

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 2724-2010 (O&M)
Date of decision: 06.12.2017

Bijender Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rakesh Nehra, Advocate for the petitioner
Mr.R.K.Makkad, Deputy Advocate General, Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***
- 2. To be referred to the Reporters or not ? **yes***
- 3. Whether the judgment should be reported in the Digest? **yes***

Kuldip Singh, J.

This is a revision against the judgment of conviction dated 15.12.2009 and order of sentence dated 17.12.2009, passed by the learned Judicial Magistrate First Class, Faridabad, vide which, the present petitioner was convicted under Section 279, 337, 304-A IPC and sentenced to undergo Rigorous Imprisonment for three months and fine of Rs.500/-, in default thereof, to undergo further Simple Imprisonment for one month under Section 279 IPC. He was also sentenced to undergo Rigorous Imprisonment for three months and fine of Rs.200/-, in default thereof, to undergo further Simple Imprisonment for 15 days under Section 337 IPC and Rigorous Imprisonment for one year and fine of Rs.5000/-, in default thereof, to undergo further Simple Imprisonment for six months under Section 304-A IPC. All the substantive sentences were directed to run concurrently. In appeal, vide judgment dated 25.9.2010, learned Additional Sessions Judge,

Faridabad, reduced the sentence under Section 304-A IPC from one year to nine months, while maintaining the remaining sentence.

The case was registered on the statement (Ex.P1) of Constable Dharambir Singh, who was on traffic duty at Sector 37, Faridabad T point. Constable Dharambir Singh in his complaint stated that he was on traffic duty at Sector 37, Faridabad T point and regulating the traffic. On 29.2.2004, at about 6.30 p.m., he was on duty when he saw that one LML scooter bearing registration number HR-51G-1805 came from Ballabgarh side. From Ballabgarh side, one Haryana Roadways bus bearing registration number HR-46-B-7268 also came at high speed and being driven rashly and negligently, hit the scooter going ahead of it, from backside. As a result of the accident, the scooterist fell down and received injuries. Scooter was badly damaged. He inquired from the scooterist about his name who disclosed his name as SP Gupta, resident of A/94, Ashoka Enclave-11, Faridabad. The bus driver disclosed his name as Bijender Singh son of Bhim Singh, resident of Bidhlan, Police Station Kharkhoda, District Sonapat. Constable Dharambir Singh arranged for the conveyance and removed the injured to Fortis Hospital, Faridabad. Bus driver went away from the spot. Statement of PW1 Constable Dharambir Singh was recorded by ASI Narinder Singh and after recording his endorsement at about 8.00 p.m., formal FIR (Ex.PW3/A) was got registered. ASI Narinder Singh then prepared site plan. The scooter and the bus were taken into possession. Scooter and bus were got mechanically examined on 1.3.2004 and Chuni Lal (PW4) Mechanic submitted report Ex.P4/A and Ex.P5/B. Photographs of the place of occurrence were got clicked. On 5.3.2004, Shri S.P.Guta succumbed to the injuries and doctor accordingly sent the

intimation to the police station in this regard. Inquest report was prepared. Postmortem of the dead body was got conducted and after completion of investigation, challan was presented in the Court.

Accused was charge sheeted under Sections 279, 337 and 304-A IPC vide charge sheet dated 6.7.2004.

In support of its case, prosecution examined complainant Constable Dharambir Singh (PW1), Constable Baljit Singh (PW2), ASI Rattan Singh (PW3), Ashok Kumar (PW4) and Chunni Lal Mechanic. Thereafter, the remaining prosecution evidence was closed by order on 27.10.2009 after granting 8 effective opportunities.

When examined under Section 313 Cr.P.C., the accused pleaded innocence and stated that he has been falsely implicated in this case. Accused did not lead any evidence in defence.

After going through the evidence and hearing the prosecution and the defence counsel, learned Judicial Magistrate First Class, Faridabad convicted and sentenced the accused as aforesaid. However, in appeal the learned Additional Sessions Judge, Faridabad reduced the sentence under Section 304-A IPC from one year to nine months, while maintaining the remaining sentence.

