

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

CRR No.1614 of 2008

Date of Decision: July 15, 2016

Satish Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No
2. Whether to be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This is a criminal revision petition in terms of Section 401 Cr.P.C. The convict-revisionist, was initially found guilty and convicted for commission of offence under Section 304-A IPC vide judgment dated 3.8.2006 by the learned Judicial Magistrate 1st Class, Rewari and sentenced to undergo rigorous imprisonment for 01 year and 06 months and to pay fine of ₹2,000/- and in default thereof to undergo simple imprisonment for 02 months. He had challenged the same by way of an appeal which findings stood upheld and appeal was dismissed vide judgment dated 8.8.2008 of the learned District and Sessions Judge, Rewari.

Heard learned counsel for the parties.

The story of the prosecution is that on 10.11.2009, ASI Kartar Singh on receipt of information of an accident near Police Post No.11 reached the spot and got recorded statement of complainant Balbir Singh, who stated that he was passenger of bus No. RJ-02P-0202 whose driver was present petitioner-Satish Kumar and while he was driving the bus in a rash and negligent manner the complainant has sought to prevail upon him but to no effect. It is alleged that while overtaking the camel cart the driver of the bus by his rash and negligent driving hit an oncoming scooter bearing No. HR-35-5791 on which a lady with a child in her lap was sitting on a pillion. It is as a consequence of the fault of the driver of the bus which hit the scooter and resulted in accidental deaths of the three riders of the scooter. The Investigating Officer prepared the necessary documents, recorded the statements of the witnesses and presented the challan. At the trial, prosecution examined complainant an eye-witness Balbir Singh PW1 who proved his statement Ex.PW1/A and, thereafter, examined PW2 Maninder Singh, another eye-witness; PW3 Shyam Kishore, Motor Mechanic, who mechanically tested both the vehicles and proved his report qua the bus Ex.PW3/B; PW4 MHC Harpal Singh who proved FIR Ex.PW4/A with endorsement PW4/B; PW5 Ram Mehar who proved receipt of the dead bodies through Ex.PW5/A; PW6 Dr. Karan Singh, who proved post mortem reports qua deceased Karan Singh Ex.PW6/A, deceased Shakuntla Ex.PW6/B and deceased Jhaman Singh Ex.PW6/C; PW7 ASI Kartar Singh, Investigating Officer, proved endorsement Ex.PW7/A on the statement of complainant Ex.PW1/A and also proved site plan Ex.PW7/B

and recovery memo Ex.PW7/C; PW8 Constable Birender Singh proved recovery memo Ex.PW7/C vide which the bus was taken into possession; PW9 Dharampal, Photographer proved photographs Ex.PW9/A to Ex.PW9/C and negatives Ex.PW9/D to Ex.PW9/F and, thereafter, closed their evidence. The accused though denied the allegations in his stand under Section 313 Cr.P.C but did not lead any evidence in his defence leading to the consequence in question.

Appreciating the arguments of the two sides, it is an admitted stand of the two sides that in this accident the entire family comprising of husband, wife and minor child have been wiped out. Thus, in the light of these consequences, the Courts need to be all the more sensitive to such an accident cases, wherein, there are number of deaths together with the fact as it is matter of common knowledge that deaths on account of road accidents have certainly attained notoriety and it would not be over exaggeration if the deaths that are being caused in this manner throughout the country shows that at every minute there is a roadside accidental death. Thus, the duty of the Court as a tool of social justice becomes all the more demanding. As is argued the very initial stand of the complainant Balbir Singh, PW1 before the police in his statement Ex.PW1/A as well as what has been reflected in his statement as PW1 shows that driver of the offending bus was trying to overtake a cart and, thus, in the process has gone onto the wrong side of the road and mauled down the oncoming scooterists and, therefore, makes it sufficiently clear that the driver of the bus had taken the bus on the wrong side of the road and caused the deaths. The same is very well and adequately corroborated from the road site plan

Ex.PW7/B, the photographs Ex.PW9/A to Ex.PW9/C and the corresponding negatives Ex.PW9/D to Ex.PW9/F and there is no worthwhile cross-examination upon the eye-witness/complainant. Moreover, the witness has categorically stated that while the driver of the offending bus was driving the vehicle in a rash and negligent manner being a passenger he has warned him to be careful and which was sufficient to show that inspite of having been called upon to desist from such a rash and negligent driving the petitioner has continued with his rendezvous reflects the very conduct of the accused that he was not only negligent but inspite of warnings has failed to desist are matters which have strong bearing on the mind of this Court.

Learned counsel for the petitioner could not highlight anything adverse that has come in the cross-examination of any of the prosecution witness. The testimony of the complainant has been materially corroborated by that of another bus passenger PW2 Maninder Singh. Learned counsel for the petitioner has sought to highlight that the accused has been not guilty for commission of an offence under Section 279 IPC which deals with the allegations of rash driving in a public way. Since the accused has already been acquitted under Section 279 IPC so he cannot be convicted for commission of offence under Section 304-A IPC for causing deaths of three persons by negligent act of driving. Causing of death by negligent driving is essential to attract the provisions of Section 304-A IPC. It is not necessary that an act causing the death by rashness can be on account of negligence as well and, therefore, in order to impose criminal liability on the accused it must be proved by the prosecution the fact that the

collision was entirely and mainly due to either rashness or negligence or both. The faint argument that has sought to be put forth by the learned counsel for the petitioner that PW2 Maninder Singh does not in his cross-examination accept that his statement was recorded by the police undermines the case of the prosecution. It needs to be stressed here as has sought to be argued that the testimony of a witness has to be taken and interpreted as a whole and not in a piecemeal manner. Therefore, these submissions do not carry the day for the petitioner. The arguments that have sought to be projected on behalf of the petitioner by his counsel that the petitioner will lose his job and he is having two minor children, a girl and a boy and, therefore, has prayed for leniency. The fact that petitioner is now aged around 45 years and family of the deceased has been adequately compensated does not merely calls for compassion for the petitioner. In the light of the number of deaths and heinousness with which the accident has been caused inspite of being forewarned are strong reasons against the petitioner. The Courts below had well appreciated the testimonies of the eye-witnesses and which has sought to be corroborated from the evidence of the Mechanic PW3 by way of mechanical report Ex.PW3/B. The same corroborates the fact that it was the bus driver who had gone on the wrong side and that is how right-side of the bus suffered damage by collision, thus, rules out any contribution on the side of the deceased to this accident.

There is well reasoned judicious findings given by the two Courts below who both have given concurrent findings. There is no such cause to show compassion as has been prayed on behalf of the petitioner by his counsel for showing leniency. There is neither any

illegality or perversity in these findings and which do not calls for any interference. There is no merits in the revision. The same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 15, 2016
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