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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1896-SB-2014
Date of Decision : September 15th , 2016

Sulakhan Singh @ Ghiddi Appellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Naresh Kaushik, Advocate,
for the appellant.

Mr. Yogesh Kumar Gupta, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Appellant – Sulakhan Singh has preferred the present appeal against the judgment of conviction and order of sentence dated 28.03.2014 passed by learned Additional Sessions Judge, Amritsar whereby the appellant was convicted under Section 304-A of IPC and was sentenced as under:-

Under Section	Sentence	In default
304-A IPC	to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.3000/-	to further undergo rigorous imprisonment for three months

2. Relevant facts for the purpose of decision of the appeal; that on

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15.10.2009, complainant Gurbir Singh reported the matter to the police that his mother, Sharanjit Kaur boarded bus No.PAB-5474 at Bhakna Kala for going to Amritsar. Major Singh alias Rana [one of the accused] who was driving the said bus, was known to his mother. He was following the bus on motor-cycle bearing registration No. PB-02-AV-1156. Major Singh was driving the bus at fast speed and in negligent manner. He did not care for safety of passengers of the bus. The complainant apprehended that the driver would be causing a major accident resulting in death of the passengers. Thereafter, Major Singh, driver of the bus, threw the bus in dirty drain of village Bhakna Kalan. The complainant raised hue and cry which attracted number of persons on the spot. Windscreen of the bus was broken and the passengers were taken out of the bus. A number of passengers got injured in the accident. His mother, Sharanjit Kaur and one more person, namely, Jarnail Singh and two other unknown ladies were found dead. As per the complainant, the accident had taken place because Major Singh was driving the bus in rash and negligent manner and at high speed without caring for safety of the passengers. On this, the present FIR was recorded and investigation formalities were completed.

3. On 16.10.2009, Gursewak Singh, Gurjant Singh, Kanwaljit Singh and Balkar Singh, who were also traveling in the said bus at the time of accident got recorded their statements. As per their statements, Sulakhan Singh alias Ghidi was one of the accused because Major Singh and Sulakhan Singh were fighting in the bus, as a result of which the accident took place and Parminder Kaur injured also died.

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4. During the course of investigation, verification was sought from District Transport Officer, Amritsar and as per the report of DTO office, bus bearing registration No. PAP-5474 was not entered in their office record and offences punishable under Sections 420, 468 and 471 IPC were added on 18.12.2009. Balwinder Singh son of Arjan Singh made extra judicial confession before Jagtar Singh and in his capacity as owner of the bus, he was arrayed as accused. He had purchased the said bus from a Scrap dealer and got prepared fake R.C., and that the bus was being used by putting fake number thereon. Balwinder Singh and Sulakhan Singh were arrested in this case and after completion of investigation, challan was presented in the Court.

5. During the process of trial, learned trial Judge framed charge against the accused for commission of offence punishable under Sections 304/420/467/468 and 471 IPC to which the accused persons pleaded not guilty and claimed trial.

6. During trial, learned Court below completed various proceedings of trial including recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. Major Singh [Accused No.1] absented from the proceedings and he was declared Proclaimed Offender [PO] whereas, Balwinder Singh, accused No. 3 died during the trial and the proceedings against him were abated by the Court below. After considering the prosecution and the defence evidence on record, held the appellant guilty and convicted him for commission of offence under Section 304-A of IPC and sentenced him on 28.03.2014 as detailed in para No.1 above.

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7. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

8. Learned counsel for the appellant-Sulakhan Singh @ Ghiddi submitted that originally, the challan was presented against three accused. Major Singh, driver of the bus has already been declared Proclaimed Offender whereas proceedings against Balwinder Singh, co-accused stood abated. There is no dispute regarding the fact that the co-accused, Major Singh was driving the bus in question. The allegations against the present appellant are that he was Checker in the said bus and he was quarreling with the Major Singh, driver of the bus and the accident was caused because of the fight between Major Singh and Sulakhan Singh which resulted into death of five persons and injuries to several passengers.

9. Learned counsel for the appellant contended that the entire case as set up by the prosecution is that the accident was caused because of rash and negligent driving of Major Singh. The first version before the police was by way of statement of Gurbir Singh, PW-1, who had not deposed anything against appellant, Sulakhan Singh, rather as per his version, the accident had taken place solely because of rash and negligent driving of the bus by Major Singh. His statement was to the extent that he knew even before causing of the accident that Major Singh would be causing accident as he was driving the bus in a rash and negligent manner.

10. Learned counsel for the appellant further contended that the prosecution improved its version subsequently on the basis of statements of Gurjant Singh [PW-3] and Gursewak Singh [PW-4], who deposed that the

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accident was caused because of rash and negligent driving of Major Singh as well as rash and negligent act of Sulakhan Singh which resulted into the death of five innocent persons.