First of all, the close scrutiny of the lower Court file shows that the case was tried in a casual manner by different magistrates by granting long adjournments and without trying to enforce the presence of the witnesses. The perusal of the interim orders show that after the charge was framed on 6.7.2004, long adjournments were granted mostly for about six months and even in one case for nine months. Adjournments after 6.7.2004 are reproduced as under:-

*Present: APP for the State
Accused on bail with Sh.M.L.Gupta,Adv*

Case received by transfer. It be checked and regd. Heard. On perusal of documents u/s 173 Cr.P.C., a prima facie case u/s 279/337/304-A IPC has been made out against the accused. Therefore, accused is charge sheeted accordingly to which he pleaded not guilty and claim a trial. Case is adjourned to 14.3.05 for prosecution evidence. All the pws be summoned for date fixed.

*(Sd/- Madhu Khanna)
JMIC/FBD 6.7.04*

*Present: APP for the State
Accused on bail with Sh.S.S.Bhati,Adv*

Two Pws are present examined and recorded. Now, remaining unexamined pws be summoned for 11.1.06.

*(Sd/- Madhu Khanna)
JMIC/FBD 14.3.05*

Present: None

Case taken up today as 11.1.2006 declared holiday. Case is adjourned to 1.4.06 for the same purpose already fixed. Parties/counsels be informed accordingly.

*CJJD/JMIC/RC/Fbd.
10.1.06*

*Present: Sh.N.K.Rathi, PP for the State
Accused on bail with Sh.S.S.Bhati,Adv*

No PW is present. Date is requested. Heard. Allowed. Now the unexamined Pws be summoned for 13.10.2006 through special messenger.

*(Sd/- Pushpinder Kumar)
JMIC/FBD 1.4.2006*

*Present: Sh.I.S.Yadav, PP for the State
Accused on bail with Sh.S.S.Bhati,Adv*

*No PW is present. Date is requested. Heard.
Allowed. Now the unexamined Pws be summoned for
9.5.2007. It shall be last opportunity.*

*(Sd/- Pushpinder Kumar)
JMIC/FBD 13.10.2006*

Present: None

*Case taken up today as I shall be on EL on
8.5.07 and 9.5.07. Case is adjourned to 3.12.07 for the
same purpose already fixed. Parties/counsels be
informed accordingly.*

*CJJD/JMIC/RC/Fbd.
7.5.07*

*Present: Sh.I.S.Yadav, PP for the State
Accused on bail with counsel*

*One PW is present and examined. No other PW is
present. Summons issued to witnesses received back
unserved. All the unexamined witnesses be summoned
for 21.4.2008. It shall be the last opportunity.*

*(Sd/- S.B.Chauhan)
JMIC/FBD 3.12.07*

Present: As above

*No PW is present. Adjournment requested. Heard.
Allowed. Now the unexamined Pws be summoned for
17.10.2008. Last opportunity stands. Intimation to SP
through Ld. District & Sessions Judge, Faridabad.*

*(Sd/- S.B.Chauhan)
JMIC/FBD 21.4.2008*

Present: None

*Case taken up today as I shall be on
CL/EL/SL/ML on 17.10.08. Case is adjourned to 3.12.08
for the same purpose already fixed. Parties/counsels be
informed accordingly.*

*CJJD/JMIC/RC/Fbd.
15.10.08*

*Present: Ld PP for the State
Accused on bail with Adv*

One PW is present and examined. No other PW is present. All the remaining Pws be summoned again for 20.4.09.

*(Sd/- S.B.Chauhan)
JMIC/FBD 3.12.2008*

*Present: Sh.J.S.Jangra, PP for the State
Accused on bail with Sh.Surender Bhati,Adv*

One PW is present and examined.No other PW is present. Adjournment sought. Heard. Allowed. Now the remaining unexamined Pws be summoned for 27.10.09. Last opportunity stands. Intimation to SP through Ld. District & Sessions Judge, Faridabad.

