

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revision No. 2125 of 2006
Date of decision : 15.05.2015

Sukhdev Singh

..... Petitioner

versus

State of Punjab

... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harminder Sharma, Advocate with
Mr. Jatinder Kumar Verma, Amicus Curiae
for the petitioner.

Mr. Deep Singh, Addl. AG, Punjab.

ANITA CHAUDHRY, J.

The petitioner was put on trial for the offence punishable under Section 279, 337, 338, 427, 304-A IPC. The Judicial Magistrate, 1st Class, Ludhiana, vide order dated 04.03.2004 convicted the petitioner and sentenced him to undergo the following punishment:-

Under Section	Rigorous imprisonment	Fine	In default of payment of fine further imprisonment
279 IPC	6 months	-	-
337 IPC	3 months	-	-
338 IPC	6 months	500/-	15 days
304-A IPC	2 years	2000/-	15 days

All the sentences were to run concurrently.

Aggrieved with the verdict an appeal was filed by the appellant which was dismissed by the Additional Sessions Judge,

vide order dated 10.10.2004.

Still not satisfied, this revision has been filed.

In order to appreciate the merits of the case, the factual matrix is necessary. The prosecution was set in motion on the basis of a complaint made by Gurmeet Singh, Sarpanch, resident of village Bhagpur. On 06.01.1998 he was going on his vehicle from village Katani Kalan on Chandigarh Road and had crossed village Herran. A matador carrying school children was going ahead of him at 8:30 A.M. A Punjab Roadways bus, driven by the revisionist was coming from the opposite direction, it came on the wrong side of the road and hit the madador head on leading to death of the driver and three children seated in the matador. The matador was carrying 22 children who also sustained injuries. With the assistance of the bus passengers, the complainant sent the injured to C.M.C. Hospital for treatment. Mohan Singh driver of the matador was sent in another bus to Ludhiana. Two children in the age group of 4 and 5 years were declared dead on arrival. Mohan Singh died on the way to the hospital. The investigations were started. The accused was arrested. The mechanical test reports of both the vehicles were obtained and the petitioner was challaned. Charge was framed under Section 279, 337, 304-A IPC.

The trial Court on appraisal of the evidence came to the conclusion that the prosecution had been able to prove its case beyond all reasonable doubts. It noted that the Punjab Roadways bus driver was driving the vehicle at a high speed. It recorded a finding that there was fog that morining. The

petitioner had started from Ferozepur early in the morning. The photographs revealed that the extent of damage to the matador. The impact was so high that the face of the matador turned to the Southern side. The testimony of the complainant and a passenger in the matador was accepted. A finding was recorded that the bus came to the wrong side of the road and had caused the accident.

The Appellate Court affirmed the order of conviction and sentence.

I have heard the submissions of counsel for both the sides and with their assistance gone through the record.

The submission made on behalf of the petitioner was that the petitioner had a good record and he had been awarded commendation certificates. It was urged that the accident had occurred due to fog and this fact had been accepted by the school teacher who was travelling in the matador and visibility was very low and both the Courts below have not appreciated this fact. It was urged that the petitioner has now retired from service.

The State counsel supported the judgment and urged that it was not disputed that the petitioner was driving the bus and this fact had been established by the official who had brought the duty record. It was urged that both witnesses (PW-2 & PW-8) have spoken about the manner, in which the accident had occurred and since there was fog and the driver had been driving since early morning, he was expected to be more careful and the accident would not have occurred had he not gone to the wrong side of the road and it was a case of rash and negligent driving

which had snuffed the life of three children who were in the age group of 4 – 5 years and injuries were sustained by 15 – 20 children.

The Hon'ble Apex Court in ***State Of Kerala, Managing Vs. Puttumana Illath Jathavedan***, decided on 11.02.1999, was dealing with the revision filed by the State of Kerala. The High Court had interfered with the conviction and sentence passed against the accused. The argument put forth on behalf of the State of Kerala was that the Court had exceeded its revisional jurisdiction in interfering with an order of conviction passed there under by reappraising the evidence and the judgment was unsustainable in law. The Hon'ble Apex Court held as under:-

“Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On

scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence. In view of the order in this appeal, no further order is necessary in SLP(Criminal) No. 1466/94."

The petitioner in this revision has taken a stand that the Courts below had erred while convicting him as no evidence had been led to establish the offence. He has taken a stand that the case rested on the statement of two witnesses but they did not corroborate each other and there were lot of discrepancies and different versions have come out leading to improbability. Plea was taken that there was a thick fog and visibility was poor and that fact had been admitted by prosecution witness and both the Courts below had mis-appreciated the evidence while rejecting the evidence produced in defence.

The petitioner has consistently taken a plea that he was innocent but he had not been able to substantiate the plea with any supporting evidence. There is no dispute that it was

the petitioner who was driving the bus and was on duty on that particular day and on that route. The matador was carrying school children including one of the teachers and was proceeding on the correct side of the road. It was the petitioner who came to the wrong side and head on struck his bus against the matador. The prosecution had examined the complainant as well as the occupant of the matador. The petitioner has not been able to impinge his credibility. The very fact that there was fog, would not establish false implication. The vehicle was being driven at a very high speed. There was fog, therefore, the driver was expected to be more careful and should have been in control of his speed. Anyways, there was no reason for him to go to the other side of the road. There is no reason to disbelieve the statement of the two witnesses.

It has been concurrently held by both the Courts below that the Punjab Roadways bus had hit the matador by going into the wrong side of the road which resulted in the death of matador driver & three children in the age group of 4 – 5 years and injuries to a number of other students. At no stage, the question of identity of driver was raised. Both the Courts below had found the testimony of the defence witnesses to be hollow and not worth reliance. There are clear findings in this regard. The two witnesses set up by the defence had stated that they were travelling in the bus but no evidence was led to show. They could not produce any tickets. The Court below had held that it could not be ruled out that these

witnesses were procured.

There is coherence and consistency in the ocular account emerging in the statements of the complainant and Gurpreet Kaur PW-8. The accident was reported by the Sarpanch who was travelling in a vehicle driven behind the matador. It was he who helped the injured and shifted them to the hospital. The appellate Court has deftly dealt with the entire issues raised by the defence. The photographs produced on record by the prosecution clearly show that the bus went to the wrong side of the road and had struck against the matador. The impact was so big that the front portion of the matador was completely damaged.

On close scrutiny of the evidence, it is found that the evidence of the prosecution witnesses clearly establishes that it was the petitioner who was at fault. He was driving the vehicle at a very high speed. He drove the vehicle on the wrong side of the road and was negligent. He had caused four deaths while profusely injuring a dozen children. There is no misappreciation of evidence. I find no illegality or impropriety in the impugned judgment which warrants interference.

As regards the question of sentence, considering the magnitude of the accident, there is no scope of reduction. Consequently, the criminal revision is dismissed.

The petitioner was bailed out on 09.11.2006, when he had undergone only one month of sentence. He would

surrender before Chief Judicial Magistrate, Ludhiana to undergo the remaining sentence within a fortnight. On the failure of the petitioner to surrender, his presence would be secured by issuing warrants of arrest. Chief Judicial Magistrate, Ludhiana would report compliance.

(ANITA CHAUDHRY)
JUDGE

15.05.2015
Sunil