

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-659-2017(O&M)
Date of decision:-6.12.2017

Karam Singh
...Petitioner

Versus

State of Union Territory, Chandigarh
...Respondent

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

Present: Mr.A.K. Walia, Advocate
for the petitioner.

Mr.Rajiv Sharma, APP, U.T., Chandigarh.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 13.1.2017 passed by learned Sessions Judge, Chandigarh vide which he had dismissed an appeal preferred by accused against judgment of conviction and order of sentence dated 29.9.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh vide which he had convicted accused for the offences under Sections 279, 304-A IPC and 3/181 of Motor Vehicle Act and sentenced him as under:

Under Section	Sentence	Fine	In default of payment of fine
279 IPC	Six months rigorous imprisonment	Rs.500/-	One month simple imprisonment.
304-A IPC	Two years rigorous imprisonment	Rs.1,000/-	Two months simple imprisonment.

3/181 of Motor Vehicle Act	-----	Rs.200/-	Two days simple imprisonment.
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All the sentences were ordered to run concurrently.

The accused-convict – Karam Singh, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence by Judicial Magistrate Ist Class, Chandigarh and judgment in appeal by Sessions Judge, Chandigarh be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution version are that on 20.11.2010, on receipt of a wireless message from control room that an accident had taken place at Kalagram light point and some police officials be sent there, a police party headed by SI Jaiveer Singh from Police Station Manimajra, Chandigarh (hereinafter referred to as the Investigating Officer/I.O.) went to the spot, where he came across complainant Rahul son of Sh.Satinder Malhotra, resident of House No.1540, Sector 23-D, Chandigarh, who got his statement recorded stating therein that on the said day at about 1:30 p.m. while he was going from Panchkula to his house on his motorcycle and was passing through Kalagram light point, he saw a person driving scooter No.PB-65-B-2947; that a CTU bus bearing registration No.CH-01/G1-5221 being driven in a rash and negligent manner came from left side and had hit the scooterist due to which, he fell down on the road along with the scooter and was run over by the bus; that the accident had taken place due to rash and negligent driving of the bus by its driver. The police party had taken the

injured to hospital. The statement got recorded by complainant Rahul formed basis for registration of the formal FIR. The case was investigated. The Investigating Officer prepared the rough site-plan of the place of occurrence, got the place of incident photographed. Post-mortem examination on the dead body was got conducted. Accused Karam Singh was arrested in this case on 22.11.2010 and was released on bail. The bus in question was taken into possession on 23.11.2010. Statements of witnesses were recorded. The vehicles involved in the accident were got mechanically tested.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Chandigarh

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

Learned Judicial Magistrate Ist Class, Chandigarh finding that charge for offences under Sections 279 and 304-A IPC and 3/181 of Motor Vehicle Act was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as ten witnesses, namely, PW1 Avtar Singh, PW2 ASI Budh Singh, PW3 Kulwinder Singh, PW4 Dr.Deepak Sharma, PW5 HC Vijay Kumar, PW6 HC Sakattar Singh, PW7 Rahul, PW8 Inspector CTU Balwinder Singh, PW9 Constable Sandeep Kumar and PW10 HC Rajesh

Kumar.

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

Accused did not lead any evidence in his defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Chandigarh convicted and sentenced the accused as mentioned supra. The appeal preferred against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Chandigarh was also decided against the accused by learned Sessions Judge, Chandigarh, which left petitioner – accused Karam Singh aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned APP for U.T. Chandigarh besides going through the record.

In this case the solitary eye-witness of the accident happened to be PW7 Rahul – complainant, who had lodged the FIR regarding the accident. For ready reference examination-in-chief of this witness is reproduced as under:

“On 20.11.2010 at about 1:30 p.m. I was going from Panchkula to Chandigarh, on my motorcycle. When I reached near Kalagram light point I observed that scooter bearing No.PB65B2947 was also on road ahead to me. I observed that at the same time a bus was also coming in rash

and negligent manner to directly hit the above said scooter due to which driver to scooter fell down and the bus crushed him on the road. The bus was driven in rash and negligent manner by the driver of bus. I could not notice the number of the offending bus. Today I do not identify the accused as the same person who has caused accident to driver of scooter due to which he received injuries and died.

At this stage, APP for the State requested to the Hon'ble Court to declare the witness hostile as he is suppressing the truth and not supporting the truth made by him to the police earlier and want to cross-examine him. Request heard. Perused. Allowed.”

A perusal of the statement goes to show that he had supported the prosecution story as regards the accident in question having been caused due to rash and negligent driving of the bus by its driver stating that the bus had directly hit the scooter due to which driver of scooter fell down and bus crushed him. He did not mince any words while stating that the bus was driven in a rash and negligent manner by its driver, though he did not mention the registration number of the bus and give the name of the bus driver stating that he could not notice the number of the offending bus and could not identify the accused as the same person, who had caused the accident as a result of which, the driver of the scooter had suffered injuries and had died. The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to

separate grain from the chaff i.e. truth from the falsehood. Merely because a witness has deposed wrongly regarding certain aspects of the case does not mean that his statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects. Therefore, deposition of this witness to the extent it supports the prosecution story can certainly be taken into consideration. From his testimony, the happening of the accident on 20.11.2010 at about 1:30 p.m. near Kalagram light point in which person driving scooter bearing No.PB65B2947 was crushed by the bus, which was being driven in a rash and negligent manner stands proved.

Now the next question arises as to which bus was involved in the accident and who was its driver. The evidence in that regard comes in the form of statement of PW8 Balwinder Singh, Inspector, CTU, Industry Area, Phase-1, Chandigarh, who had brought the summoned record regarding the duty roster of accused Karam Singh, Driver No.248 proving it as Ex.PA stating that on 20.11.2010 in the morning shift driver Karam Singh was deputed on bus No.CH-1G-5221 and route No.62/96. He stated that during the course of investigation, Investigating Officer had recorded his statement. He identified accused Karam Singh present in the Court at that time. From his statement, one thing stands established that Karam Singh is employed as a driver in Chandigarh Transport Undertaking and on the fateful day, he was on duty as driver on bus No.CH-1G-5221 having route No.62/96. In his cross-examination, a suggestion has been put to this witness that the accused was not driving the vehicle at the time of accident. Learned Sessions Judge, Chandigarh has rightly observed that

it being so, the onus shifted to him to prove that fact, which he has failed to establish, rather in his cross-examination PW8 Balwinder Singh had clarified the matter stating that bus bearing No. CH-1G-5221 began its journey from Nalagarh in Himachal Pradesh and was to reach Chandigarh within two hours though the buses generally reach within one and a half hour. Another suggestion, which indirectly supports the prosecution story is that bus reached the depot at 1:00 p.m.

From the statement of PW1 Avtar Singh, Junior Assistant office of Registering & Licensing Authority, Mohali, it comes out that Scooter bearing No.PB-65-B-2947 is registered in the name of Baldeep Singh.

PW2 ASI Budh Singh had carried out the investigation in this case partly, whereas PW3 Kulwinder Singh son of deceased deposed regarding death of Balbir Singh on 20.11.2010 in a road side accident near Kalagram light point, while he was driving scooter bearing No.PB-65B-2947 and was hit by CTU Bus. He stated that when he came to know about the mishap, he went to PGI, where his father was shifted and was declared brought dead by the doctor, thereafter, post-mortem examination was performed and then dead body of his father was handed over to him. He stated that his statement was recorded regarding identification of dead body of his father. PW4 Dr.Deepak Sharma, ESI Dispensary Sector 29, Chandigarh had deposed that on 22.11.2010, he had conducted post-mortem examination on the dead body of Balbir Singh son of Arjun Singh brought by Constable Sandeep Kumar from Police Station Manimajra and identified by Kulwinder Singh and Kuldeep

Singh with alleged history of road side accident on 20.11.2010 with patient having been taken dead to PGI. He stated that he had found four external injuries and in his opinion cause of death was shock and haemorrhage as a result of underline injuries, which was sufficient to cause death in the ordinary course of nature; that all the injuries were ante mortem in nature with probable time, and the time that elapsed between injuries and death was within few minutes and between death and post-mortem within 48 hours. He proved the post-mortem report as Ex.PW4/1.

PW5 HC Vijay Pal, Mechanic stated that on 23.11.2010 at the request of SI Jaiveer Singh, he had mechanically tested vehicle No.CH01G-5221 i.e. CTU Bus and PB65B-2947(scooter) vide his report Ex.PW5/1.

PW6 HC Sakattar Singh had brought register No.19 pertaining to entry in the register deposing that on the said date at about 5:30 p.m., SI Jaiveer Singh had deposited scooter No.PB65B/2947 which was sold in auction and on 23.11.2010 at about 12:15 p.m., SI Jaiveer Singh had deposited CTU Bus No.CH01G/5221, which was released by the Court on 25.11.2010 proving the true extract as Ex.PW6/2.

Learned counsel for the petitioner has stated that there is discrepancy in the bus number as given in the FIR and police papers from the bus which had actually been taken into possession inasmuch as in the police papers, the number of the bus was given as CH01-G1/5221, whereas actually its number is CH-01G-5221, therefore involvement of bus No.CH01G/5221 is not established. I am not impressed by this contention. There is nothing on record to show that there is another bus of

CTU having No. CH01-G1-5221. In the cross-examination of PW8 Inspector Balwinder Singh, no clarification was sought from him in that regard. No evidence has been led by the accused in defence in that respect. It seems that due to some mistake in observation in the FIR, the registration number of the bus was mentioned as CH01-G1-5221 instead of CH-01G-5221. The accused cannot take advantage of this fact. The prosecution has led both oral as well as documentary evidence to show that accused was on duty on bus No. CH01G/5221 on the fateful day and it was he whose rash and negligent driving was direct and proximate cause of the accident resulting in the death of Balbir Singh.

Another contention put forward by learned counsel for the petitioner was that identity of the accused being driver of the bus is not established. Again this argument is devoid of any merit. As discussed above, the accused being driver of the offending bus, which had caused the accident and rash and negligent driving of accused being responsible for that is fully established on the record. There was no necessity of holding any test identification parade. Even otherwise, offences for which the accused was booked happened to be bailable ones. The accused could not possibly be detained by the investigating agency and then made to participate in the identification parade. Similarly, the accused himself did not make any request for holding of test identification parade.

Another submission of learned counsel for the petitioner was that SI Jaiveer Singh, who had carried out the investigation was not examined by the prosecution, which adversely affects its case. I do not find myself in agreement with the learned counsel for the petitioner on

this point. In an accident case, the crucial evidence, which should be there is in the form of eye-witness account and medical evidence. Statement of Investigating Officer is just of corroborative nature and its absence does not create a dent in the prosecution story.

Learned counsel for the petitioner has argued that the prosecution has not led any evidence as to who had taken the dead body to PGI, Chandigarh and the concerned doctor from PGI was not examined. This also does not make much difference. The important thing to be seen is as to whether the accused was author of the accident by his rash and negligent driving of the offending vehicle resulting in the death of a human being not amounting to culpable homicide. The factum as to who had taken the dead body to the hospital is not much material. Similarly since as per prosecution story, the deceased had died at the spot, the entry in the medical record mentioning the particulars of the dead body as unknown does not have any effect. Similarly testimony of the doctor, who had prepared such documents was not necessary. The prosecution has examined the doctor, who had performed the post-mortem examination on the dead body, which lend support to the prosecution story by providing medical evidence.

One more argument put forward by learned counsel for the petitioner was that no inquest report was prepared by the Investigating Officer. Though in case of unnatural death of a human being an inquest report is prepared by the Investigating Officer, however, its absence is not fatal to the prosecution case. The matter would have been clarified by the Investigating Officer SI Jaiveer Singh, if he had prepared in the Court but

then he had not turned up to get his statement recorded.

One more argument of learned counsel for the petitioner was that the only eye witness of the accident having turned hostile, the conviction of accused cannot be based on his testimony. However, again this contention is without any merit. As already discussed, he had supported the prosecution story on material aspects regarding accident having taken place due to rash and negligent driving of CTU bus by its driver. Then other evidence brought on the file by the prosecution that it was the accused, who was driving the bus at the relevant time, as such it was his rash and negligent driving of the offending bus which had resulted in the accident leading to the death of Balbir Singh. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt and no fault can be found with the judgments passed by the Courts below. Hitting a scooterist going on a public way by a bus driver resulting in his being run over by the bus leading to his death indeed shows rashness and negligence on the part of the bus driver.

After hearing the rival contentions of the parties, I find that both the Courts below on appreciation of evidence have reached a firm conclusion that rash and negligent driving of the offending bus by accused Karam Singh was direct and proximate cause of the accident resulting in the death of Balbir Singh. The approach of the trial Court in arriving at this conclusion can certainly be faulted or the conclusion arrived at cannot be termed as perverse. Rather it comes out that the accused was driving the bus on a public way in a dare devil manner

throwing caution to the winds not caring for the lives of the other commuters on the road. He failed to exercise care and caution expected to him while driving the bus on the public way and by his such wrongful driving caused the accident in which Balbir Singh, an innocent person has lost his life. The medical evidence duly supports the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction. The other evidence adduced by the prosecution supports its version. The accused had failed to render any reasonable or plausible explanation of his alleged false implication in this case.

Learned counsel for the petitioner referred to several authorities in support of his arguments i.e. Ajaib Singh Versus State of Punjab, 2000(2) RCR(Criminal) 737, State of Haryana Versus Sher Singh, 2009 AIR(SC) 823, Mohammed Aynuddin @ Miyam Versus State of Andhra Pradesh, 2000 AIR(SC) 2511, State of Punjab Versus Gurdip Singh, 2003(4) RCR(Criminal) 858 and Hanuman Versus State of Haryana, 2010(1) R.C.R.(Criminal) 426 but those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

It is well settled law that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

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 any merit and is dismissed accordingly.

Karam Singh - petitioner/accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Chandigarh is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

6.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No