

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 536 of 2008

Date of Decision : November 11, 2016

Baldev Singh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. P.S. Hundal, Senior Advocate with
Mr. Sanjeev Kumar, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Addl. Advocate General, Haryana.

T.P.S. MANN, J.

The petitioner was tried for committing offences punishable under Sections 279, 338 and 304-A IPC. Vide judgment and order dated 30/31.1.2007, learned Judicial Magistrate 1st Class, Karnal convicted him for the aforementioned offences and sentenced him to undergo imprisonment and to pay fine as follows :-

- (i) rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- under Section 279 IPC and in default of payment of fine, to further undergo rigorous imprisonment for two months;
- (ii) rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- under Section 338 IPC and in default of payment of fine, to further undergo rigorous imprisonment for four months; and
- (iii) rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- under Section 304-A IPC

and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months.

All the sentences were ordered to run concurrently.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 7.3.2008, learned Sessions Judge, Karnal found no merit in the appeal and, accordingly, dismissed the same. Still not satisfied, he filed the present revision, which was admitted on 20.8.2008. Subsequently, vide order dated 12.11.2008, this Court suspended his sentence of imprisonment as well.

The case of the prosecution, in nutshell, is that on 28.4.1996 at 3.00 p.m. complainant Jai Pal, who used to ply a three-wheeler, started from village Kutail for Karnal while driving his three-wheeler in which ten passengers were travelling. At about 3.30 p.m., when he reached G.T. Road and was to go to Karnal, he took his three-wheeler through a gap in the median for proceeding towards Karnal. In the meantime, one bus of Punjab Roadways bearing registration No.PB-012-8604 came from the side of Karnal. The bus was being driven by its driver at a high speed and in a rash and negligent manner. It struck against the three-wheeler being driven by complainant Jai Pal. As a result, the passengers sitting in the three-wheeler sustained injuries. Out of them, Pirthi, Balbir Singh, Surinder Kumar and Smt. Sunita succumbed to the injuries.

Further case of the prosecution is that on receipt of ruqa from Arpana Hospital, Madhuban, SI Surinder Kumar, Incharge, Police

Post, Pacca Pul, Karnal reached there and recorded the statement of complainant Jai Pal, on the basis of which, FIR No.210 dated 28.4.1996 under Sections 279/337/304-A IPC was registered at Police Station, Sadar Karnal. After completion of the investigation and other usual formalities, challan was presented against the petitioner in the Court. He was charged for the offences under Sections 279, 338 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined fourteen witnesses.

PW1 Dr. Sunil Kumar Midha medico-legally examined Smt. Sona, Naresh, Bhagti, Jai Pal, Harbhajan, Kamla and Talsa.

PW2 Dharam Singh identified the dead body of his brothers Pirthi and Balbir Singh, who had died in the accident.

PW3 Ram Kumar identified the dead bodies of his cousin brother Surinder Kumar and his wife Smt. Sunita.

PW4 Smt. Kamla , PW 5 Smt. Bhagwati, PW6 Smt. Sona Devi and PW7 Karambir, who had sustained injuries in the accident supported the prosecution case.

PW8 Dr. G.S. Arora had conducted x-ray examination of Jai Pal, Bhagti, Kamla, Sona and Naresh.

PW9 complainant Jai Pal did not support the prosecution case.

PW10 Dr. R.K. Saini deposed about conducting post-mortem on the dead bodies of Balbir Singh, Surinder Kumar, Sunita Devi and Pirthi.

PW11 Naresh Kumar and PW12 Harbhajan Singh, who were also witnesses of the occurrence did not support the prosecution case.

PW13 Constable Ved Pal testified about conducting mechanical examination of bus No.PB-012-8604 and auto rickshaw No.HR-45-0399.

PW14 Inspector Surinder Kumar deposed about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the petitioner pleaded his false implication. However, in his defence, he did not examine any witness.

After going through the evidence and hearing learned counsel for both the parties, the trial Court convicted and sentenced the petitioner, as mentioned above, which judgment of conviction and sentence was subsequently upheld by the lower appellate Court.

This Court has heard learned counsel for the parties and perused the evidence with their able assistance.

