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

CRR No.1509 of 2016

Date of decision: December 06, 2016

Sahun

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Chetan Sharma, AAG Haryana.

A.B. CHAUDHARI, J (Oral)

This is a revision petition directed against the judgment and order dated 19.10.2015/20.10.2015 passed by the learned Judicial Magistrate Ist Class, Palwal and confirming the same vide judgment and order dated 03.03.2016 by learned Sessions Judge, Palwal in an appeal filed by the petitioner.

It is the case of the prosecution and also the finding recorded by both the Courts below that the petitioner was driving a bus of Tikri Brahaman Bus Service Company on 03.12.2010 and the deceased, while the bus was in motion, was standing on the foot-step of the bus on front gate. It is, further, the case of the prosecution that the nephew of the complainant fell down because the petitioner-bus driver had applied brakes and after fall, he died. The Courts below have convicted the petitioner on admitted facts, holding the petitioner to be rash and negligent while applying brakes. Appellate Court went a

step further and recorded a finding that the petitioner was supposed to apprehend and imagine that in case, he applies brakes at once or in the normal course, there is every possibility of the deceased falling down from the bus and therefore, the petitioner was held guilty of rash and negligent driving.

Having heard learned counsel for the rival parties and having regard to the provisions of Section 304-A of Indian Penal Code, 1860 (for short 'IPC') and Section 279 IPC, I think the benefit of doubt must go to the petitioner in the above fact situation. The nephew of the complainant was standing on the foot-step of the bus on the front gate fully knowing that it was highly risky to stand on the foot-step of the bus and the above driver was under an obligation to apply brakes at once or slowly as per need and therefore, the deceased could fall down. Not only that, even the complainant who was the family member of the deceased and was sitting in the bus, was expected to be diligent and alert by calling back his nephew who was standing on the foot-step of the bus and not allowing him to stand there when the bus was in motion and instead asking him to sit in the bus. Thus, the Court ought to view these pragmatic aspect of the matter. But then the petitioner cannot be convicted for applying brakes when it was necessary to apply it in order to avoid any accident. It cannot be assumed that the petitioner was fully knowing about the deceased would fall down as the same depended upon the deceased holding the rod of the door of the bus with a particular grip and therefore, the petitioner cannot be blamed to know about the manner in which the

grip was made by the deceased. Therefore, the basic fault lies with the deceased in travelling in a bus on the foot-step at the front gate of the bus. In my opinion, the petitioner, therefore, cannot be said to have performed any reckless or negligent driving or for applying brakes of the bus which is said to have resulted into deceased falling down from the bus. At any rate, the benefit of doubt must go to the accused and not to the prosecution.

In the result, I find that the reasons adopted by both the Courts below are not legally correct in the facts and circumstances of the case.

Hence, CRR No.1509 of 2016 is allowed. Judgment and order dated 19.10.2015/20.10.2015 passed by the learned Judicial Magistrate Ist Class, Palwal and judgment and order dated 03.03.2016 passed by learned Sessions Judge, Palwal, are set aside. Fine paid by the petitioner, if any, be returned to him by the respondent-State.

(A.B. CHAUDHARI)
JUDGE

December 06, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No