convicted and sentenced by the Court of learned Chief Judicial Magistrate, Hisar u/s 304-A IPC to undergo rigorous imprisonment for one and a half years and a fine of Rs. 2,000/-, in default whereof to further undergo rigorous imprisonment for six months. He was also sentenced u/s 279 IPC to undergo rigorous imprisonment for three months. Both the sentences were ordered to run concurrently. Aggrieved against the same, petitioner filed an appeal and the same was dismissed by the Court of learned Additional Sessions Judge, Hisar.

2. The petitioner was tried in case FIR No. 95 dated 14.4.1996 registered at Police Station City Hisar under Sections 304-A, 279, 337, and 338 IPC.

3. Complainant Subhash Kumar met the Investigating Officer, who was investigating the case FIR No. 93 of 1986 u/s 379 IPC near Nagori Gate, Hisar and reported that on 14.4.1986 at about 9.15 P.M. when complainant was going to his house after closing his shop near United Commercial Bank, he saw that Muni Surat Dass and his wife were

going on a scooter No. HRT-8550 towards their residence, then at that time, a truck bearing No. HRT-7734 in a very rash and negligent manner came from Jain Chowk and struck against the scooter of Muni Surat Dass, due to which both of them fell on the road. It is stated that Muni Surat Dass died at the spot, whereas his wife Ravi Kanta was taken to Civil Hospital. It is stated that accident took place due to rash and negligent driving of truck and after parking the truck the driver ran away from the spot.

4. The F.I.R. was investigated and it was found that the petitioner was driver of the offending truck. Report u/s 173 Cr.P.C. was submitted. Petitioner was charged for the offences to which he pleaded not guilty and claimed trial.

Subhash Kumar, complainant, appeared as PW.4.

5. Ami Chand, Assistant Sub Inspector, PW.1, had taken into possession driving licence of the petitioner vide recovery memo Ex.PA.

Rajinder Pal, PW.2 mechanically examined scooter and the truck belonging to deceased and accused, respectively and submitted his reports Ex. PW.2/A and Ex. PW.2/B.

Bhushan Lal, PW.3, was photographer.

As stated earlier, Subhash Kumar, PW.4 reiterated the version given by him in the FIR.

Hari Singh Yadav, Advocate, PW.5, had attested the inquest and had identified the dead body of Muni Surat Dass.

Parmod Jain, PW.6, is another witness of the occurrence. He is also witness to the recovery of possession of truck, blood stained earth and the scooter.

Dr. R.P. Singal, PW.8, had radiologically examined Ravi Kanta, wife of deceased.

Dr. Surinder Singh, PW.9, had medicolegally examined Ravi Kanta, wife of deceased

Dr. N.M. Sharma, PW.10, conducted autopsy of deceased Muni Surat Dass.

Siri Chand, PW.11, is retired Sub Inspector, who had recorded the complaint made by Subhash Kumar, PW.4, on the basis of which formal FIR was registered. He also investigated the case.

Jai Kumar, PW.12 had taken the offending truck on sapurdari. He also stated that the truck was being driven by the accused/petitioner.

6. An argument has been raised that Ravi Kanta, injured, was not examined and she was best witness to depose regarding the occurrence. Once the two Courts below have held that Subhash Kumar, PW.4, and Parmod Jain, PW.6, had witnessed the occurrence, non-examination of Ravi Kanta will not cause dent in the prosecution case. The Courts

have always insisted upon the quality of evidence and not quantity of evidence. Even though Ravi Kanta was injured and her non- examination is not sufficient to disbelieve Subhash Kumar, PW.4, and Parmod Jain, PW.6, on whose testimony two Courts below have placed implicit reliance.

7. Learned counsel for the petitioner, in the alternative has stated that in the present case occurrence had taken place in April 1986 and a period of 22 years has lapsed. He has further stated that the petitioner is sole bread earner of his family. He has liability of family and in the last 22 years his children have become of marriageable age. In case petitioner is sent behind the bars, it will cause stigma and matrimonial prospects of the children will be affected. Appeal of the petitioner was dismissed on 5.11.1996 when he was taken into custody. It has been stated by learned counsel for the petitioner that the petitioner was released on bail by this Court on 12.12.1996 and a few days thereafter he came out of jail. Hence, the petitioner has undergone more than one month and ten days of his actual sentence.

8. Keeping into account liabilities and antecedents of accused, protracted trial and the fact that the petitioner has undergone more than one month behind the bars, ends of justice will be met in case sentence of petitioner is reduced to already undergone and amount of fine is enhanced so that family of the deceased can be compensated. Accordingly, it is ordered that sentence of petitioner shall be reduced to already undergone subject to payment of enhanced amount of fine, which is awarded as Rs. 35,000/-. Non deposit of fine within a period of three months from today shall be construed as dismissal of the present revision petition. Amount of fine, be disbursed to the legal heirs of deceased.

9. With these observations, the present revision petition is disposed off.