

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

**Criminal Appeal S-425-SB of 2005
Date of Decision: November 8, 2017**

Baljit Singh @ Manga

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present : Mr. Munish Puri, Advocate
for the appellant.

Mr. Gaurav Garg Dhuriwala, Sr. Deputy A.G., Punjab.

T.P.S.MANN, J.

The instant appeal has been filed by accused Baljit Singh @ Manga son of Karam Singh, resident of village Dayal Bhatti, District Amritsar for challenging the judgment and order dated 30.10.2004 passed by learned Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur.

Vide impugned judgment and order, learned trial Court convicted the accused under Section 304-A IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a

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fine of Rs.500/- and in default of payment of fine, to undergo further rigorous imprisonment for one month. He was also convicted under Section 337 IPC and sentenced to undergo rigorous imprisonment for six months. Both the substantive sentences were ordered to run concurrently.

Aggrieved of his conviction and sentences, the appellant filed the present appeal, which was admitted on 1.3.2005. Subsequently, vide order dated 12.3.2005, this Court suspended his sentence of imprisonment and ordered his release on bail.

According to the prosecution, complainant Surinder Singh son of Om Parkash, resident of Krishna Nagar Camp, Dina Nagar got recorded his statement with the police on 27.10.2002 that he was running a grocery shop and on that day, he alongwith Ritesh Kumar son of Bodh Raj, resident of Taragarh Mod (turn), Dina Nagar and Ranjan Arora son of Varinder Arora, resident of Hanuman di gali, Dina Nagar had gone to village Kanwan on motor-cycle bearing No. PB-58-8610 in order to have a round of his fields. At about 7.00 p.m., when they were coming back and reached near bus stop of Parmanand, a bus was seen coming from the opposite direction at a very high speed and without using the dipper. As a result, the driver of the bus struck it against their motor-cycle. The complainant and the two other persons travelling with him on the motor-cycle fell down on the road. Due

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to the accident half of the head of Ranjan Arora was crushed and he died at the spot. The complainant noted the number of the offending bus as PB-06-B-9997, which belonged to Gulmarg Company. The accused, namely, Baljit Singh @ Manga, who was driver of the bus fled from the place of the accident alongwith his bus. The complainant and Ritesh Kumar had also received injuries in the accident. The motor-cycle was also damaged. The injured were taken to Civil Hospital, Gurdaspur for treatment where the statement of the complainant was recorded by ASI Harcharan Singh. On its basis, FIR was registered against the accused.

During the investigation of the case, ASI Harcharan Singh got conducted post-mortem on the dead body of Ranjan Arora after preparing inquest report. He also recorded statements of the witnesses. After visiting the place of occurrence, he prepared rough site plan and got examined the vehicles involved in the accident from a mechanic. Photographs with regard to the place of accident were also taken. The accused was, thereafter, committed to the Court of Sessions where he was charged under Sections 279, 337 and 304 IPC to which he pleaded not guilty and claimed trial.

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

PW1 Dr. M. Vashist proved admission of complainant

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Surinder Singh and injured Ritesh Mahajan at Civil Hospital Gurdaspur and bed head tickets Ex.PA and Ex.PB. He deposed that on 27.10.2002, he sent ruqa Ex.PC to Station House Officer, Police Station City, Gurdaspur and vide his opinion Ex.PD/1 declared injured Surinder Singh fit to make statement. Similarly, vide his opinion Ex.PD/2 on police request Ex.PD, he also declared injured Ritesh Mahajan fit to make statement.

PW2 Dr. Vinay Sharma, Medical Officer, who had conducted postmortem on the dead body of Ranjan Arora on 28.10.2002 found following injuries:-

- “1. Right half of the face including scalp and head was crushed and brain matters were lying out.
2. Multiple abrasions present over the body especially on the right side”.

He proved on record copy of the postmortem report Ex.PE and police request for post mortem examination Ex.PE/1.

PW3 Surinder Mohan Luthra, Steno of D.T.O., Gurdaspur proved that bus bearing No. PB-06-B-9997 was owned by M/s Gulmarg Transport Company Pathankot vide RC Ex.PG.

PW4 complainant Surinder Singh deposed in accordance with the case of the prosecution about the accident having taken place due to rash and negligent driving of the accused while driving his bus on 27.10.2002 at about 7.00 p.m. in

the area of Parmanand and struck it against the motor-cycle of complainant party. In this accident Ranjan Arora had died at the spot whereas the complainant and Ritesh Mahajan had received injuries.

PW5 Ritesh Mahajan, who was also an eye-witness of the occurrence and had received injuries in the accident supported and corroborated the statement of the complainant.

PW6 HC Ashok Kumar, who was a formal witness, proved recovery memo Ex.PW6/A vide which RC of the bus was taken into police custody. He also proved the arrest memo Ex.PW6/B and personal search memo Ex.PW6/C.

PW7 Constable Joginderpal deposed about delivering the special report of the case to Ilaqa Magistrate.

PW8 HC Surinder Kumar, Mechanic proved test report Ex.PW8/A prepared by him after mechanically testing the bus.

PW9 Ajay Kumar, Photographer proved the photographs qua place of occurrence and dead body of Ranjan Arora.

PW10 HC Satnam proved recovery memo Ex.PW10/A vide which blood stained earth was taken into police custody. He also proved recovery memo Ex.PW10/B qua the motor-cycle involved in the incident.

PW11 Narinder Kumar, Clerk, office of SDM Dera Baba Nanak proved copy of RC with regard to motor-cycle bearing

No. PB-58-8610.

PW12 ASI Bachan Singh testified that he recorded statement of Rajesh Kumar son of Bishan Dass under Section 161 Cr.P.C.

PW13 Rajesh Gutpa, owner of the motor-cycle involved in the accident proved its RC.

PW14 ASI Harcharan Singh deposed about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded his false implication. However, he did not lead any defence evidence.

After hearing learned counsel for the parties and on going through the evidence available on the record, the learned trial trial Court convicted and sentenced the appellant, as mentioned above.

This Court has heard Mr. Munish Puri, learned counsel for the appellant and Mr. Gaurav Garg Dhuriwala, learned Senior Deputy Advocate General, Punjab and with their able assistance, scanned the evidence.

According to the prosecution, the offending bus bearing registration No. PB-06-B-9997 belonging to Gulmarg Company and being driven by the appellant at a very high speed and without dipping the head light, hit against the motor-cycle bearing No. PB-58-8610 and at that time complainant Surinder

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Singh, Ritesh Kumar and deceased Ranjan Arora were riding the same. The complainant after being hit on account of the accident, claimed to have noticed the registration number of the owner of the bus in question. However, it was not mentioned that after causing the accident, the appellant had alighted from the offending bus or given his own particulars to complainant Surinder Singh as well as PW5 Ritesh Mahajan. It was only stated that the bus was being driven by the appellant, who was present in the Court and the persons, who had gathered at the spot took them to the hospital. In cross-examination, PW4 Surinder Singh testified that they were removed to Civil Hospital, Dina Nagar by the public of a car. He did not know the car number or its owner because he was unconscious at the time of accident. He further stated that he remained conscious at the time of the occurrence and then became unconscious and again gained consciousness at 11.00 p.m. in the hospital. He also stated that he did not note the registration number of the bus on some paper but he remembered the same. He also stated that he had identified the accused from his face but his name was told by the police and, thereafter, his statement was recorded. He also stated that he did not tell the name of the accused to the police and the name of the accused was mentioned by him in his statement Ex.PG as told to him by the police. He also stated that the bus did not stop at the place of the accident. If the bus had

not stopped after causing the accident, there was no occasion for the complainant to identify the driver or to know his particulars especially when the occurrence had taken place at about 7.00 p.m. on 27.10.2002. PW5 Ritesh Mahajan in his examination-in-chief deposed that the offending bus was driven by the accused. In his cross-examination, he testified that on the day of the accident, their statements were recorded on 11.00 p.m. and he himself was in complete senses when his statement was recorded. He further stated that only police was present when his statement was recorded and no other private witness was there. He also testified that it were the people who told them the names of the accused as Baljit Singh. However, he could not name the person who told them the name of the accused. He went on to state that the accused did not stop the bus at the place of occurrence. However, he had reduced its speed and, thereafter, took it away from there.

A combined reading of the statements of PW4 Surinder Singh and PW5 Ritesh Mahajan makes out that after causing the accident, the appellant had not alighted from the bus. The occurrence had taken place at about 7.00 p.m. on a wintry night. According to PW4 Surinder Singh, the name of the bus driver was told him by the police whereas according to PW5 Ritesh Mahajan, the name of the appellant was learnt from the people. In such a situation, the police was duty bound to hold test

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identification parade so as to fix the identity of the appellant. Both PW4 Surinder Singh and PW5 Ritesh Mahajan have stated in one voice that the police did not get the appellant identified from them. Non-holding of test identification parade by the Investigating Agency is fatal to the prosecution. Therefore, it cannot be said with certainty that it was the appellant who was driving the offending bus at the time of the accident resulting in dashing against the motor-cycle and causing the death of Ranjan Arora and injuring complainant Surinder Singh and Ritesh Mahajan.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellant is acquitted of the charges against him.

The appellant is on bail. His bail bonds and surety bonds are hereby discharged.

November 8, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No