**In the High Court of Punjab and Haryana at Chandigarh**

**CRR No. 769 of 2015 (O&M)**
**Date of Decision: March 04, 2015**

*Shalinder* ... *Petitioner*

*Versus*

*State of Haryana* ... *Respondent*

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH**

1) Whether Reporters of the local papers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. G.S. Nagra, Advocate,
for the petitioner.

***Paramjeet Singh, J.* (Oral)**

Instant criminal revision has been preferred by the petitioner against judgment dated 04.02.2015 passed by learned Sessions Judge, Jind dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 03.09.2013 passed by learned Chief Judicial Magistrate, Jind vide which the petitioner has been convicted for offences punishable under Sections 279, 337 and 304-A of the Indian Penal Code (hereinafter referred to as the "IPC") and sentenced as under:-

| ***Section*** | ***Sentence*** |
|---|---|
| 279 IPC | Six months rigorous Imprisonment and to pay a fine of Rs.500/- |
| 337 IPC | Six months rigorous Imprisonment and to pay a fine of Rs.500/- |
| 304-A IPC | One year rigorous Imprisonment and to pay a fine of Rs.500/-. In default, to undergo SI for two months. |

All the sentences were ordered to run concurrently.

The prosecution version emerges from the statement of complainant – Manik Shah, who made a statement to the effect that he was driver by profession. He was coming from Julana to Jind on his motorcycle, whereas on another motorcycle bearing registration No. HR-31D-3186 make Bajaj Platina of black colour, his nephew Vinod son of Jagbir along with Anil son of Ramphal and Pawan son of Mahabir were going from Jind to Julana. On that day i.e. 24.11.2009 in the night at about 2.00 A.M. when they reached near Village Bishanpura towards Rohtak, a white colour cruiser bearing registration No. HR-61-5853 being driven at a high speed and in a rash and negligent manner by the the petitioner came from Rohtak side and directly hit against the motorcycle of his nephew Vinod as a result of which he died at the spot, whereas, Anil and Pawan were seriously injured and were admitted to General Hospital, Jind from where they were referred to PGIMS, Rohtak.

After investigation, challan was presented against the petitioner. Charge was framed under Sections 279, 337, 304-A and 427 IPC. Petitioner pleaded not guilty and claimed trial.

To prove its case, prosecution examined PW-1 Laxman Singh Retd. SI, PW-2 SI Ramesh, PW-3 Manik Shah, PW-4 Ved Pal SSI, Haryana Roadways, Jind, PW-5 Dr. Rajesh Gandhi, Medical Officer, PW-6 Chander Singh, PW-7 Palvinder, PW-8 Harish Kumar photographer, PW-9 HC Pawan Kumar, PW-10 Anil, PW-11 Pawan son of Mahabir and thereafter, closed its evidence.

Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded his innocence and took the plea of false implication. However, he did not opt to lead any evidence in defence.

Ultimately, the trial Court after hearing the parties and appreciating the evidence on record, held the petitioner guilty and convicted and sentenced him as aforesaid. Feeling aggrieved against that, petitioner preferred an appeal before the Sessions Judge, who, after hearing the parties, dismissed the appeal and upheld the conviction and sentence. Hence, this criminal revision.

I have heard learned counsel for the petitioner and perused the record.

Learned Counsel for the petitioner raised a plea that this is a case of non-identification of the accused. Learned Counsel for the petitioner contended that there is no proper identification of the accused, i.e., the petitioner.

A perusal of the judgments of the trial court as well as the lower appellate Court clearly shows that PW3 complainant Manik Shah during his cross examination has specifically stated that he had seen the accused in the Court for the second time which means that the accused was seen by the complainant on the day of occurrence.

Testimony of PW3 Manik Shah has to be considered to be trustworthy unless the defence is able to cause a dent in the prosecution version. The eye-witness has identified the accused. It is not the case of the accused that he had been shown to the witness prior to his being

identified in Court. Court identification, itself, is a good identification in the eyes of law. It is not always necessary that it must be preceded by test identification parade. It always depends upon the facts and circumstances of a given case. No straight-jacket formula can be laid down in this regard. In my considered opinion, it was not necessary to hold test identification parade of the petitioner for the reasons that he was duly seen. So, the contention with regard to non-identification parade of the petitioner is rejected.

Learned Counsel for the petitioner further argued that single testimony of PW3 Manik Shah is not corroborated and as such cannot be relied upon. On the sole testimony of PW3, petitioner cannot be convicted.

I have considered this contention of learned Counsel for the petitioner. It has no substance. The defence has led no evidence to discard the presence of this witness at the spot. The testimony of PW3 has to be taken to be creditworthy unless it is proved that he was a planted witness. He being the actual eye witness to the occurrence, cannot be disbelieved and both the courts below have rightly believed the version of PWs. It is settled principle of law that it is quality of the evidence which is material and not the quantity.

In order to establish the guilt against the petitioner prosecution is required to prove the essential ingredients of the offence beyond all shadows of doubt and in case of offence punishable under Section 304A of the Indian Penal Code prosecution is required to establish the following ingredients:-

(i) Death of person in question.

(ii) Accused has caused such death.

(iii) The act of accused was rash and negligent not amounting to culpable homicide.

In case of death by rash and negligent act, maxim *res ipsa loquitur* is applicable for offence under Section 304-A of the Indian Penal Code. In the matter of **Thakur Singh v. State of Punjab, 2003(9) SCC 208 ,** the Hon'ble Supreme Court has held that in the facts of the case the doctrine of *res ipsa loquitur* came into the play and the onus of proof shifted to the person who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. Since the accused had not succeeded in showing that the accident happened due to causes other than negligence on his part, his conviction cannot be faulted.

The evidence of prosecution witnesses in this case clearly establishes that petitioner was driving the offending vehicle. The petitioner was required to take complete precaution to save the innocent lives. Had the petitioner driven the vehicle with aforesaid precaution, then there would have been no occasion of this accident, so the maxim *res ipsa loquitur* would apply in the present case. These circumstances are sufficient for drawing an inference that petitioner was not cautious but was rather negligent while driving the vehicle and by his negligent act he has caused death of Gurpinder Singh deceased.

As far as the quantum of sentence is concerned, theory of

deterrence (Penology) was dealt with by the Apex Court in the matter of **Dalbir Singh v. State of Haryana 2000(2) RCR (Cr) 816,** in which it has been held that while considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. Para 13 of the said judgment reads as under:

> "*13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to*

*callous driving of automobiles*."

While dealing with the question of sentence in case of rash and negligent driving, the Hon'ble Supreme Court in the matter of **State of Karnataka v. Sharanappa Basanagouda Aregoudar, 2002(2) RCR (Cr) 271**, has held that the sentence imposed by the Courts below should have a deterrent effect on potential wrongdoers and it should be commensurate with the seriousness of the offence. Para 7 of the said judgment reads as under:-

> "*7. In the facts and circumstances of the case, we are inclined to interfere with the judgment of the learned Single Judge and hold that the respondent is liable to undergo the sentence imposed by the trial Magistrate and affirmed by the appellate Court. Consequently, we direct that for the offence punishable under Section 304-A, the respondent be taken into custody to undergo simple imprisonment for six months. As regards the offences under Sections 279, 337 and 338 IPC, no separate sentence has been awarded by the trial Magistrate. The direction of the trial Magistrate is maintained*."

On close scrutiny of the evidence, it appears that petitioner does not deserve leniency in sentence. I do not find any illegality or impropriety in the impugned judgments. Consequently, this criminal revision is dismissed in limine.

**March 04, 2015** **[Paramjeet Singh]**
vkd **Judge**