

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

CRR 709 of 2008
Date of Decision : May 02, 2017

KarambirPetitioner

Versus

State of HaryanaRespondent

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

Present : Mr. Zorawar Singh, Advocate for
Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. Ashok S. Chaudhary, Additional A.G., Haryana.

T.P.S. MANN, J.

The petitioner was tried for committing the offences punishable under Sections 279, 337 and 303-A IPC. Vide judgment and order dated 3.9.2005, learned Chief Judicial Magistrate, Narnaul convicted and sentenced him as below :-

- (i) Convicted under Section 337 IPC and sentenced to undergo rigorous imprisonment for three months;
- (ii) Convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo further imprisonment for hundred days; and
- (iii) Convicted under Section 279 IPC but his sentence dispensed with.

Aggrieved of his conviction and sentence, the petitioner

preferred an appeal but remain unsuccessful as it came to be dismissed by learned Sessions Judge, Narnaul vide judgment dated 5.4.2008. Still not satisfied, he filed the present revision, which was admitted on 10.4.2008 and his sentence was suspended, subject to furnishing of bonds.

According to the prosecution, the petitioner was working as a teacher at JRD Model School, Akoda and also used to ply a mini bus bearing Registration No.2CC/4981 for carrying students of that school. On 29.9.1996, he made 41 school children to sit in the bus for carrying them to their homes and himself occupied the driver's seat at about 4.00 p.m., after school hours. Complainant-Rajbir, Sarpanch of village Adalpur also occupied the bus in the company of his son Devender who was attending L.K.G. classes in that school though his formal admission had not yet been made there. After the children occupied the bus, the accused bolted the windows from inside and drove the bus at a high speed. A small tin (pipi) containing petrol was kept behind the driver's seat near the battery and due to high speed the petrol fell on the battery and it caught fire. The bus was filled with smoke but the accused accelerated the speed instead of brining the bus to halt. The children started crying and the bus ultimately struck against a tree and came to stop. Rajbir broke open a window and saved his son Devender and other children with the help of Sanjay and Uttam Singh who are also the residents of village Adalpur and had reached the spot. 12/13 children were shifted to C.H.C., Mahendergarh with burn injuries whereas five children who were trapped inside the bus itself died due to burns.

Regarding the incident, FIR was registered on the basis of

statement made by Rajbir. During the investigation, the container (can) of petrol as well as the bus were taken into possession. The injured were medically examined and post-mortem conducted on the dead bodies. The petitioner was arrested and after completion of investigation, challan was presented against him in the Court. He was, thereafter, charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

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

PW1 Rajbir-complainant fully supported the prosecution story. According to him the accident was result of negligence on the part of the petitioner. He also deposed about taking of can (pipi) into possession by the police.

PW2 Sanwant Singh testified that he had identified one student, namely, Sapna from her tiffin as she was from his family.

PW3 Ramesh deposed that the dead body of Khusboo was received by her family.

PW4 Sanjay deposed that the bus had caught fire when it was being driven by the petitioner and the petrol can was kept in the bus by the petitioner himself.

PW5 Babu Lal deposed that five dead bodies were taken out of the bus in his presence, including that of his nephew Manjit.

PW6 Lajwanti deposed that she alongwith other students was on way home from the school in the mini bus. At the time of the accident the bus was occupied by 40/42 students as well as Rajbir Sarpanch. Can

filled with petrol was kept near the engine and when the bus caught fire, the students started crying. The petitioner who was driving the bus accelerated it instead of bringing it to halt. Ultimately the bus struck against a tree and the petitioner ran away leaving the bus there.

PW7 Praveen Kumari and PW8 Praveen Kumar deposed that they were also sitting in the bus alongwith the students.

PW9 Babu Lal deposed that the petitioner was working as a teacher in JRD Model School, Akoda whereas he was Headmaster of the school. The petitioner also worked as a teacher in the said school and owner of the bus in question. According to him, five students died due to accident involving that bus and some others had suffered injuries.

PW10 Raghbir Singh, photographer proved the photographs Exs.P9 to P13 and their negatives Exs.P14 to P18.

PW11 Dharam Pal, Constable (Draftsman) deposed that he had prepared scaled site plan Ex.P11/A.

PW12 ASI Om Parkash deposed that he had sought opinion about the fitness of Gobind injured and, thereafter, recorded his statement under Section 161 Cr.P.C.

PW13 ASI Ram Kumar proved the formal FIR Ex.PW13/B registered on receipt of statement Ex.PA of the complainant.

PW14 Dr. V.K. K. Govila, Senior Medical Officer deposed that he had conducted post-mortem on the dead body of six years' old Devender Singh. In his opinion the death took place due to shock as a result of burns which were ante mortem and sufficient to cause death in ordinary course of

nature.

PW15 Dr. Gajraj Singh testified that he medically examined Devinder aged six years, Gurmit aged nine years, Neetu aged nine years, Ramesh aged eleven years and Mahipal aged ten years.

PW16 Dr. S.N. Sharma, Medical Superintendent testified that he conducted post-mortem on the dead bodies of Pinki aged eleven years, Sapna aged five years, Khushbu aged five years, Manjit five years and Sangita aged eight years.

PW17 Dr. Rakesh Sharma deposed that he had conducted medico-legal examination of Ravieen aged ten years, Parveen aged twelve years, Gobind aged ten years, Sandeep aged eight years, Pradeep aged eight years, Jagdish aged eleven years and Rajwinder aged eleven years.

PW18 SI Vinod Kumar testified regarding the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the petitioner denied the allegations of prosecution and pleaded that he was innocent. However, no evidence was produced by him in his defence.

Having heard learned counsel for the parties and on going through the record, this Court finds that the accident in question had taken place on 29.9.1996 when the offending bus was being driven by the petitioner in which several students were travelling. On the same day, FIR, at the instance of Rajbir, was recorded. According to Rajbir, he had brought out the victims from the bus with the help of others. Said Rajbir while appearing in the witness box as PW1 duly supported his version, on the

basis of which the FIR was registered. Sanjay, who had helped him in taking the victims out of the bus, was examined by the prosecution as PW4. Though the defence suggested to him that the bus in question was being driven by one Ajmer but he denied the same.

PW6 Rajwanti, PW7 Praveen Kumari and PW8 Praveen Kumar, who were sitting in the bus at the time of the accident deposed that it was the petitioner who was driving the bus and when the engine caught fire, the petitioner, instead of bringing the bus to a halt, accelerated its speed. The bus came to a halt only when it struck against the tree. The negligence on the part of the petitioner was writ large. Merely because PW5 Babu Lal stated in his cross-examination that the bus was being driven by Kalia @ Ajmer is no ground to reject the prosecution case. Said Babu Lal was not travelling in the bus. He had only helped PW1 Rajbir in taking the victims out of the bus which was on fire.

From the medical evidence brought on record by the prosecution by examining a number of doctors who had conducted post-mortems as well as medico-legal examinations it stands established that the deceased and the injured had received extensive burns. The offending bus, at the relevant time was being driven by the petitioner at a very high speed. Besides, a can filled with petrol was kept near the engine. As such, the petitioner while negligently driving the bus had committed the various offences of which he stands charged and convicted.

Coming to the quantum of sentence, though the petitioner has been suffering the agony of criminal prosecution for more than twenty years and a first offender, besides being sole bread winner of the family, he does

not deserve the concession of probation as due to his negligent driving, a number of students had died and a number of other students received burn injuries. However, at the same time, it would be in the ends of justice if the sentence of the petitioner under Section 304-A IPC is reduced from two years to 1½ years.

Resultantly, the conviction of the petitioner under Sections 279, 304-A and 337 IPC is upheld. His substantive sentence of imprisonment under Section 304-A IPC is reduced from two years to rigorous imprisonment for 1½ years. The fine of Rs.10,000/-, alongwith its default clause, is maintained and so also his sentence of rigorous imprisonment for a period of three months for the offence under Section 337 IPC. The substantive sentences of imprisonment shall run concurrently.

The revision is, accordingly, disposed of.

May 02, 2017
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(T.P.S. MANN)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO