

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

Crl. Revision No.535 of 2003(O&M)

Date of Decision: March 11 , 2015.

Sant Singh

..... PETITIONER (s)

Versus

State of Haryana and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Pawan Girdhar, Addl.A.G., Haryana.

1. Whether reporters of 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?

LISA GILL, J.

This petition has been filed by Sant Singh impugning the judgment and order dated 04.12.1997 passed by learned Judicial Magistrate First Class, Kurukshetra whereby the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 304A IPC and to undergo rigorous imprisonment for six months for the offences punishable under Sections 279/337 IPC. Challenge is also laid to judgment dated 03.03.2003 rendered by learned Additional Sessions Judge, Kurukshetra upholding the abovesaid conviction and sentence imposed upon the

petitioner by the learned trial court.

FIR No.110 dated 12.06.1989 was registered against the petitioner (driver of the offending bus) and one Yudh Kulbhushan (Conductor of the offending bus) son of Daulat Ram on the statement of Smt. Savitri Devi. She has stated that she is a labourer and on 12.06.1989, she alongwith her son Ramesh had left their home for village Samaspur at about 9.00 a.m. to get some medicines. Both of them reached Ladwa bus stand at about 11.00 a.m. where she asked a passenger who was sitting in bus No. HYC-4671 about the destination of that bus. In the meanwhile, her son tried to board the said bus but the bus started suddenly and pushed off in a rash and negligent manner. Her son fell down on the ground and the rear wheel of the bus ran over his son, who died on the spot. She also fell on the ground and the rear wheel of the bus crossed over her right foot. The bus was driven by petitioner – Sant Singh and the conductor was Yudh Kulbhushan. It was averred that the accident took place due to the rash and negligent act of the bus driver and the conductor.

Post-mortem examination of the deceased child, Ramesh was conducted by PW2 Dr. Atul Arora. Post-mortem report (Ex.PW2/A) was prepared. Death was opined to have occurred due to combined effect of internal (peritoneal) haemorrhage due to laceration of liver and mesentery as well as injury to cervical spinal cord. Injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Smt. Savitri Devi, complainant was examined by PW1 Dr. A.K.Garg. Two injuries were detected on the person of Smt. Savitri i.e., a contusion of 6cm x 4cm on lateral malleolus of the right leg as well as swelling

on right foot. Abrasion of 2cm x 1cm on medial malleus of right foot. A fracture was revealed after x-ray of injury No.1.

On both the accused being charge-sheeted, they pleaded innocence and claimed trial.

Prosecution examined as many as nine witnesses to prove its case.

Statement of the accused was recorded under Section 313 Cr.P.C. where they pleaded innocence and false implication. No evidence was led in defence.

Learned trial court on perusal of the evidence on record and considering the facts and circumstances of the case, convicted both the accused for the offences punishable under Sections 304A/279/337 IPC and sentenced them to undergo imprisonment as aforementioned.

Petitioner as well as co-accused Yudh Kulbhushan preferred appeal against their conviction and sentence, which was dismissed by the learned Additional Sessions Judge, Kurukshetra vide judgment dated 03.03.2003.

Aggrieved therefrom, the present petition has been filed by petitioner - Sant Singh. It is informed that Crl. Revision No.503 of 2003 filed by Yudh Kulbhushan has been allowed by this Court on 24.01.2011.

Learned counsel for the petitioner submits that no case, whatsoever, is made out against the petitioner. It is vehemently urged that the identity of the petitioner has not been established on record. No independent witness has been examined by the prosecution to prove its case. It is only interested witnesses who have deposed in Court. Thus, no reliance can be placed on them.

Furthermore, even the Investigating Officer has not been examined which casts

a serious doubt on the prosecution version.

I have heard learned counsel for the parties and gone through the available record.