11. Learned counsel for the appellant also contended that only injured persons were in a position to depose about the cause of accident and much specifically, whether the same was caused due to the fight between Major Singh and present appellant, Sulakhan Singh or solely due to rash and negligent driving of Major Singh. For the reasons best known to the prosecution, no injured person has been examined. The presence of Gurjant Singh and Gursewak Singh [PW-3 and PW-4] in the bus never stood established because these witnesses could not produce any bus-ticket to show that they were actually travelling in the bus. More so, the witness examined in defence has established that appellant, Sulakhan Singh @ Ghiddi was not working as Checker at that time. Even if the statements of PW-3 and PW-4 are taken to be correct that the bus was being driven at a normal speed. If that be so, how rash and negligent driving or negligent act could be attributed to the present appellant. However, the Court below has completely ignored this fact while recording the judgment of conviction and order of sentence against appellant-Sulakhan Singh @ Ghiddi. So the present appeal be accepted.

12. Learned State counsel submitted that the accident which resulted into the death of five innocent persons is not disputed in any manner. The Court below has rightly placed reliance upon the testimony of PW-3 and PW-4 who deposed in so many words that in fact, the accident had taken

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place because of the quarrel between Major Singh and Sulakhan Singh, appellant herein and that was the main act on the part of the present appellant which led to this unfortunate accident. The trial Court has rightly appreciated the entire evidence. The present appeal is without any merit and the same be dismissed.

13. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that this most unfortunate incident resulting into death of five innocent persons was certainly because of some lapse on the part of some human being, but the real point involved in the present appeal is – Whether present appellant, -Sulakhan Singh @ Ghiddi, was responsible in causing the accident or not?

14. The first point to be seen is that the process of law started by way of statement of PW-1, Gurbir Singh [complainant], who had stated in so many words that the accident was caused because of rash and negligent driving of Major Singh alone. At that time, he had not said any thing about the manner of accident or any fight having been taken place between the appellant and Major Singh. It is also important to note that PW-1, Gurbir Singh got recorded his statement after the accident and he was present on the spot so as to bring-out the body of his mother from the bus and at that time, he had enough time and occasion to interact with other passengers travelling in the bus, who could depose about the manner of the accident. But he had not levelled any allegation against appellant, -Sulakhan Singh @ Ghiddi meaning thereby that as per his information, available at that time,

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the accident was caused because of sole rash and negligent driving of Major Singh and not the present appellant.

15. Certainly, the prosecution version before the trial Court is on the basis of statements of Gurjant Singh [PW-3] and Gursewak Singh [PW-4], who deposed that accident had taken place because of rash and negligent act on the part of appellant, Sulakhan Singh as well. First of all, their presence in the bus is not established as the relevant question put to them in the cross-examination was by way of admission on their part that they were not having any ticket for travelling in the bus in question. It has come in the statement of PW-5, Dr. Rakesh Arora that one Robindeep was injured in the bus. In fact, he was the best witness to depose about the manner of the accident, but he was not examined during investigation/trial.

16. Taking the case and evidence available on the file from different angle. Undisputedly, Major Singh was on the driving seat and he was controlling the bus. For a moment, if the improved version of the prosecution is taken to be correct, that there was some fight/quarrel between Major Singh and appellant-Sulakhan Singh, Major Singh, being driving the bus was certainly in a position to stop the bus then and there so as to avoid the accident, but he still continued to drive the bus which resulted into this unfortunate accident. That was only because of rash and negligent act of Major Singh. More so, there is nothing available on the file that appellant, Sulakhan Singh was in fact Checker on the said bus. It has come in the statement of DW-1, Ramandeep Singh son of Balwinder Singh [who was owner of the bus in question] that appellant Sulakhan Singh was not

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Checker on bus No. PAB-5474 and he was not concerned with the accident in any way. However, Major Singh alias Rana was driver on the bus on the date of the accident.

17. Prosecution version regarding presence of appellant Sulakhan Singh as a Checker in the bus and there being any quarrel between Sulakhan Singh and major Singh have taken place, is not established. More so, this fact cannot be ignored that Major Singh was driving the bus and was controlling the vehicle and if at all, some body tried to disturb him while driving, it was incumbent upon him to stop the bus so as to avoid any accident. That way, the accident had taken place only because of rash and negligent driving of Major Singh and not because of alleged rash and negligent act of the appellant. The Court below has not considered these facts while recording the judgment of conviction and order of sentence dated 28.3.2014.

18. In view of my above discussion, the present appeal stands allowed. The judgment of conviction and order of sentence dated 28.03.2014 passed by learned Additional Sessions Judge, Amritsar are set-aside. The appellant is acquitted of the charge. He be set at liberty forthwith, if not required in any other case.

(SHEKHER DHAWAN)
JUDGE

September 15th, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes