

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

CRR No. 3895 of 2016

DATE OF DECISION :- November 28, 2017

Bhajan Singh

...Petitioner

Versus

State of Haryana

...Respondent

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

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

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Bhajan Singh, an accused in F.I.R. No. 467 dated 28.11.2010 for offence under Sections 279/337/338/304-A of the Indian Penal Code registered with Police Station Ratia faced trial by Chief Judicial Magistrate, Fatehabad, who vide judgment dated 18.3.2014 convicted him for offences under Sections 279, 337, 338 and 304A of the Indian Penal Code and vide order dated 20.3.2014 sentenced him as follow :-

U/s 279 of IPC	Rigorous imprisonment for a period of six months
U/s 337 of of IPC	Rigorous imprisonment for a period of six months
U/s 338 of IPC	Rigorous imprisonment for a period of one year.
U/s 304-A of IPC	Rigorous imprisonment for a period of two years.

All the sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment of conviction and order of

sentence accused convict had preferred an appeal to the Court of Sessions which was however dismissed by Additional Sessions Judge, Fatehabad vide judgment dated 1.9.2016. The accused convict was dissatisfied with the said judgment and he has knocked at the door of this Court by way of filing the Revision Petition, notice of which was given to the State.

Briefly stated the facts of the case as per prosecution story are that on 28.11.2010, a police party from police station Ratia headed by SI/SHO Kapil Kumar (hereinafter referred to as the Investigating Officer/IO) was travelling in official Jeep bearing No. HR-62/1272 in connection with official duties in the area of Ratia town. There the SI/SHO received telephonic message from MHC of the Police Station that an accident had taken place near village Jallopur. Therefore, the police party rushed there. On coming to know that the persons travelling in tempo who had received injuries had been taken to hospital, the police party went to General Hospital, Fatehabad where it came across complainant Bhura Singh son of Rala Singh of Ram Dasiya community, resident of village Kamana, who got his statement recorded with the police and stated that on the said day i.e. 28.11.2009, he along with 24/25 members of their family had gone to village Sardulgarh in a mini four wheeler bearing registration no. HR-47A/3821 driven by now Hans Raj of village Jallopur to attend the death ceremony (Bhog) of his paternal uncle Budhhu Singh. On their return journey when their vehicle had gone 2 Kms ahead of village Hadoli towards Jallopur, a private bus having registration No. RJ-13-PA-0002 being driven in a rash and negligent manner came from Ratia side, which hit their vehicle. Resultantly all the occupants thereof received injuries. The passers-by removed the injured to CHC Ratia where Karnail Kaur-mother, Kelo-maternal aunt, Kesar Kaur-maternal aunt, Gurmeet Kaur-sister-in-law Jasbir Kaur-sister-

in-law, Saravjeet Kaur-sister-in-law, Tej Kaur-paternal aunt of complainant and Hans Raj, driver of the vehicle had expired. The dead bodies of those persons were brought to the General Hospital, Fatehabad. The investigating officer appended his endorsement below such statements of complainant and sent ruqa to police station which formed the basis for registration of formal F.I.R. Inquest proceedings with regard to unnatural deaths of the deceased were initiated and report in that regard were prepared. Post mortem examination on the dead bodies was conducted. The police team headed by the investigating officer went to the place of accident and carried out spot inspection. A site plan of the place of accident was prepared.

During the course of investigation statements of witnesses were recorded. Resultantly, vehicles were taken into police possession. Accused was arrested in this case. After completion of investigation and other formalities challan against accused was prepared and filed in the Court of Illaqa Magistrate, Fatehabad. On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Then finding a prima facie case charge for offence under Sections 279, 337, 338 and 340A of the Indian Penal Code was framed against accused to which he pleaded not guilty and claimed trial. During the course of prosecution evidence prosecution examined as many as 34 witnesses HC Ram Saroop as PW1, Dr. Sachin Mangla as PW2, Dr. V.K. Jaini as PW3, Kapil Kumar Sub Inspector as PW4, Dr. Sandeep Goyal as PW5, Dr. Virender Bishnoi as PW 6, ASI Jagdish Chander as PW7, HC Ram Parkash as PW8, Dr. Manoj Soni as PW9, Jaspal Kaur as PW10, Gurdial Kaur as PW11, Mandeep as PW12, Bhura Singh as PW13, Chhinder Pal Kaur as PW14, Rajpal Kaur as PW15, Sham Lal as PW 16, Mukesh Kumar as PW17, Dr. Man Mohan Pahwa

as PW18, Biru Ram as PW19, Dr. Rama Bansal as PW20, Harvinder Singh as PW 21, Harbans as PW22, Ralla Singh as PW23, Jasbir Kaur as PW24, Mahendro as PW25, Constable Leela Ram as PW26, Jaswinder Kaur as PW27, Charanjeet Kaur as PW28, Smt. Murti Devi as PW29, EHC Nirmal Singh as PW30, Surender Singh as PW31, Angrejo as PW32, SI Surjan Singh as PW33, Dr. Joginder Singh as PW34 .

Since the prosecution failed to procure this evidence despite filing of several opportunities, the same was closed by the Court order.

Statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against him were put to him. He denied the allegations stating that he is innocent and has been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing the arguments Chief Judicial Magistrate, Fatehabad convicted and sentenced the accused as mentioned above which left him aggrieved and he had filed an appeal in the Court of Sessions which was however dismissed by Additional Sessions Judge, Fatehabad vide his judgment dated 1.9.2016. Accused-convict was dissatisfied and he has filed the present Criminal Revision in this Court, notice of which was given to the State.

I have heard learned counsel for the revision petitioner and learned State counsel besides going through the record and I find that there is absolutely no merit in the Revision Petition.

In this case prosecution by bringing enough cogent and convincing evidence both oral as well as documentary on record has been able to prove that accused Bhajan Singh was author of the accident by his rash and negligent driving of Bus No. RJ-13-PA/0002 resulting in causing death of eight persons and injuries to several others. Jaspal Kaur PW10, Gurdial Kaur

PW11, Mandeep PW12, Bhura Singh PW13, Chhinderpal Kaur PW14, Rajpal Kaur PW15, Sham Lal PW 16, Mukesh Kumar PW17 are remaining eyewitnesses supported the prosecution story on material aspects. All of them were cross examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. The injured eyewitnesses having been hurt in the accident are stamped witnesses and also persons at the spot cannot be doubted. No previous enmity between the eye witnesses and the accused has been alleged or proved promoted by which the PWs might have involved the accused in this case wrongly or deposed against him to secure his conviction. There was absolutely no reason for them to screen the actual culprit and substitute the accused in this case without any rhyme or reason. Since it would have been their earnest endeavor to ensure that the person responsible for their miseries is brought to book and punished suitably rather trying to save the said person and substitute an innocent in his place.

As regards his contention that no test identification parade was conducted in this case and identity of the case has not been established, this plea is without any merit. Since the offences under which the accused was picked happened to be bailable ones, the investigating agency could not have possibly got a chance to have custody of the accused and to make him participate in the identification parade. It is not the case of the accused that he had made a request for arranging test identification parade but the same was not heeded too. Further more the injured eyewitnesses having opportunity to see the accused driving the offending vehicle at the time of accident, the salient features do get printed on the minds of such persons and their identifying the accused in the Court cannot be said to be for the first time.

Though it is case of the defence that accused was not driving the bus at a relevant time but he has failed to prove that. He having taken specific plea in that regard. It was incumbent upon him to bring on record the evidence to prove that plea but he has failed to do so rather PW21 Harbans, owner of the offending bus has categorically stated that accused Bhajan Singh was driving it on the fateful day. The prosecution has become successful in proving that rash and negligent driving of the offending bus by Bhajan Singh was direct and approximate cause of accident in which eight persons have lost their lives. Driving the bus on a public way without caring for safety of the other commuters on the road throwing caution to the wind in a reckless manner do constitute rash and negligent driving. The medical evidence in this case duly corroborates the ocular evidence. The prosecution has successfully proved that in the accident caused due to rash and negligent driving of the offending bus by accused Bhajan Singh, Karnail Kaur, Hans Raj, Saravjeet Kaur, Jasvir Kaur, Gurmeet Kaur, Kesar Kaur, Kailo Kaur, Tej Kaur died, whereas Harbans Singh, Mahindro, Ralla Sigh, Jasbir Kaur, Jaswinder Kaur, Gurdial Kaur, Jaspal, Mandeep, Rajpal Kaur, Chhinderpal, Manpreet and Angrej had received injuries. The investigation in this case had been conducted in a fair and most impersonate manner. The investigating officer had no reason to involve the accused in this case wrongly and challan him and depose against him falsely. The judgment passed by Chief Judicial Magistrate, Fatehabad is well reasoned one based on proper appreciation of evidence and correct interpretation of law. There is no illegality or infirmity there with. Similarly, learned Additional Sessions Judge was fully justified in dismissing the appeal.

During the course of arguments, learned counsel for the revision petitioner argued that some leniency be given to him as regards sentence part

which prayer is opposed by the learned State counsel submitting that petitioner after the present case had caused another accident regarding which F.I.R. No. 212 dated 31.7.2014 for offence under Sections 279/336/337/304-A of the Indian Penal code had been registered with Police Station Sadar Tohana. As such, he does not deserve leniency.

Keeping in view the fact that accused by his wrongful driving on the public way had caused death of eight human beings besides injuries to 12 other persons does not deserve any leniency rather awarding of deterrent punishment to him is required so that the other persons may take lesson from his fate and keep away from path of crime. There is no ground to interfere with the judgments passed by the Courts below regarding conviction and sentence part. Those are upheld.

The Revision Petition is absolutely without merit and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

November 28, 2017
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No