Argument of learned counsel for the petitioner that identity of the petitioner has not been established is untenable. Identity of the petitioner has been duly proved on record. The leaf of the Duty Register (Ex.PB) reveals the petitioner to be the driver of the offending vehicle at the time of incident. The mother of the deceased, Smt. Savitri Devi, the complainant in this case, was herself injured in this accident. She is, therefore, the most natural and probable witness to this incident. Her testimony inspires confidence. There is nothing on record to disbelieve her version. She has supported the prosecution version by her consistent stand. Defence has not been able to expose any chinks in her testimony. Therefore, non-examination of an independent witness is definitely not fatal to the case of the prosecution in the instant situation.

Similarly, failure of the prosecution to examine the Investigating Officer of the case cannot be of any benefit to the petitioner. It cannot be a circumstance which would justify the benefit of doubt to be extended to the petitioner. This is so especially in view of the fact that PW8 Savitri Devi has given a graphic account of the incident. The medical evidence on record corroborates the version given by her. No prejudice can be pointed out due to non-examination of the Investigating Officer.

A perusal of decision dated 24.01.2011 in Crl. Revision No.503 of 2003 filed by co-accused Yudh Kulbhushan reveals that Yudh Kulbhushan has been acquitted on the ground that it is not the case of the prosecution that the

said accused had blown the whistle without ascertaining the fact that all the passengers had boarded the bus but it is the case of the prosecution that the driver had started the bus without awaiting the signal from the conductor i.e., Yudh Kulbhushan. Therefore, acquittal of the said co-accused cannot be of any benefit to the petitioner, who is concededly not similarly placed. It is the specific case of the prosecution that the driver without even waiting for the signal from the conductor suddenly started the bus thereby, resulting into the death of a young boy aged 14 years and injuries to the complainant.

Learned counsel for the petitioner has vehemently urged in the alternate that the petitioner is now 70 years of age. He is facing the agony of trial since the year 1989. He has since retired from service and out of one year of imprisonment imposed upon him, he has undergone about two months of the sentence. Since the year 1989, no other case has been registered against the petitioner. Therefore, it would be in the fitness of things to extend the benefit of probation to the petitioner.

Law on the point as to whether the benefit of probation under the Probation of Offenders Act, 1958 should be granted to the accused- convicted for offence under Section 304A IPC, has been settled by Hon'ble Supreme Court in **Dalbir Singh v. State of Haryana, 2000 (2) RCR (Crl.) 816** by observing that the courts should not as a normal rule, invoke the provisions of the Probation of Offenders Act, 1958 when the accused is convicted of the offence under Section 304-A IPC in causing death of human beings by rash or negligent driving. Relevant paragraphs no.12 and 13 of the judgment read as under:

“12. In **State of Karnataka v. Krishna alias Raju(1987) 1 SCC**

538 : (AIR 1987 SC 861 : 1987 Cr.L.J. 776) this Court did not allow a sentence of fine, imposed on a driver who was convicted under S.304-A IPC to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing death of a human being. In that case this Court enhanced the sentence to rigorous imprisonment for six months besides imposed a fine.

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 S. 304-A I.P.C. as attracting the benevolent provisions of S.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 of causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the highrate of motor accidents due to callous driving of automobiles.”

This judgment was subsequently reiterated by the Hon’ble Supreme

Court in **B.Nagabhushanam v. State of Karnataka, 2008(3) RCR (Crl.)50** and the benefit under the Probation of Offenders Act, 1958 was denied to the accused for commission of offence punishable under Section 304-A IPC.

In the present case, petitioner-accused has snuffed out the life of a young boy aged 14 years and caused injuries to the complainant by driving the bus in a rash and negligent manner. Hence, in view of peculiar facts of present case and the decisions of the Hon'ble Supreme Court in ***Dalbir Singh's*** case (supra) and ***B.Nagabhushanam's*** case (supra) petitioner-Sant Singh does not deserve the benefit of probation under the Probation of Offenders Act.

Consequently, this revision petition is dismissed.

Bail bonds and surety bonds of the petitioner shall stand cancelled.

Copy of the judgment be sent to learned Chief Judicial Magistrate, Kurukshetra, who shall take necessary steps to take the petitioner in custody to serve the rest of the sentence.

March 11 , 2015.
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(**LISA GILL**)
JUDGE