

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

**CRA-S-846-SB of 2004
Date of Decision : 9.12.2015**

Joginder Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Kirpal Singh, Advocate
for the appellant.

Mr. A.S. Klar, AAG, Punjab.

GURMIT RAM, J.

The above-said appellant has preferred the instant appeal against the judgment dated 1.4.2004 and order of sentence dated 3.4.2004 passed by the Court of learned Additional Sessions Judge, Kapurthala, vide which the appellant was held guilty for the offence punishable u/S 304 Part-II read with Section 34 of the IPC in criminal case bearing FIR No.38 dated 23.4.1999 u/Ss 304/34, IPC and Complaint Case No.88A of 1999 u/S 302/34 of the IPC and awarded the sentence accordingly.

2. The case as put forth by the prosecution before the learned trial Court in brief was that on 22.4.1999, Amrik Singh SI/SHO, Police Station Sadar, Kapurthala was present in the premises of Police Post Kala Sanghian in connection with checking. A medical chit was received in the police post from SMO, PHC Kala Sanghian to the effect that injured Hardev Singh son of Piara Singh, resident of Sandhu Chatha, who was brought to this hospital for treatment has expired. On this, said SI/SHO

Amrik Singh along with Paramjit Singh ASI and other police officials reached at PHC, Kala Sanghian where above-said Piara Singh along with his brother Karnail Singh - Sarpanch met him and got recorded his statement which was as under:-

“That he is an agriculturist by profession. He along with his family has been residing in the *dera* (residence made in the field) in the area of Kala Sanghian road, village Sandhu Chatha. His elder brother Karnail Singh - Sarpanch along with his family has also been residing therein. He has two sons namely Hardev Singh aged about 13 years and Harnek Singh aged about 10 years. Today in the evening his son Hardev Singh had gone to drop their maid servant Manjit Kaur in the village on motorcycle make YAMAHA bearing registration No.PB08M-8363. He was waiting for his son while standing by the side of road in front of his *dera*. At about 7:30 p.m., his son was returning to *dera* from the side of village on his motorcycle. At that time, Resham Singh son of Sohan Singh and Joginder Singh son of Chanan Singh of his village were also seen on a bullock cart while coming from the side of village near the motor of Sadhu Singh of his village. When his son Hardev Singh reached near their bullock cart and likely to cross the same, then said Resham Singh and Joginder Singh turned the back portion of the bullock cart towards the right side in front of his motorcycle at once with the intention to kill him. As a result of which, motorcycle of his son struck against the right rear portion of the bullock cart. He immediately reached at the spot to know about his son. In the meantime, his brother Karnail Singh also reached at the spot on a scooter. They saw that Hardev Singh had sustained injuries on his forehead, chin, middle of chest and left thigh due to striking his motorcycle against the bullock cart. They took injured Hardev Singh to PHC, Kala

Sanghian where the doctor declared him dead. The cause behind this occurrence as alleged was that in the last election of Sarpanch, his brother Karnail Singh had contested against Sohan Singh and his brother won that election. Above-said Resham Singh and Joginder Singh had supported said Sohan Singh in that election. They had caused death of his son by doing the above-said illegal act in order to get the revenge.”

After recording the above statement of complainant, it was read over to him and he had signed the same after admitting it to be correct. After making his endorsement on this statement of complainant, SI Amrik Singh sent ruqqa to the police station, on the basis of which the instant case was registered initially u/S 304/34, IPC. Inquest proceedings with regard to the dead body of deceased were conducted. Post-mortem on dead body was also got conducted. Site-plan of the place of occurrence was prepared. From the spot, broken bullock cart and motorcycle involved in this occurrence were taken into police possession. The matter was investigated from the people present at the spot with regard to the facts of this case. During this investigation, the alleged motive/enmity qua this occurrence was not established, so the offence was substituted from Section 304, IPC to 304-A, IPC. Accused were apprehended. Statements of witnesses were recorded. On completion of investigation, challan was presented against the accused.

Regarding this occurrence, complainant Piara Singh had also filed a private complaint against accused Resham Singh and Joginder Singh u/Ss 302/34, IPC. The learned Illaqa Magistrate after making compliance of the provisions of Sections 207 and 208, Cr.P.C. committed both the challan case as well as the complaint case to the learned Sessions

Judge, Kapurthala for the trial vide order dated 24.2.2000.

3. Then the accused were charge-sheeted for the offence punishable u/S 302 read with Section 34, IPC, by the learned trial Court, to which, they pleaded not guilty and claimed trial.

During the trial of this case, accused Resham Singh absconded from the Court proceedings and he was declared as a proclaimed person vide order dated 18.10.2002.

4. During trial of the case, thirteen witnesses were examined by the prosecution in order to prove its version against the accused.

