

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

**Crl. Appeal No. S-629-SB of 2010
Date of decision : 08.10.2015**

Rajwinder Singh @ Raju

..... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by: Mr. Parveen K. Kataria, Advocate
for the appellant.**

Mr. K.S. Aulakh, AAG Punjab.

ANITA CHAUDHRY, J.

Appellant Rajwinder Singh @ Rinku has preferred the instant appeal against the judgment of conviction and sentence dated 21.01.2010 vide which he was held responsible for deaths of Swarna Ram, Jaswant Singh, Raj Kumari, Gurnam Singh and Sadhu by his rash and negligent driving. He was convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.50,000/-. In default of payment of fine, he was required to further undergo rigorous imprisonment for one year. Fine is stated to have been deposited by him.

The facts leading to the institution of present appeal are being noticed first.

The FIR was registered on the statement made by

Sarwan Kumar, Ex-Councilor and President of the Taxi Union, wherein he disclosed that on 11.12.2002 he was at the Union office at 9:15 a.m. A passenger bus bearing registration No. PB09A-3851 came from Nawan Shahar side, driven by Rajwinder Singh in a rash and negligent manner and at high speed. A four-wheeler bearing registration No. PB07-2080 driven by Dilbagh Singh came from Rahon side. It was on its right side. The bus struck the four-wheeler. In the meantime, a three wheeler carrying passengers, driven by Gurnam Singh also came from Rahon side. The driver of the bus could not control his vehicle and rammed into the three wheeler, as a result the passengers namely Swarna Ram, Sadhu Ram, Gaurav Kanta, Raj Kumari, Harwinder Singh, Joga Singh, Pardeep Singh, Narinder Kumar, Jaswinder Singh, Kulwinder Kaur and Simro sustained injuries. The driver of the bus ran away from the spot. The injured were shifted to the Civil Hospital, Nawan Shahar. Swarna Ram, Jaswant Singh, Raj Kumari, Gurnam Singh and Sadhu Ram succumbed to the injuries. FIR No. 100 dated 11.12.2002 was registered at Police Station Rahon, under Sections 279, 338 and 304 IPC. The case was investigated. Statements of witnesses were recorded under Section 161 Cr.P.C. Final report was prepared. Since the case was exclusively triable by Sessions, the case was committed. Charge under Sections 279, 338 and 304 IPC was framed. An alternative charge under Section 304-A IPC was framed against the accused.

In support of its case, prosecution produced as many as

26 witnesses (some witnesses were numbered wrongly).

In his statement recorded under Section 313 Cr.P.C., the accuse denied the incriminating evidence. He took the stand that he was driving the vehicle at normal speed and on the correct side. According to him, the accident had taken place due to rash and negligent driving of TATA-407 who was over-taking the bus and in the process it struck against the three-wheeler and subsequently three wheeler hit the bus.

No evidence was led by the accused.

On conclusion of trial, the trial Court acquitted the appellant under Section 304 and 338 IPC, but convicted and sentenced him under Section 304-A IPC.

I have heard learned counsel for the appellant and learned State counsel and have gone through the record carefully.

Learned counsel for the appellant had urged that the accident had occurred due to rash and negligent driving by the three wheeler driver as it was over-loaded with fifteen passengers, as against the capacity of six passengers. Referring to site plan Ex.PW22/B, it was urged that it was the three wheeler which had come on the wrong side which resulted in the accident. He had further submitted that none of the witnesses had deposed that the appellant was driving the bus rashly and negligently and they only stated that the bus was driven at a high speed and that would not attract the provisions of Section 304-A IPC and he cannot be said to be negligent. To support his contention, he had referred to **State of Karnataka Vs. Satish, 1999 ACJ 1378 (SC)** and **Pardeep Kumar Vs. State of Haryana, 2000 Crl. L.J. 3394.**

The State counsel supported the judgment and submitted that there was overwhelming evidence on record to prove that the accident had occurred due to rash and negligent driving of the appellant.

The prosecution had produced 26 witnesses, namely, PW1 Joga Singh, PW2 Harwinder Singh, who were travelling in the three wheeler and suffered injuries. PW3 Narinder Singh had identified the dead body of his father Gurnam Singh. PW4 Dr. Davinder Lal had conducted post-mortem examination on Swarn Chand and Jaswant Singh. PW5 Pankaj Kumar was also travelling in the three wheeler. PW6 Lachhman Dass claimed that he was travelling in bus, driven by the appellant. PW7 Dilbagh Singh was the driver of the TATA-407. He deposed that the bus was driven by the appellant at high speed and firstly it struck against the four wheeler and then rammed into three wheeler and caused the accident. PW8 Des Raj had identified the dead body of his father Swarn Chand while PW9 Ramesh Kumar identified the dead body of his father Sadhu Ram. PW10 Pritam Chand had mechanically examined the vehicles. PW11 Bhag Ram, father of deceased Jaswant had reached the spot on hearing about the accident. PW12 Dr. Devinder Singh had conducted the post-examination on the dead bodies of Raj Kumari and Gurnam Singh. PW13 Dr. N.P. Sharma had conducted autopsy on the body of Sadhu Ram. PW14 Gurmeet Singh is the photographer. PW15 Rajinder Kumar was a witness to the inquest proceedings. PW16 Surinder Kumar Banga was one of the passengers in the three wheeler. He supported the case. PW17

Kulwinder Jit Singh had identified the body of his nephew Jaswant Singh. PW18 Balbir Singh had produced documents of the bus and licence of the appellant. PW19 Satnam Singh had initially treated the injured Raj Kumari. PW20 Surinder Pal remained associated with the investigation of the case. PW21 Kulwinder Kaur also sustained injuries in the accident. She was travelling in the three wheeler. PW21 (wrongly re-numbered) Pardeep Singh was a passenger in the three wheeler. PW22 SI Mohinder Singh is the investigating officer of the case. PW22 (wrongly numbered) Arwinder Singh Clerk proved the registration certificate of the bus. PW.23 Junior Assistant proved the registration certificate of three wheeler in question and PW24 HC Balwinder Singh proved the DDR entry No.14 dated 12.01.2003.

The accident in question is not disputed. The prosecution had proved that Swarna Ram, Jaswant Singh, Raj Kumari, Gurnam Singh and Sadhu Ram had died on account of the injuries sustained by them in the accident. The post-mortem reports were proved by the Medical Officers.

The appellant had denied negligence on his part. However, different stands were taken by him, viz. the accident had taken place due to negligence of the three wheeler driver as it was overloaded. In his statement under Section 313 Cr.P.C. he had stated that the accident took place due to the negligent driving of TATA-407. He had tried to shift the blame on the drivers of other two vehicles involved in the accident.

The prosecution had examined six passengers of the three wheeler i.e. PW1 Joga Singh, PW2 Harwinder Singh, PW5

Pankaj Kumar, PW16 Surinder Kumar Banga, PW21 Kulwinder Kaur and PW21 (wrongly renumbered) Pardeep Singh. The trial Court did not rely on the statement of PW 2 Harwinder Singh and PW5 Pankaj Kumar as they had deposed that they were sitting in the three wheeler with their faces towards the back.

We are thus left with the testimonies of four witnesses. All these witnesses in one voice deposed that the bus was driven at high speed and the driver had caused the accident. They unequivocally deposed that the accident had occurred due to the negligence of the bus driver. PW16 Surinder Kumar Banga and PW Pardeep Singh categorically deposed that the accident had occurred due to rash and negligent driving of the bus driver. None of the passengers sitting in the bus came forward to depose in favour of the appellant. The prosecution had produced PW6 Lachhman Dass, who was sitting in the bus at that time, but his testimony was discarded and benefit of it was given to the appellant under Section 304 IPC. His testimony too is suggestive of the fact that the appellant was driving the vehicle rashly and negligently at the time of accident.

Much stress was placed on the positioning of vehicles as shown in the site plan. It was submitted that the driver was on its correct side and the driver of the three wheeler had come on the wrong side. The site plan was prepared on the basis of positioning of vehicles after the accident. The same cannot wash of the ocular version given by PWs Joga Singh, Surinder Kumar Banga, Kulwinder Kaur and Pardeep Singh, who specifically deposed that the accident had occurred due to negligence of the appellant. No suggestion had

been put to the witnesses that the accident had occurred due to the fault of the three wheeler driver or that the three wheeler had come on the wrong side. The impact was so strong as is apparent from the fact that five persons lost their lives. The impact was so big that the positioning of the vehicles had changed.

No ill-will or motive was attributed to the prosecution witnesses. Their testimonies have remained unshattered so far as negligence of the appellant was concerned. Their testimonies have been minutely examined by the trial Court and this aspect of the matter had been adequately dealt with by it. From the ocular version coming on record, there is ample evidence to prove that the appellant was not only driving the bus at a high speed, but was rash and negligent too. The authorities referred to are of no help. There is direct nexus between the rash and negligent driving of the bus by the appellant and resultant deaths of five persons.

Making a vain attempt, it was submitted that the occurrence had taken place in 2002 and the appellant had undergone the agony of a protracted trial and it took about thirteen years and that the appellant had remained in custody for about ten months and as the appellant was the only bread earner, prayer for leniency was made. According to him, it could be a case of contributory negligence and sought release of the appellant on probation.

The accident had occurred in 2002. The appellant has suffered agony of trial. The custody certificate shows that one more case under Section 304-A IPC is pending against the appellant. In

this accident, five persons had lost their lives. The prayer for probation is declined. The conviction is maintained. However, the sentence awarded to the appellant is reduced to one and a half year under Section 304-A IPC. His bail bonds and surety bonds stand cancelled. The appellant is directed to surrender before the Court of CJM concerned within 15 days from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate steps to procure his presence. A copy of this order be sent to the CJM, S.B.S. Nagar for compliance.

With the above modification in the sentence, the instant appeal stands dismissed.

October 08, 2015
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(ANITA CHAUDHRY)
JUDGE