

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

CRR No.1744 of 2015 (O&M)

Date of decision:13.05.2015

Ajaib Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. H.S. Rakhra, Advocate for the petitioner.

.....

TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 13.04.2015 passed by the Court of Additional Sessions Judge, Moga vide which it dismissed the appeal against the judgment of conviction and order of sentence dated 28.03.2014 rendered by the Court of Judicial Magistrate 1st Class, Moga vide which it convicted the present revision petitioner for offence under Sections 279/304-A IPC and sentenced to undergo RI for a period of 3 months and to pay a fine of Rs.200/- and in default thereof to undergo SI for a period of 15 days for offence under Section 279 IPC and further sentenced to undergo RI for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine to undergo SI for a period of one month for offence under Section 304-A IPC.

Briefly stated case of the prosecution was that on 29.10.2007, Bikkar Singh got statement recorded that he is resident of Village Malke and on 29.10.2007 itself at about 7 AM, he was standing at the bus stand of

Village Panj Grahi and at about 7.45 AM, his grandson, Jagjit Singh came on a mini bus and having alighted was standing at the bus stand whereupon two buses of the State Roadways Transport Department came from Bagha Purana side being driven at a very high speed and in an attempt to overtake the other bus, bus bearing registration No.PB-29-F-9185 struck against his grandson, who fell down and the bus driver fled away after stopping the bus about 1-1 ½ kallas away from the spot. Jagjit Singh, grandson of the complainant, Bikkar Singh was taken to Civil Hospital, Moga and he succumbed to the injuries suffered.

On the basis of statement dated 29.10.2007 given by Bikkar Singh, FIR was registered. Post mortem of the dead body of Jagjit Singh was conducted. Site plan was prepared. After completion of investigation, challan was presented. Documents were supplied to the accused, present petitioner, namely, Ajaib Singh as per mandate of Section 207 Cr.P.C. On the basis of prima facie case, charges under Sections 279/304-A IPC were framed against the accused. Accused/present petitioner pleaded not guilty and claimed trial.

To prove its case, prosecution examined Bikkar Singh as PW1, Inspector Darbara Singh as PW2, Suresh Chander PW3, Dr. Joginder Sahota as PW4, SI Rashpal Singh as PW5, Ravinder Singh as PW6 and Karamjit Singh as PW7. Evidence of prosecution was closed by order dated 26.02.2014.

Statement of accused Ajaib Singh was recorded under Section 313 Cr.P.C. and the incriminating evidence was put to him. He pleaded innocence and examined Jagdish Singh as DW1 and thereafter closed evidence.

Learned trial Court convicted the present revision petitioner for offence under Sections 279/304-A IPC and sentenced him for the said offence as afore noticed. Accused Ajaib Singh preferred appeal against said judgment of conviction and order of sentence passed by the learned trial Court before the Court of Additional Sessions Judge, Moga, who dismissed the same, hence the present revision petition.

I have heard Mr. H.S. Rakhra, learned counsel appearing for the revision petitioner and have gone through the pleadings on record.

It is settled principle of law that while exercising revisional jurisdiction, this Court is not to re-appreciate and reappraise the evidence until and unless it comes to the conclusion that the findings recorded by the trial Court are perverse, illegal and erroneous on account of misreading of evidence. The Courts below while relying upon cogent and convincing evidence of prosecution witness, were right in coming to the conclusion that the prosecution had proved its case against the accused beyond any reasonable shadow of doubt.

Both the Courts have noticed that complainant, Bikkar Singh in his evidence had clearly deposed that on 29.10.2007 at about 7 AM when he was standing at the bus stand at Village Panj Grahi Khurd then at about 7.45 AM his grandson, Jagjit Singh had come on a mini bus and having alighted from the same was struck by bus bearing registration No.PB-29-F-9185 which was being driven by its driver at a very high speed and while attempting to overtake another bus. Bikkar Singh while appearing as PW1 duly identified the accused present in Court as the person who was driving the offending bus. Even in cross examination, Bikkar Singh specifically deposed that the Driver of the said bus is present in the Court and he is duly

identifying him. Prosecution duly proved on record that offending bus bearing registration No.PB-29-F-9185 was being driven by Ajaib Singh S/o Sadhu Singh (present petitioner) on 29.10.2007 as per duty roster by examining PW3 Suresh Chander, who in turn proved on record duty roster dated 29.10.2007 as Ex.PW-3/A and duty roster register Ex.PW-3/B. Prosecution had further examined PW4, Dr. Joginder Sahota as regards cause of death of Jagjit Singh and who deposed that on 29.10.2007, he had examined the dead body of Jagjit Singh and the cause of death was opined as head injury and piercing of right side ribs in the lungs and such injuries being sufficient to cause death and which was ante-mortem in nature. Courts below have rightly rejected the defence version of the accused being innocent and have rightfully discarded the version and testimony of defence witness Jagdish Singh DW1. Hence, no fault can be found with the judgment of conviction passed by the learned trial Court as well as by the learned Appellate Court.

Even the submission raised by learned counsel appearing for the petitioner for grant of benefit of probation under the Probation of Offender's Act is without merit. The question as to whether benefit of probation is to be granted to an accused convicted for offence under Section 304-A IPC has been settled by the Hon'ble Supreme Court in **Dalbir Singh Vs. State of Haryana, 2000 (2) RCR (Criminal) 816** and wherein it was held as under:

“12. In State of Karnataka v. Krishna alias Raju, [1987] 1 SCC 538 this Court did not allow a sentence of fine, imposed on a driver who was convicted under Section 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 imposing 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 Section 304-A IPC as attracting the benevolent provisions of Section 4 of the P.O. 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 think 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 for 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 high rate of motor accidents due to callous driving of automobiles.”

By applying the dictum laid down by the Hon'ble Apex Court in **Dalbir Singh's case (supra)**, the present petitioner, who was serving as a driver by profession with the State Roadways Transport Department is not entitled to the benefit of probation.

The judgments rendered by the Courts below do not suffer from any illegality and infirmity and the same are liable to be upheld, hence the

present revision petition is hereby dismissed being devoid of any merit and the judgment of conviction and order of sentence passed by the learned trial Court is upheld.

Revision petition is dismissed.

13.05.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter?

Yes