

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

CRR-1746-2016

Date of decision : 16.08.2017

Joginder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Vipin Mahajan, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 20.05.2015 passed by Judicial Magistrate Ist Class, Dasuya vide which he had convicted accused-Joginder for offences under Sections 279, 337, 304-A of the Indian Penal Code ("IPC" - for short) and sentenced as below:-

Under Section 304-A IPC	To undergo imprisonment for a period of 2 years and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo imprisonment for a period of one month.
Under Section 279 IPC	To undergo imprisonment for a period of 6 months.
Under Section 337 IPC	To undergo imprisonment for a period of 6 months.

All the sentences were ordered to run concurrently.

Feeling aggrieved by that judgment, the accused-convict had preferred an appeal against that judgment but learned Appellate Court vide judgment dated 08.04.2016 upheld the judgment passed by trial Court and dismissed the appeal.

Feeling aggrieved, he has preferred the revision petition in hand praying that the same be accepted and the impugned judgments of conviction and order of sentence passed by the Courts below be set aside and he be acquitted of the charge framed against him.

Briefly stated that facts of the case as per prosecution version are that criminal machinery in this case was set into motion by complainant Sukhpal Singh son of Harjit Singh resident of Kaulpur Police Station Mukeria, District Hoshiarpur who got his statement recorded with the police on 15.06.2011 wherein he contended that he is student of M.A. Part-I and on the fateful day he along with his grandfather Charanjit Singh Kaulpur, aunt (Bhua) Gagandeep Kaur, daughter of aunt Malleen Kaur aged about 7 years

had gone to Jalandhar in Alto car bearing registration No.PB-07-L-Temp-1113 in connection with some personal work. On their return journey at village Kaulpur he was driving the car whereas his paternal uncle (Taya) Gurchetan Singh and Kuldeep Singh Ex-Sarpanch were following his car in gypsy. At about 2:30 /2:45 p.m. when the car driven by him had reached just ahead of Khakha Fatak near main G.T. Road then a bus bearing registration No.PB-13R-9517 of Libra Transport being driving in a rash and negligent manner came and struck his car with the result the car again turned towards Jalandhar side. The bus dragged the car to some distance as a result of which car was damaged. Sh. Charanjit Singh and Gagandeep Kaur (paternal aunt) of complainant fell out from the car and received injuries on head and other parts of body. Complainant and baby Malleen Kaur also received injuries. Sh. Gurchetan Singh and Kuldeep Singh had stopped their vehicle and removed the injured to Johal Hospital, Jalandhar where his grandfather and aunt were declared brought dead. After the incident the bus driver run away from the spot leaving the bus behind. After registration of the FIR the case was investigated, accused was arrested in this case and released on bail as offence happened to be bailable one.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court. Accused-Joginder Singh was sent up to face trial.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Dasuya he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Dasuya finding that charge for offence under Sections 279, 304-A, 337 & 338 IPC was disclosed

against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined complainant as PW-1, Kuldeep Singh as PW-2, ASI Jasvir Singh as PW-3, Gurchetan Pal Singh as PW-4 and Dr. Kewal Singh as PW-5. Since the prosecution failed to conclude its evidence despite availing numerous opportunities, its evidence was closed by order by the trial Magistrate.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

During his defence evidence the accused examined Davinder Singh as DW-1.

The trial Court had formulated the following point of determination:-

“Whether on 15.06.2011 at about 2:30 p.m. the accused committed offence punishable under Section 279, 337, 338, 304-A of IPC?”

After hearing arguments the learned trial Court convicted and sentenced the accused as mentioned above. He had preferred an appeal but was unsuccessful. Hence the present revision petition.

I have heard learned counsel for the petitioner / accused – convict, learned State counsel, besides, going through the record and I find that there is absolutely no merit in the appeal.

In this case the prosecution had examined PW-1 Sukhpal Singh-

complainant/injured who provided the eye-witness account of the accident deposing in consonance with the prosecution story. He stated that he had received injuries in the accident and after that he got out from the car and checked his grandfather and his aunt in the meanwhile his uncle Gurchetan Singh also reached who got arranged a vehicle. He deposed that driver of the bus also came near them who told his name as Joginder Singh. He identified the accused to be driver who was driving the bus and fled away from the spot seeing the seriousness of the situation. He categorically stated that the accident occurred due to rash and negligent driving of the accused.

PW-2 Kuldeep Singh also provided the ocular version of the incident corroborating the statement of PW-1 Sukhpal Singh deposing on the lines of prosecution story; he also identified the accused to be driver of the offending bus stating that after the accident Joginder Singh-driver had stayed for some time and thereafter he fled away from the spot. This witness deposed that the accident had taken place due to rash and negligent driving of the bus driving by the accused.

PW-3 ASI Jasvir Singh Investigating Officer of the case deposed with regard to investigation carried out by him by proving various documents.

PW-4 Gurchetan Pal Singh also provided eye-witness account of the accident supporting the prosecution story on material aspects. He categorically stated that bus was being driven in a rash and negligent manner when it hit the Alto car. Although all the three eye-witnesses were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shaken on any material point.