PW9 Jai Pal, who was plying the three-wheeler at the time of the accident and at whose instance the FIR came to be recorded, did not support the prosecution case at the trial. Similarly, PW11 Naresh Kumar

and PW12 Harbhajan Singh, who, according to the prosecution, had witnessed the occurrence also did not support the prosecution case. All of them were got declared hostile by the prosecution but despite the same, the prosecution could not elicit any material to connect the petitioner with the crime.

According to the prosecution, complainant Jai Pal was driving the three-wheeler in which ten passengers were travelling. He started from village Kutail for going towards Karnal. When he reached the G.T. Road, he started driving the three-wheeler on the road leading towards Karnal. It is the case of the prosecution that the G.T. Road was a dual carriage way and for that reason he drove his three-wheeler towards Karnal. After some time, he took the three-wheeler to the other side which was the road meant for the traffic coming from the side of Karnal and going towards Panipat. Apparently, he was driving the three-wheeler on the wrong side for going towards Karnal, whereas that lane was meant for the traffic proceeding towards Panipat and not towards Karnal. This is indicated in the rough site plan Ex.PW14/D as well as in the sketch plan of the scene of occurrence, which is part of the inquest reports.

PW4 Kamla, who was one of the passengers travelling in the three-wheeler and had received injuries during the accident, deposed during her cross-examination that the accident had taken place at a distance of 2½ killas from the turning i.e. the place where the three-wheeler had crossed the G.T. Road from village Kutail and was to

proceed towards Karnal.

PW5 Bhagwati, who was also one of the passengers travelling in the three-wheeler and received injuries deposed in her examination-in-chief that when they had covered a distance of one killa from Kutail turning, the offending bus came from the side of Karnal and struck against the tempo/three-wheeler in which she was travelling. During her cross-examination, she testified that she did not know as to who was responsible for the accident.

PW6 Sona Devi, another passenger sitting in the three-wheeler and had received injuries in the accident, deposed that the accident took place when they had covered a distance of one killa from the Kutail turning and at that time the three-wheeler was being driven on the proper side of the road. Though she deposed that the accident took place due to the negligent driving of the bus driver yet fact remains that the offending bus was coming in the proper lane meant for the traffic coming from Karnal and proceeding towards Panipat. That being so, the three-wheeler in question was being driven not in the correct lane but in the wrong lane.

PW7 Karambir testified that the offending bus was coming from the side of Karnal whereas the three-wheeler was coming from the side of Kutail. Further, the bus driver caused the accident by striking against the three-wheeler. Therefore, even according to him the three-wheeler was being driven in the wrong lane which was meant only for the traffic coming from the side of Karnal and going towards Panipat.

The three-wheeler ought to have been driven by complainant Jai Pal in the lane meant for the traffic coming from the side of Panipat and going towards Karnal and not in the other lane meant for the traffic coming from Karnal.

From the above, it can safely be concluded that the three-wheeler, in question, which was being driven by complainant Jai Pal, at the time of the accident, was proceeding in the wrong lane/road and if that be so, it cannot be held that the petitioner had been rash and negligent in causing the accident by dashing the bus against the three-wheeler. In **Mahadeo Hari Lokre Vs. State of Maharashtra**; AIR 1972 SC 221, the Hon'ble Supreme Court was seized of a case having similar facts. Deceased Ravi Kant therein was walking along the street whereas the offending bus was coming from behind. Suddenly he tried to cross the road without taking notice of the approaching bus and, thus, there was every possibility of his dashing against the bus without the driver of the offending bus becoming aware of his crossing till it was too late. Further, if a person suddenly crosses the road, the bus driver, howsoever slow he might be driving, would not be in a position to save the accident.

Applying the reasoning in the case of Mahadeo Hari Lokre (supra) to the facts and circumstances of the present case, it can be held that if the three-wheeler was to proceed towards Karnal, it could not have entered the lane/road meant for traffic coming from the side of Karnal and going towards Panipat. Rather, the three-wheeler was to stay

in the other/opposite lane meant for the traffic coming from the side of Panipat and proceeding towards Karnal. Apparently, the driver of the three-wheeler had managed to cross the divider in between the two lanes/roads and started proceedings towards Karnal, giving no time at all to the driver of the bus to avoid hitting the three-wheeler, and therefore, the bus driver cannot be held to have driven the bus in a rash and negligent manner and caused accident.

Resultantly, the revision is accepted, conviction and sentence of the petitioner is set aside and he is acquitted of the charges against him.

November 11, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO