

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1827 OF 2009**

**SUBHASH CHAND**

**Appellant(s)**

**Vs.**

**STATE OF PUNJAB**

**Respondent(s)**

**JUDGMENT**

**Dinesh Maheshwari, J.**

In this appeal, the appellant-accused has called in question the order dated 18.04.2009 in Criminal Revision No. 621 of 2009 whereby, the High Court of Punjab & Haryana, Chandigarh has upheld his conviction for the offences under Sections 279 and 304-A of the Indian Penal Code ('IPC').

2. The accusation against the appellant had been that on 10.03.2000, at around 07:30 a.m., while driving a truck bearing registration No. HPS 5716 at a high speed and in a rash and negligent manner on the wrong side of a heavy traffic area at Mall Road, Patiala (near Malwas Cinema), he caused an accident which resulted in the demise of the rider of an unnumbered Hero

Puck Moped. It was further alleged that the appellant immediately fled from the scene with his vehicle. For the incident in question, FIR was registered at Police Station Kotwali, Patiala on the statement of Nirpal Singh (PW-2), who was an eye-witness to the accident alongwith Rajinder Singh (PW-3). The appellant, who was serving with ITBP, was surrendered by his commandant and was arrested on 04.04.2000. After completion of investigation, the accused was charge-sheeted for the offences aforesaid.

3. In trial, the prosecution, *inter alia*, relied on the testimony of PW-2 Nirpal Singh, who asserted that at the time of the accident, he was going on a scooter with his brother Rajinder Singh and saw the truck of ITBP bearing registration number HPS-5716 being driven by the accused in a rash and negligent manner; and the truck, while turning on the wrong side of the road, ran over the moped, resulting in the demise of the rider. Rajinder Singh (PW-3) corroborated the testimony of PW-2. The accused-appellant attempted to suggest that his identity was in doubt as, admittedly, the driver of the offending truck had fled from the scene.

4. In its judgment and order dated 28.11.2005, the Trial Court rejected the contentions urged on behalf of the accused and found it proved that he did cause the accident which resulted in the death of the rider of moped; and further that the identity of the accused-appellant as driver of the offending vehicle was not in doubt for he was surrendered by his own commandant. Accordingly, the Trial Court convicted the accused-appellant for the offences under Sections 279 IPC and 304-A IPC; and awarded the punishment of 6

months' rigorous imprisonment and fine of Rs. 1,000/- with default stipulation for the offence under Section 279 IPC and 2 years' rigorous imprisonment and fine of Rs. 2,000/- with default stipulation for the offence under Section 304-A IPC.

5. The appeal preferred by the accused-appellant against the judgment and order aforesaid was considered and dismissed by the Sessions Judge, Patiala by the judgment dated 04.02.2009 after re-appreciation of the entire evidence on record. The accused-appellant took the matter further in revision (Criminal Revision No. 621 of 2009), which was also dismissed by the High Court of Punjab and Haryana at Chandigarh by the impugned order dated 18.04.2009 giving rise to this appeal.

6. The main plank of the case of the appellant is that his involvement in the accident in question is not proved, inasmuch as his identity as the driver of the offending vehicle has not been established. The contention so urged essentially relates to a question of fact and in the present case, the Trial Court as also Appellate Court, after detailed scrutiny of the evidence on record, came to the conclusion that the appellant had been the driver of the vehicle in question who fled from the scene with his vehicle. Even in the revision petition, the High Court has taken pains to analyse the evidence and, after due consideration of the material on record, including the testimony of PW-2 Nirpal Singh and PW-3 Rajinder Singh, has affirmed the finding that the appellant was indeed the driver of the offending vehicle. The Courts have also taken note of a significant circumstance that the appellant, who was driver on

the said truck of ITBP, was surrendered by his own commandant. On the point of identity of the appellant-accused, the High Court has neatly summed up the relevant factors in its impugned order dated 18.04.2009 in the following:

*“...The tenor of the evidence is that Nirpal Singh (P2) did not identify as to who was driving the truck when it was involved in the accident but he identified the driver of the truck when he was produced in court. Therefore, from the said deposition it cannot be said that Nirpal Singh (PW2) had failed to identify the Petitioner as the person who was driving the truck. Besides, Rajinder Singh (PW3) in his deposition on 22.08.2003 stated that he identified the accused (Petitioner) present in Court who was driving the offending truck. Besides, the learned JMJC Patiala in her order has observed that the FIR was lodged on the same day as the date of the occurrence. Moreover, the fact that the accused (Petitioner) was got surrendered by his own Commandant, could not be over-looked. Therefore, the findings and the conclusions as regards the identity of the Petitioner as the person who was driving the offending vehicle stands clearly established and it is not a case of false implication of the Petitioner.... ”*

Having examined the record, we are satisfied that the baseless contention about want of identification of the appellant as the driver of offending vehicle has rightly been rejected and there is no reason to consider interference in the concurrent finding of fact in this regard.

7. Learned counsel for the appellant has also endeavoured to point out certain so called shortcomings or inconsistencies in the prosecution case viz., that no dent was found on the vehicle in question on its mechanical examination; that the alleged photographs of the site of accident were not

produced; that as per the statement of PW-3 Rajinder Singh, the dead body was removed at 10 a.m. whereas, as per PW-2 Nirpal Singh, they reached the hospital with the dead body of the victim at about 8 a.m.; and that in the inquest report, the suggestion had been that it was a case of natural death.

8. We are clearly of the view that all the suggestions aforesaid are neither of any effect nor of bearing on the substance of the matter. It is clearly established on record that the accident in question did take place at 7:30 a.m. on 10.03.2000, when the truck driven by the accused bumped into the moped driven by the deceased Lavjot Singh, who fell on the road and succumbed to the injuries sustained in this accident. In the post-mortem conducted at 2 p.m. on 10.03.2000, the doctor concerned (PW-5 Dr. O.P. Agarwal) found multiple lacerated wounds on the head of the deceased with abrasions on the face and forehead; skull fractured into pieces; brain injured; and mandible and nasal bone fractured. In the given set of circumstances, any observation in the inquest report, or any discrepancy regarding the time of reaching the hospital, or want of photographs, or want of dent on the vehicle, do not create any uncertainty or doubt about the prosecution case.

9. Another suggestion is made as if the FIR in the present case was fabricated or manipulated. This suggestion is too remote and is of uncertain nature because the FIR was registered on the statement of Nirpal Singh (PW-2) and there had been no reason to fabricate or manipulate the FIR in this case relating to a fatal vehicular accident.

10. It has also been argued that the incident in question took place about 19 years back and the appellant has already undergone about four months of imprisonment and hence, no useful purpose would be served by his imprisonment now at this stage; and in any case, the appellant deserves to be extended the benefit of probation. These submissions also deserve to be rejected in the given set of facts and circumstances of this case.

11. In the case of **Thangasamy v. State of Tamil Nadu, Criminal Appeal No. 698 of 2010 decided on 20.02.2019**, we have rejected similar contentions in relation to a vehicular accident case after taking note of several decisions of this Court on the principles concerning just and adequate punishment in such cases, including those in ***Alister Anthony Pereira v. State of Maharashtra: (2012) 2 SCC 648***; ***State of M.P. v. Ghansyam Singh: (2003) 8 SCC 13***; ***Dalbir Singh v. State of Haryana: (2000) 5 SCC 82***; and ***State of Karnataka v. Muralidhar : (2009) 4 SCC 463***. The same principles relating to just and adequate punishment do apply to the present case too; and we find no reason to reduce the punishment awarded or to extend the benefit of probation where a 15 year old boy lost his life due to the rash and negligent driving of the truck by the appellant and where, after causing the accident, the appellant fled from the site and was surrendered by his commandant more than 3 weeks later.

12. Accordingly, in view of the above, this appeal fails and is, therefore, dismissed. The appellant shall surrender before the Court concerned within a period of 4 weeks from today and shall undergo the remaining part of the

sentence. In case he fails to surrender within the period aforesaid, the Trial Court will take necessary steps to ensure that he serves out the remaining part of sentence, of course, after due adjustment of the period already undergone.

.....J.  
(ABHAY MANOHAR SAPRE)

.....J.  
(DINESH MAHESHWARI)

New Delhi

Dated: 25<sup>th</sup> February, 2019.