PW-1 Sukhpal Singh having received injuries in the accident is

a stamped witness and his presence at the spot cannot be doubted. I find his presence and that of the other two eye-witnesses namely Gurchetan Pal Singh and Kuldeep Singh at the spot to be natural and probable and account given by them to be worthy of reliance. No reason has been suggested or proved prompted by which they might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. PW-1 Sukhpal Singh having suffered injuries in the accident and lost two near relatives in the accident with another relative receiving injuries would have been the last person to screen the actual culprit and involved the accused in this case falsely, since it is always the earnest endeavour of such person to ensure that the actual culprit is brought to book and punished suitably for his criminal acts rather than trying to screen the actual offender and substitute some innocent person in his place. Furthermore the Investigating Officer had no reason to involve the accused in this case wrongly rather the case in hand appears to have been investigated in a fair and impartial manner.

PW-3 ASI Jasvir Singh had deposed in detail regarding the investigation conducted by him. The medical evidence provided by Dr. Kewal Singh (PW-4) who had conducted post-mortem examination on dead body of Sh. Charanjit Singh proving his post-mortem report Ex.PW5/B and pictorial diagram as Ex.PW5/C. He further proved post-mortem report of Gagandeep Kaur as Ex.PW5/D and its pictorial diagram showing seats of injury as Ex.PW5/E corroborates the prosecution story. The post-mortem report goes to show that cause of death was due to road side accident.

As far as defence evidence adduced by the accused in the form of examining DW-1 Davinder Singh, who stated that on 15.06.2001 he had gone to Phagwara and while returning he was traveling bus in question,

when the bus reached near greater Punjab Tanda, there already an accident with Alto car and a truck of J&K number had occurred. People were gathered there and no accident had taken place with Libra Bus. He stated that photographs Ex.D1 and Ex.D2 are of the truck which had actually caused the accident. Whereas Ex.D3 is photograph of the bus in which he was traveling. However, in the cross-examination he had stated that he had not intimated any higher authority in that regard. From the reply given by him in the cross-examination he does not come to be a witness on whom much reliance can be placed. If the accident had been caused by the truck and not with the bus then there was little reason for the complainant party to involve the bus and its driver in this case wrongly. The investigation as carried out in the case showed involvement of the bus in question and accused being author of the accident by his rash and negligent driving of the offending bus.

As regards the contention of revision petitioner that no identification parade was arranged so as to get the accused identified from the eye-witness. Keeping in view the facts and circumstances of the case there was not necessity for the same, even otherwise offences under Sections 279 and 304-A are bailable in nature, the Investigating Officer does not get an opportunity to get the custody of the accused so as to make him participate in the identification parade. Accused in his part also did not come with a request for test identification parade so as to get him identified from the eye-witness. In any case, there was no necessity for doing so. According to eye-witnesses after the incident, accused had come out and disclosed his name as Joginder Singh, however, keeping in view the seriousness of the situation he had run away. In that way the eye-witnesses

had an opportunity to see accused driver at the spot and his identification in the Court by them cannot be said to be for the first time. Therefore, this argument does not carry much merit.

It has to be kept in mind that accused while being examined under Section 313 Cr.P.C. had admitted that he was driving bus in question though denying the bus being involved in the accident. As regards small variation and contradictions in the statements of eye-witnesses with regard to manner of the accident, those are not of much value, since such types of variations and contradictions are bound to occur as a result of loss of memory, due to passage of time and difference in power of observation, perception and memorization of events by various individuals. No mountain can be made out of molehills, so as to doubt the depositions of eye-witnesses who are otherwise found to be truthful and reliable. Though the accused is not named in the FIR but then purpose of lodging FIR is simply to set criminal machinery into motion and the detailed version of the accident / incident may not be there, but during investigation accused was found to be driver of the offending bus, as such, he was challaned, he cannot take advantage of the fact that he is not named in the FIR.

The trial Court has given benefit to the accused as regards offence under Section 338 IPC noting that since Dr. B.S. Johal who had conducted MLR of injured had not been examined, therefore, grievous hurt was not proved. Hence accused was not convicted for offence under Section 338 IPC. The prosecution has successfully proved its charges against the accused as regards offences under Sections 279, 337 and 304-A IPC. The trial Court was justified in convicting and sentencing the accused for the said offences.

The learned counsel for revision petitioner has prayed that sentence of the accused - convict be reduced keeping in view the fact that he is a first offender, a poor man and sole bread winner of his family. He is behind bars for 1 year, 5 months & 24 days as per custody certificate submitted by learned State counsel. However, this request has been opposed by learned State counsel.

I, on my part feel that the accused by rash and negligent driving of the bus had caused deaths of two human beings, besides, causing hurt to two others. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare-devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road, such type of elements have to be dealt with sternly otherwise there would be more instances of causalities due to road side accidents. In this incident no leniency can be shown to the accused-convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and appeal is found to be without merit and is dismissed accordingly.

16.08.2017*Gaurav Sorot***(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**