

In the High Court of Punjab and Haryana at Chandigarh

**CRR No.2113 of 2006
Date of decision:18-3-16**

Baljeet

..... Petitioner

Vs.

State of Haryana

.... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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?

Argued by: Mr. Harish Mehla, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

RAJ RAHUL GARG.J.

This revision petition is directed against the judgment dated 03.10.2006 rendered by learned Additional Sessions Judge, Hisar, whereby, the appeal against judgment of conviction recorded by learned Judicial Magistrate 1st Class, Hisar, was dismissed regarding offence under Sections 279, 304-A and 338 of Indian Penal Code (for short 'IPC'). Learned trial Court held revisionist Baljeet guilty for the offence under Section 337 IPC as well but the learned Additional Sessions Judge, Hisar, acquitted the revisionist for the aforesaid offence for the reason that he was not charge-sheeted for the same.

The learned trial Magistrate vide order of sentence dated 17.05.2002 sentenced the revisionist to undergo RI for a period of six months and to pay a fine of ₹500/- for the commission of offence punishable under Section 279 IPC; to undergo RI for a period of 4 months

and a fine of ₹300/- for the commission of offence punishable under Section 337 IPC; to undergo RI for a period of 1 year and a fine of ₹700/- for the commission of offence punishable under Section 338 IPC; to undergo RI for a period of two years and a fine of ₹500/- for the commission of offence punishable under Section 304-A IPC. In default of payment of fine, he was further directed to undergo RI for a period of 3 months for the commission of aforesaid offence.

Brief facts of the prosecution case are like this; that on 07.06.1995, complainant Mai Ram @ Baje Ram alongwith Manohar Lal son of Shankar Lal, left village Hamjapur for Delhi at about 4:00 P.M. by Tata-407 bearing No. HR-39-7725. Buta Singh was the driver of that vehicle. Conductor whose name was not known to the complainant but was resident of village Kamana and was son of Bajigar, was also there in that truck. 8 buffaloes and 10 he-calves were also loaded in that vehicle. When they reached near *Gaushala* at Landhari canal bridge, it was about 8:30 P.M. As per complainant, he and conductor were sitting by the side of the driver whereas Manohar Lal was with the cattle. At Landhari Rajbaha (canal) while they were going by their side, bus bearing No. RJ-31P-0079, which was a private bus, came from Hisar side being driven rashly and negligently and struck against their Tata 407 vehicle by its left side. The name of the driver of the bus became known afterwards as Baljeet son of Chhaju Ram. As a result of this accident, engine of Tata 407 as well the left side window were badly damaged. Complainant as well conductor of Tata 407 vehicle received injuries on left eye, below the eye, on left foot and the teeth of the complainant were also broken. Manohar Lal also received injuries on his left side and on the right hand. As a result of this accident, as per

complainant, the face of their Tata 407 vehicle was turned towards right side. They were taken out from the aforesaid vehicle by the people who were present at the spot. The bus driver took his bus backward and then passengers of the bus alighted from the bus. The driver of the Tata-407 vehicle had gone to his house for reporting about the accident, bus driver also left the spot. In this accident, as per complainant, 4 buffaloes and 2 he-calves had died. Conductor of Tata 407 vehicle had died, on reaching the hospital, on account of the injuries suffered by him. Complainant and Manohar Lal became unconscious on account of aforesaid injuries, on their way to hospital.

The aforesaid statement of complainant is Ex. PZ which was recorded by the police on 08.06.1995. ASI Jagdish Singh made his endorsement on this statement and sent the same to the police station for registration of the case, whereupon formal FIR Ex. PW11/A was recorded.

In fact, on receipt of information regarding this accident, police had reached the spot and after taking out the injured from Tata 407 vehicle, they were sent to hospital. On 07.06.1995, application was moved before the doctor for seeking opinion as to if injured Manohar Lal and Mai Ram were fit to give statement, whereupon, doctor opined vide Ex. PW11/B that they were not fit to give statement. Again on 08.06.1995, opinion of doctor was sought in this regard, whereupon, doctor opined that they were fit to give statements. Inquest report was completed. Dead body of Gurudev Singh (conductor) was got post-mortemed. Site plan of the spot Ex. PW11/C was prepared. Tata 407 vehicle bearing No. HR-39-7725 and bus bearing No. RJ-31P-0079 were taken into police possession vide memos Ex. PW4/A and PW4/B respectively. Photographs of the spot were also

obtained. That very day, registration certificate (RC) of Tata 407 vehicle and driving license (D.L) of Buta Singh and copy of insurance were taken into police possession. That very day both the aforesaid vehicles were got mechanically tested. On 09.06.1995 accused was arrested. At that time, photostat RC of bus No. RJ-31P-0079 and photocopy of D.L of Baljit Singh were taken into police possession vide memo Ex. PW3/B. Statements of witnesses were recorded. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused for committing offence punishable under Sections 279 IPC, 338 IPC and 304-A IPC, revisionist-accused was charge sheeted. To the charge, accused did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein each prosecution allegation appearing against the accused was denied and accused pleaded his innocence and false implication.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court held revisionist-accused guilty for committing offence punishable under Sections 279,337,338 and 304-A IPC. Vide order of sentence dated 17.05.2002, they were sentenced, as mentioned in the earlier part of this judgment.

Revisionist had gone in appeal against the aforesaid judgment of conviction before the learned Additional Sessions Judge, Hisar. After recording the judgment dated 03.10.2006, confirmed the judgment of conviction of revisionist-accused so far as offence under Sections 279,338 and 304-A IPC are concerned, whereas he was acquitted for the offence under Section 337 IPC. Thus, the appeal filed by the revisionist-accused

was dismissed accordingly.

Aggrieved by the aforementioned two judgments passed by the Courts below, the revisionist-accused has come up in this Court by way of revision petition with the grouse that he was not driving the bus in question at the relevant time nor was identified by any of the prosecution witnesses and also there is no evidence regarding his rash or negligent driving of vehicle in question.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record of this case.

The first and foremost point argued by learned counsel for the revisionist is this; that prosecution has failed to establish the identity of accused in this case. Accused was not known to the prosecution witnesses. In the FIR Ex. PZ, the complainant Mai Ram mentioned that he came to know the name of the driver of the offending bus later on . This shows that the accused was not seen driving vehicle in question by any of the prosecution witnesses. Moreover, Mai Ram, who is the complainant of this case, turned hostile. He did not support the prosecution case at all rather stated that the bus in question was not driven by the accused, present in the Court, and further that the driver was not known to him. Even Manohar Lal (PW6) deposed that the name of the driver became known to him afterwards. Thus with this evidence on record, it cannot be said that it would be the revisionist-accused who was driving the vehicle in question at the relevant time.

The above argument of learned counsel for the revisionist-petitioner is not sustainable. The accident in question had taken place at about 8:30 P.M. on 07.06.1995. On that day complainant and Manohar Lal

were unfit to make statements when opinion in this regard was sought by the doctor at 11:55 P.M. They were reported as fit to make statements by the doctor on the very next day i.e. 08.06.1995 at 6:30 A.M. The statement of complainant was recorded at 7:50 A.M. on 08.06.1995. In the statement of complainant, which is Ex. PZ, the name of driver of the bus finds mention. The very fact that he came to know about the name of the driver of the bus as Baljeet afterwards does not mean that after a gap of sufficient time, he came to know about the name of the driver of the bus. Under the facts and circumstances of this case, when the police also reached the spot just after the accident and the passengers of the bus also alighted from the bus at the spot. Buta Singh (PW1), driver of Tata- 407 vehicle, who was not seriously injured and had gone to his house for reporting the matter, had sufficient time to have a talk with the driver of bus to know his name. Under these circumstances if Buta Singh states that the bus in question was being driven by accused, present in Court, and caused accident in question in which he, Baj Singh and conductor of Tata-407 vehicle received injuries, it is sufficient evidence for pin-pointing the accused of this case. In fact, no question was put to this witness that accused of this case was not driving the bus in question at the relevant time or that he was not the driver on that bus.

Of course Mai Ram did not support the prosecution case but since he was won over by the accused, therefore, he did not support the case of prosecution. Manohar Lal, who was also one of the occupants of Tata 407 vehicle, has also supported the prosecution case by stating that the bus was being driven by Baljeet rashly and negligently.

It is not the case where no one was present at the time of accident or that the bus driver has run away alongwith the bus from the spot

just after causing accident. Passengers from the bus had alighted from the bus at the spot and even Buta Singh had an opportunity to talk to the driver of the bus in order to know his name. FIR of this case is prompt and the accused is also named in the FIR. As such, I find no illegality in the findings of both the Courts below when it is recorded that identity of accused is established on the file.

Regarding rash and negligent driving of bus in question, it was argued by learned counsel for the revisionist-petitioner that the accident had taken place at Landhari canal bridge. Buta Singh (PW1) deposed that one camel cart came in front of the bus. As such, bus driver brought the bus towards his side which caused accident in question. Mai Ram-complainant as PW2 deposed that the cart was going in front of canter 407. Thus, on account of sudden emergence of camel car in front of bus, the accident in question resulted for which revisionist-accused cannot be said to be rash and negligent in any manner.

The above argument of learned counsel for the revisionist-petitioner is again not sustainable as the story of camel cart is not believable. It is neither in the complaint nor stated by Manohar Lal (PW6). Even otherwise, in the site plan, the presence of camel care has not been shown at any place. Also the accused had failed to convince this Court as to from which side the camel cart emerged in front of bus in question. As such, accused cannot derive any benefit out of it. Even otherwise for the sake of arguments, if we take into consideration the story of camel cart going in front of the bus that would again cast duty on the driver of the bus to slow down its bus and not to take his bus to the wrong side. If in that eventuality, bus driver had taken the bus to the other side of the road, this also goes to

show that the bus was being driven rashly and negligently. As the bus driver could not apply the brakes and slowdown the speed of the bus on seeing the camel cart going in front of him rather had to take the bus to the wrong side of the road shows that the bus was being driven rashly and at a high speed.

Whether the accused in a particular case acted rashly and negligently will depend upon the facts of that particular case. The mere fact that an accident has taken place or that some lives have been lost or some persons have received injuries will not lead to any presumption of rash or negligent act on the part of driver but will have to be established like any other fact.

Under Section 304-A death may be occasioned due to rash act of a person, in that case though there is no criminality in the act itself. It flows out of the fact that the person so responsible ought to have known that he is capable of causing injury to another person. In the present case this duty was particularly cast upon the petitioner in view of the approaching bridge on the canal. Culpability of the revisionist, therefore, lies in failing to take reasonable and proper precautions of slowing down the speed of vehicle so as to prevent any mishap. His case as such falls under Section 304-A of IPC.

Even the Hon'ble Apex Court has defined the expression "criminal negligence", used in Section 304-A of IPC as meaning gross and culpable neglect or failure to exercise the reasonable and proper care which was imperative duty of the accused to have exercised.

Driver of a passenger bus is required to be more careful than driver of other vehicle because he is taking care of transport of human lives.

Driver of any vehicle far less to speak of a passenger bus would take

adequate care before entering a bridge on the canal. By not slowing down the vehicle, the revisionist-accused as committed breach of a positive and imperative duty which he should have exercised, therefore, both the courts below rightly found him guilty of offence under Sections 279,338 and 304-A IPC.

As a result of driving the bus in question rashly and negligently, the revisionist-accused had caused this accident. As such, findings recorded by both the courts below on this aspect cannot be said to be illegal, incorrect or improper.

For the reasons recorded above, finding no merit in this revision petition, it is dismissed. If the petitioner is on bail, his bail bonds shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Hisar, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHULGARG)
JUDGE

18-3-16

smriti