

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

CRR-1812 of 2007 (O&M).
Date of Decision: 02.02.2016.

PARTAP SINGH

....PETITIONER.

VERSUS

STATE OF HARYANA

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. R.K. Agnihotri, Advocate for the petitioner.

Mr. Shivendra Sawroop, Assistant Advocate General,
Haryana.

SNEH PRASHAR, J.

By way of this petition, Partap Singh (petitioner) assailed the judgment dated 19.09.2007 passed by learned Sessions Judge, Narnaul affirming the judgment of conviction dated 19.10.2004 and order of sentence dated 20.10.2004 recorded by learned Judicial Magistrate Ist Class, Narnaul, in case pertaining to First Information Report No.282 dated 12.11.1999 under Sections 279 and 304-A of the Indian Penal Code (for short "I.P.C.") registered at Police Station City Narnaul, vide which he was held guilty, convicted and sentenced as under:-

- (i) *to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- for the commission of offence under Section 279 I.P.C.*
- (ii) *to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.200/- for the commission of offence under Section 304-A I.P.C.*

The facts as they emerge from the record and are relevant for being noticed are as under:-

On 12.11.1999 Suresh Kumar, Sub Inspector went to General Hospital, Narnaul on receipt of an information about admission of a person injured in a roadside accident. The injured was declared unfit for making statement and no eyewitness of the accident was available in the hospital. Therefore, Sub Inspector Suresh Kumar came to Bus Stand Narnaul and recorded the statement Ex.PW2/A of Constable Balwan Singh who had witnessed the accident.

Balwan Singh stated that he was on duty at the bus stand and at about 1:00 p.m. was present at the outer entry gate. The home guard on duty with him, namely Babu Lal, had gone towards enquiry office. In the meantime, bus bearing registration No.RJ-02P-1028 came from inside the bus stand towards the outer entry gate. It was being driven at a very high speed and in a negligent manner and resultantly it hit an unknown person who was entering the bus stand. After causing the accident, the driver fled away with his vehicle. The injured-victim was sent to the hospital with Babu Lal, Home Guard and some other persons in a private vehicle. The passbook recovered from the person of the injured was handed over to Sub Inspector Suresh Kumar when he recorded the statement of Constable Balwan Singh.

On the basis of the said statement, First Information Report No.282 dated 12.11.1999 under Sections 279 and 304-A I.P.C. was registered against the petitioner. Site-plan of the site of accident was

prepared by the Investigation Officer. On 12.11.1999 after receiving information regarding death of the injured, Investigation Officer reached the hospital where Dr. Balvinder Pal and Ram Avtar disclosed the name of deceased as Om Parkash son of Inderpal, resident of Rewari. Postmortem examination of the dead body was conducted. During investigation, the offending bus was taken into possession vide memo Ex.PW2/C The petitioner was arrested and on completion of investigation and other formalities was sent to the Court for trial.

The petitioner was charge-sheeted under Sections 279 and 304-A I.P.C., to which he pleaded not guilty and claimed trial.

The prosecution examined PW1 Balram Inspector Roadways, PW2 Balwan Singh Head Constable, PW3 Balvinder Pal, PW4 Ram Avtar, PW5 Dr. Anil Mathur and PW6 Abhimanyu Sub Inspector.

After closure of evidence of the prosecution, statement of the petitioner under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded by putting to him the incriminating evidence available on record, which he denied and pleaded false implication.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the petitioner, learned trial Court convicted and sentenced him as indicated above.

Feeling aggrieved by the impugned judgment of conviction dated 19.10.2004 and order of sentence dated 20.10.2004 passed by learned trial court, the petitioner preferred an appeal which was dismissed

by learned Sessions Judge, Narnaul vide judgment dated 19.09.2007.

Still unsatisfied, the petitioner has preferred the instant criminal revision.

The submissions made by Mr. R.K. Agnihotri, learned counsel appearing for the petitioner and Mr. Shivendra Sawroop, learned Assistant Advocate General representing the State of Haryana have been heard and record has been perused.

The star witness of the prosecution was PW2 Head Constable Balwan Singh (constable at the relevant time), who deposed that on 12.11.1999 he alongwith Babu Lal, Home Guard was present at the outer entry gate of bus stand Narnaul in connection with the traffic control duty. At about 1:00 p.m., when Babu Lal, Home Guard had gone inside the bus stand for some enquiry, bus bearing registration No.RJ-02P-1028 came from inside the bus stand towards the outer gate being driven in a very high speed and negligent manner and hit a person who was entering the bus stand. As an impact of the accident, the victim fell down and sustained serious injuries on head and other parts of the body. He added that he arranged a jeep and sent the injured alongwith Babu Lal, Home Guard and 2-3 other persons to the hospital. He also specifically identified the petitioner as the driver of the bus.

Learned counsel for the petitioner argued with vehemence that it was not the version of PW2 Head Constable Balwan Singh that the driver of the bus which caused the accident, was personally known to him.

No identification parade was arranged by the Investigation Officer after

arrest of the petitioner for identification. PW2 Constable Balwan Singh identified the petitioner for the first time in the Court and that could not be relied upon. Learned counsel also pointed out that the Investigation Officer of the case who prepared rough site plan of the site of accident and also got the dead body postmortemed was not examined by the prosecution and that left a lacuna in the prosecution case and rendered the allegation of the prosecution doubtful.

There appears no force in the arguments of learned counsel for the petitioner. The police official who investigated the case was admittedly not an eyewitness of the accident. The allegation against the petitioner was that by driving his bus rashly and negligently he had caused the vehicular accident which resulted in death of Om Parkash, father-in-law of PW3 Balvinder Pal. Only the person who eye-witnessed the accident and was in a position to disclose the cause of the accident and also identify the driver of the offending bus, was an important and material witness for proving the allegation of the prosecution. The accident took place near the outer entry gate of bus stand Narnaul. PW2 Head Constable Balwan Singh witnessed the accident as he was present at the gate on traffic control duty. There is nothing on the record to make his presence doubtful at the site of accident.

PW2 Head Constable Balwan Singh was neither a relative or an acquaintance of the deceased nor had any reason to falsely implicate the petitioner. He was performing his official duty when he witnessed the accident. He gave a crystal clear account of the manner in which the

accident took place and also identified the petitioner being driver of the offending bus which caused the accident. In his cross-examination, though he stated that the name of the driver was not known to him but he categorically deposed that he had identified the driver at the time of accident. When the witness was conveniently able to see the driver at the time of accident, even if thereafter he identified him for the first time in the Court has no adverse bearing on the case. On a query put to him whether he was called to participate in an identification parade relating to the driver of the bus, he denied the same and stated of his own that he was in a position to identify the driver.

Indeed, the doctor who conducted postmortem examination on the deceased was not examined but that too is of no adverse consequence. PW5 Dr. Anil Mathur who was posted as Medical Officer, General Hospital, Narnaul on 12.11.1999 testified that on that date he had medico legally examined an unknown person aged 60 years male who was brought by some persons from bus stand Narnaul. From the passbook in his bag, his name was known to be Om Parkash Sharma, retired Railway employee and resident of Subhashpura, near Girls School, Bikaner. PW5 proved the medico legal report Ex.PW5/B prepared by him.

Indeed, in the medico legal report the doctor mentioned that the history given to him about the injured was that he had fallen from the bus but PW5 stated that the persons who accompanied the victim had said so as heard by them. It is the case of the prosecution that only PW2 Constable Balwan Singh present on duty at the outer entry gate of the bus stand

had witnessed the accident. Even Babu Lal, Home Guard who also was on duty with him was stated to be not present at the site at the time of accident as he had gone inside for some enquiry. On the date of accident itself, the statement Ex.PW2/A of PW2 Balwan Singh was recorded by the investigation officer and he stated that the accident had taken place due to rash and negligent driving of bus no.RJ-02P-1028 by its driver. He also stated that after causing the accident the driver sped away with the bus. PW1 Inspector Balram, Haryana Roadways, Narnaul produced the official record and testified that on 12.11.1999 bus no.RJ-02P-1028 which was going from Delhi to Khetri had left bus stand Narnaul at 12:50 p.m. There being no evidence to contradict the statement of PW1 Inspector Balram who deposed from official record and the deposition of PW2 Head Constable Balwan Singh who identified the petitioner as driver of the bus and also consistently deposed that the accident occurred due to rash and negligent driving of the offending bus by the petitioner and that deceased Om Parkash had suffered injuries during the accident, which was corroborated by PW5 Dr. Anil Mathur, the allegations of the prosecution stand duly proved.

There appears no ground for intervention in the judgment of conviction recorded by learned trial Court. The order on quantum of sentence also calls for no intervention. Hence, the criminal revision filed by the petitioner is dismissed.

The petitioner is on bail in this case, his bail bond shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict

arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

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

(SNEH PRASHAR)
JUDGE

02.02.2016.

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Note: Whether to be referred to the Reporter or not? Yes.