5. Then accused Joginder Singh was duly examined as per the provisions of section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against him during trial of the case was put to him, which was denied by him entirely. Further he pleaded his innocence and false implication in this case. He further stated that Hardev Singh came on his motorcycle from their behind at a very high speed and struck his motorcycle on the back side of his cart. Hardev Singh was a child and was not holding any driving licence. He could not control his vehicle which resulted into the present accident which took place due to his own negligence.

6. The learned trial Court on culmination of the trial heard counsel for both the parties, perused the record as well and held accused Joginder Singh guilty for the offence punishable u/Ss 304 Part-II read with Section 34, IPC vide the impugned judgment and sentenced him as under:-

“Rigorous imprisonment for a period of five years and to pay a fine of ₹2,000/- and in default of payment

of fine, accused shall suffer further rigorous imprisonment for a period of two months”.

7. Appellant/accused Joginder Singh being dissatisfied with the impugned judgment and order of sentence has come up in the instant appeal before this Court, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

8. I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

9. Learned counsel for the appellant has contended that the finding of the learned trial Court that while abruptly turning the bullock cart towards the right side, the accused were well aware of the consequences which could follow on account of the strike of motorcycle being driven by Hardev Singh, is illegal and hence not sustainable in the eyes of law since it is not the case of prosecution that the present appellant and his co-accused Resham Singh were having prior knowledge that the said Hardev Singh is coming on a motorcycle from the back side. Then it is his further contention that Karnail Singh the uncle of deceased Hardev Singh who took him to the hospital had revealed before the doctor that alleged injuries were sustained by deceased Hardev Singh in some accident. It is further his contention that in the given facts and circumstances of the case, the case, if any, makes out is u/S 304-A of the IPC to the maximum and that too against Resham Singh co-accused of the present appellant who was allegedly driving the bullock cart at the relevant time. Further he has prayed for the acceptance of this appeal and to acquit the appellant of the charges of which he has been held guilty and

convicted in this case by setting aside the impugned judgment of conviction and order of sentence.

10. But on the other hand, learned State counsel strongly denied the above contentions of the learned counsel for the appellant and has contended that the impugned judgment of conviction is based on the evidence available on the record. The reasons given by the learned trial Court in holding the appellant guilty in this case are also stated to be valid one. It is further his contention that there is nothing on the record which could warrant any kind of interference in the impugned judgment of conviction and, has prayed for dismissal of this appeal.

11. Now I deem it necessary to have a glance to the relevant evidence as available on the file for the proper appreciation of the above rival contentions of both the parties, gist of which is as under:-

PW1 Piara Singh – complainant deposed to the effect that on 22.4.1999 at about 7:00 p.m., his son Hardev Singh had gone to the village to drop their maid servant Manjit Kaur on a motorcycle. He saw his son coming from the side of village. Resham Singh and Joginder Singh accused were also seen coming on a bullock cart from the side of village which was being driven by accused Resham Singh, while accused Joginder Singh was sitting by his side. When his son tried to cross their bullock cart, then both the accused turned the cart suddenly towards the right side and blocked the road with the intention to kill his son. Consequently, his son struck against the cart along with his motorcycle, sustained injuries and became unconscious. He and his brother Karnail Singh – Sarpanch took injured Hardev Singh to Kala Sanghian hospital

where doctor declared him dead. His statement Ex.PA to this effect was recorded by the police.

PW2 Karnail Singh was the brother of PW1 Piara Singh. He also supported the version of prosecution by lending corroboration to the above discussed statement of PW1 Piara Singh.

PW5 Dr. Bharpur Singh Rai stated to the effect that Hardev Singh injured son of Piara Singh was brought to hospital with multiple injuries on 22.4.1999 at about 8:45 p.m. with the alleged history to have accident near Sandhu Chatha. He expired on the same day at 8:55 p.m. Further he proved the chit Ex.PW5/A sent by him to the Incharge, Police Post, Kala Sanghian.

PW6 Dr. Davinder Banga was one of the members of the Board of doctors who conducted post-mortem on the dead body of deceased Hardev Singh on 23.4.1999 on police request Ex.PW6/A. Further, he proved the copy of post-mortem report of the deceased Ex.PW6/C and the pictorial diagrams showing the seats of injuries Ex.PW6/D to Ex.PW6/F. Further he gave his opinion that death in this case was due to haemorrhage and shock due to injury to the liver which was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature and could be the result of vehicular accident.

PW12 SI Amrik Singh was the Investigating Officer of this case. On the relevant date, he was posted as SHO, Police Station Sadar, Kapurthala and was present in the Police Post Kala Sanghian in connection with its checking. On receipt of a chit Ex.PW5/A from Civil

Hospital, Kala Sanghian that Hardev Singh had died on account of injuries, he went to that hospital where he recorded the statement Ex.PA of complainant Piara Singh, upon which he made his endorsement Ex.PA/1, on the basis of which a formal FIR Ex.PW9/A was recorded. Further he also prepared the inquest report Ex.PW6/G in respect of the dead body of deceased Hardev Singh and also proved the injury report Ex.PE. Then he visited the spot of occurrence and prepared the site-plan Ex.PF. Further he took the motorcycle and broken cart into his possession from the spot vide memo Ex.PC and Ex.PB, respectively. Then he also proved the memo Ex.PG vide which clothes of deceased after converting the same into a parcel were taken into police possession. Then he also took into possession photographs Ex.PW11/1 to 5 and negatives thereof Ex.PW11/6 to 10 vide memo Ex.PW11/11. Ex.PW8/A was the memo vide which a pair of bulls produced by accused Joginder Singh were taken into police possession.