*(Sd/- S.B.Chauhan)
JMIC/FBD 20.4.2009*

*Present: Sh.J.S.Jangra, PP for the State
Accused on bail with counsel*

Evidence of the prosecution is not present despite 8th effective opportunity including the 4th last opportunity granted to the prosecution to lead and conclude its entire evidence. The case is pertaining to the year 2004. There is no justification to further adjourn the case for the evidence of the prosecution. As such the evidence of the prosecution is closed by Court order. To come up on 30.10.09 for statement of accused as envisaged u/s 313 Cr.P.C.

*Bhawna Jain
JMIC/Fbd 27.10.09*

The perusal of interim orders further shows that it was simply recorded that either one or two PWs are examined and remaining Pws are unexamined. PWs were ordered to be summoned without recording as to whether any or all PWs were served or unserved. In none of the orders, any

coercive step was taken to enforce the presence of the witnesses. Perusal of the challan shows that there were as many as 11 witnesses and different Magistrates at different times summoned all the PWs, without noticing whether Court will be in a position to examine all the PWs if they are served? Thereafter, without taking any coercive steps to procure the presence of the witnesses, who were not being served or not coming forward, the process of granting last opportunity was started and after recording that four last opportunities have been granted, evidence was closed by order. This is a casual approach to deal with the case involving death of a human being.

I am of the view that grant of long adjournments, many a times ranging 6-7 months and without taking coercive steps to enforce the presence of the witnesses, amounts to handling of the case in a casual manner, resulting in inevitable result in most of the cases i.e. closure of evidence by order and loss of the vital evidence.

I am further of the view that when the witnesses are summoned, the Magistrate in place of ordering the summoning of all Pws, should satisfy as to which witnesses are being summoned for the next date of hearing, after considering whether the Magistrate will be able to examine the number of witnesses being summoned. On the next date, the Magistrate should recorded the details whether the summons are not served and for which reasons, these are not served, to evaluate whether coercive steps are required to be taken in case a witness avoid service or intentionally does not appear. The Court should take coercive steps to enforce the presence of the witnesses if they fail to appear or avoid appearance. Merely recording that no PW is present and unexamined PWs be summoned, is not sufficient.

Further, once the trial is started, ordinarily adjournment is not to be granted. Attention is invited to the provisions of Section 309 of Cr.P.C., which read as under:-

309. Power to postpone or adjourn proceedings.—1 [(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

1 [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

1 [Provided also that—

(a) no adjournment shall be granted at the request of a

party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

Therefore, it is clear that once, the trial has started, it should ordinarily continue on day to day basis and ordinarily no adjournment is to be granted. For this purpose, the Court may examine as to how many witnesses have been cited by the prosecution and keeping in view the time likely to be consumed by the witnesses, decide as to how many witnesses are to be summoned for the day one and how many for day two and so on, until one round is complete in which all the witnesses are summoned. For example, when a complainant/ injured or eye witness is examined, it is likely to consume more time and Court may summon two or three witnesses only. Whereas the formal witnesses are likely to consume less time and more number of witnesses can be summoned. It will ensure that in the first round of hearing, all the witnesses are summoned and thereafter, in the second round of hearing, consecutive dates are to be given i.e. for example,

Monday, Tuesday, Wednesday, Thursday and so on, summoning all the remaining witnesses. This process can continue for subsequent rounds of hearings. It will ensure that all the witnesses are summoned and in case some witnesses are not appearing or avoiding service, coercive steps can be taken to ensure his presence. The report made on summons has to be considered.

As in the present case, if all/ unexamined PWs are summoned, it is left to the discretion of the Ahlmad to as, to how many witnesses, the summons are to be issued. With the result that many times the summons are issued only to the first few witnesses and the witnesses at the tail of the list are never summoned and ultimately, the Court, after the case becomes old, grants last opportunity and closes the evidence by order. With the result that vital evidence is left over causing injustice to the victim.

In this regard, matter is required to be brought to the notice of all the Judicial Officers working in the State of Punjab, Haryana and Chandigarh, to sensitize them about the criminal trials. Therefore, a copy of this judgment is ordered to be sent to all the Judicial Officers working in the State of Punjab, Haryana and Chandigarh through their respective Session Judges to ensure that no long adjournments be granted and casual approach be avoided and further, Court should make every endeavour to compel the presence of the witness before closing the evidence by order.

Now, coming to the merits of the present case, in this case, Constable Dharambir Singh is natural witness. He was on the traffic duty, where the accident took place. He has stated that the scooter came from Ballabgarh side and bus also came from the same side (i.e. Ballabgarh side) and hit the scooter from behind. He also identified the accused present in

the Court. Therefore, the fact that the site plan as well as photographs of the accident are not proved, becomes insignificant. The non-examining of the doctor also becomes insignificant, as Ashok Kumar (PW4) has specifically stated that he had identified the dead body of S.P.Gupta and had received the same. It was not suggested to him that SP Gupta had not died and that he did not die due to accident. After the accident, SP Gupta was admitted in Fortis Hospital, Faridabad, where he succumbed to the injuries few days later. Therefore, death of SP Gupta in the road side accident is also proved.

Learned counsel for the petitioner has vehemently argued that in this case the bus driver was not negligent. He has stated that it was a T point and that the deceased was to take a turn towards right hand i.e. towards Sector 37 and that the bus was at a slow speed as there was traffic in front of the bus as well as behind the bus. Therefore, it was not possible to drive at high speed and in rash and negligent manner. In this regard, attention of this Court has been drawn to the cross-examination of Constable Dharambir Singh, who has stated that place of accident is a national highway. The scooter was at the speed of 20-25 kmph and it gave indicator to turn right towards Sector 37. The scootrist was wearing Helmet. However, he maintained that bus was at high speed and it must be at the speed of 30-40 kms. He admitted that he had given indication for the traffic to move straight towards Delhi and that there were many vehicles before and after the bus. However, at the same time, he denied that scootrist was not having any indicator. He also denied that accident took place due to the fault of the scootrist.

Now, if the actual position is visualized, it comes out that it was a T point. There was straight road and there was a road leading to right

hand towards Sector 37. The un-exhibited photographs and site plan does indicate that the accident took place after the crossing of T point near the berms of the footpath. However, it cannot taken into consideration as these are not proved. This Court is to examine the evidence produced before it. The traffic constable is the eye witness and he had an opportunity to see the accident. In the rush, even speed of 30-40 KMS can be an act of rash and negligent driving. When there was a rush in front of the bus, the bus driver was supposed to be careful to see that the bus which has a wide body, does not hit any other vehicle. The bus in fact hit the scooter and crushed it under the left front wheel. Had the bus been driven at a reasonable speed, keeping in view the rush of traffic, then even if the bus hit the two wheeler, it could have immediately stopped. The fact that the scooter was run over by the left hand front wheel, goes to show that bus was at much more speed than required in such rush. Therefore, there is no ground to dispute the statement of Constable Dharambir Singh that accident had taken place due to the fault of the bus driver. In this case, investigating officer, photographer and doctors who had conducted the MLRs and postmortem could not be examined. There are concurrent findings of fact of two Courts below. After examining the entire evidence, this Court does not find any ground to differ with the view of both the Courts below.

Faced with these circumstances, learned counsel for the petitioner has prayed for leniency stating that the petitioner should be released on probation. He has already lost his job. He has no previous history of accident. After considering the facts and circumstances and also taking into consideration that in India every day about more than 400 people die in the road side accidents and three times more are injured and it is a

continuous process every day, the law regarding rash and negligent driving of the vehicles has to be enforced with the iron hand. This Court does not find any ground to reduce the sentence passed by two Courts below nor there is any ground to release the petitioner on probation.

As such, the present petition is dismissed.

Petitioner be re-arrested to undergo the remaining part of the sentence.

Let a copy of this judgment be circulated amongst all the Judicial Officers working in the State of Punjab, Haryana and Chandigarh through their respective Session Judges, after obtaining necessary orders from Hon'ble the Chief Justice.

06.12.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned: Yes
Whether Reportable: Yes