12. In the light of above discussed statements of PW1 and PW2, one thing is established beyond any doubt that at the relevant time, the alleged bullock cart was being driven by accused Resham Singh and the present appellant was sitting along with him. So in this situation, it is difficult to hold that there was any kind of complicity on the part of the present appellant in the commission of the alleged crime since he was not holding any control of the alleged bullock cart at that time. So the finding recorded by learned trial Court that appellant was also controlling the driving of the alleged bullock cart at the relevant time along with his co-accused Resham Singh is held to be not correct being against the record

as well as version of prosecution.

13. Then as per the record, age of deceased Hardev Singh as proved was about 13 years, when the alleged occurrence took place, so as such he was not eligible to hold any driving licence nor he was legally entitled to drive any kind of motor vehicle. For instance, PW1 Piara Singh in his cross-examination has admitted that his son Hardev Singh was studying in 6th class on the date of the alleged accident. He was also preventing him not to drive the motorcycle. His son was also not having any driving licence. Then PW2 Karnail Singh in his cross-examination has also admitted that deceased was not having any driving licence. He started learning motorcycle driving when he was about 10 years old. They did not stop him from driving the motorcycle, meaning thereby that this witness himself was encouraging the deceased who was of the age of about 13 years at the time of alleged occurrence to drive two wheeler i.e. motorcycle which legally he was not entitled to drive.

But if any person is driving any vehicle on the road without any driving licence whatsoever reason may be that does not mean that no offence is made out if such like person is killed in any road accident. But at the same time, the prosecution is duty bound to prove that the death had been caused due to rash and negligent act on the part of the accused person.

14. Now from the evidence which is available on file, the condition of vehicles involved in the accident is to be seen. The alleged both these vehicles involved in this accident were taken into police possession vide memos Ex.PB and Ex.PC. In the memo Ex.PB, it is

recorded that rear plank from right side of the bullock cart in question was broken and had come upwards from its original place due to breakage. Supporting plank fitted below the roof of the bullock cart was also found broken from its right side. Then in the memo Ex.PC pertaining to motorcycle above mentioned, it is recorded that its speedometer, base plate, clutch handle, lever, headlights and indicator were found broken and its left front shocker and mud-guard were also found damaged. So from this condition of both the vehicles, it can be concluded that deceased struck the motorcycle from the behind against the bullock cart of appellant at a very rash speed which resulted into the alleged accident.

Even the I.O. PW12 Amrik Singh SI in his cross-examination admitted that after investigation, he came to the conclusion that it was a case of accident and the report u/S 173, Cr.P.C. was presented for the offence punishable u/S 304-A of the IPC. From the condition of motorcycle which was in a badly damaged condition, it could be said that it had struck against the bullock cart with full force from behind.

Then as above-said, it also came in the statement of PW5 Dr. Bharpur Singh Rai that when injured Hardev Singh was brought to his hospital by his uncle Karnail Singh, he reported the alleged matter as the accident near Sandhu Chatha.

15. Then it is also a matter of common knowledge that bullock cart is slow moving vehicle. Such like vehicle when moves on the road has unexpected flexibility to the extent of about one feet on its both sides due to some sort of bubbling caused due to its manual manufacturing

process and level of road. In the case in hand, it is admitted case of prosecution that deceased was coming from the back side of the bullock cart on a motorcycle. So if a person on a vehicle comes from the back side and is intending to cross the vehicle going ahead of him, then it is for him first to see as to whether there is sufficient space available on the road/way for his safe passage (crossing) which the deceased in the instant case had failed to observe.

16. Then learned State counsel has contended that appellant had admitted in his statement u/S 313 Cr.P.C. that he was plying his cart on the correct side of the road and as such he could be held liable for the alleged incident. But this single line in the said statement of appellant cannot be held to be suffice to bring him to book in this case when it is the case of prosecution itself that the alleged bullock cart was being driven at the relevant time by Resham Singh, co-accused of the present appellant and not this appellant.

17. In the light of the above discussion, I find merits in this appeal to accept the same. So the same stands accepted. Consequently, the impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charge of which he has been held guilty and convicted in this case by granting him the benefit of doubt. His bail bonds and surety bonds also stand discharged.

A copy of this order be sent to the quarter concerned for strict compliance.

9.12.2015

Brij

**(GURMIT RAM)
JUDGE**

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes