

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 679 of 2017 (O&M)

Date of Decision: 23.05.2017

Jinder Khan

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.P.S. Rehan, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

SURINDER GUPTA, J.

This is revision against judgment dated 08.02.2017 passed by Sh. Pushvinder Singh, Additional Sessions Judge, Gurdaspur whereby appeal of the petitioner against his conviction and sentence by the trial Court for offences punishable under Sections 279, 337 and 304-A of Indian Penal Code (for short 'IPC') was dismissed.

2. Case of prosecution, in brief, is that on 29.09.2006 at about 09.30 p.m., complainant-Banarsi Dass alongwith his wife Rani and other passengers boarded bus bearing registration no. RJ-07-PA-6612 from Lal Qilla, Delhi for going towards Jammu. On 30.09.2006 at about 06.45 a.m., when they reached near Tibri Bye Pass, Gurdaspur, a truck bearing registration no. JK-02-4-4788 was coming from Aujla Bye Pass side, which was overloaded and came at a very fast speed. Due to fast speed, drivers of both the vehicles could not control their vehicles as a result of which accident took place between bus and truck resulting in injuries to bus passengers. Wife of complainant also suffered multiple injuries. One

Joginder Singh, Subedar came to the spot, arranged the vehicle and with the help of other persons got the injured admitted in Civil Hospital, Gurdaspur, where wife of complainant died. Complainant stated that he did not know drivers of the vehicles but could identify them if they appear before him and the accident had taken place due to negligence of drivers of both the vehicles, who fled from the spot after leaving their vehicles.

3. The police arrested drivers of both the vehicles and presented challan against them. Learned trial Court convicted both the accused for offence punishable under Sections 279, 337 and 304-A IPC and sentenced them as follows:-

<i>Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>Sentence in default</i>
279 IPC	RI for 6 months	₹500/-	10 days.
337 IPC	FIR for 3 months	₹500/-	10 days.
304-A IPC	RI for 1½ year	₹1000/-	One month

4. On appeal, Appellate Court acquitted driver of the truck, namely, Ravi Kumar and held petitioner solely negligent for causing the accident due to his rash and negligent driving. While accepting appeal of Ravi Kumar, appeal filed by the petitioner was dismissed and his conviction and sentence as awarded by the trial Court was maintained.

5. Learned counsel for the petitioner has argued that both the Courts below have misread the evidence while convicting the petitioner. Joginder Singh, who admittedly is an eye-witness, has categorically stated while appearing as PW-1 that the accident had taken place due to rash and negligent driving of the truck driver. Though, he has named the truck driver as Jinder Khan but in fact driver of the truck was Ravi Kumar and not Jinder Khan. This witness was present at the spot when the accident took place. At the time of accident, the bus was coming from Tibri road Mukerian towards

Gurdaspur and truck was coming from Aujla *chowk* towards Pathankot at a very fast speed. He had taken initiative to take out injured passengers and made arrangement to send them to hospital.

6. Complainant-Banarsi Dass, while appearing as PW-4, has stated that the truck was overloaded and its driver Ravi Kumar was driving it in a rash and negligent manner. Jinder Khan driver of the bus was also driving it in a rash and negligent manner. Both the drivers lost control of their vehicles and accident was caused. He has also stated that it was the truck which hit the bus and this shows that negligence was of driver of the truck and not of driver of the bus.

7. As per case of prosecution, the accident took place due to rash and negligent driving of truck and bus drivers. Learned Appellate Court, while observing that driver of the truck was not at fault, has taken note of the statement of PW-1 Joginder Singh, who has stated that the truck was going from Aujla *chowk* to Pathankot highway and the bus came from the link road. Bus hit the truck and had overturned and again got straight. From this statement of PW-1, learned Ist Appellate Court concluded as follows:-

“22.Though, the PW-1 and PW-4 have stated that the driver of the offending truck was negligent and rash in his driving, but from the attending circumstances, revealed in the cross-examination of said witnesses comes out that the bus was being driven at a high speed even at a point when it was to enter the main road from a link road and it hit the offending truck in the middle of its body. It indicates from the circumstances attending on the occurrence that front wheel of the truck had

already crossed the link road joint from where the bus was to enter the main road when the two vehicles came into contact with each other and front portion of the bus hit in the middle of the body of the truck. It is matter of common knowledge that a vehicle coming from a link road has to slow down and ensure that the main road, which it is likely to enter, is free from any oncoming traffic. However, from the circumstances, revealed in the evidence of PW-1 and PW-4, it is found that the driver of the bus did not observe the necessary precaution and restraint while entering the main road. At the same time, it comes out that appellant/accused cannot be held rash and negligent because the front wheel of the truck had already crossed the point where the link road joined the main road, when the occurrence took place. So in the given circumstances, this court has no hesitation to conclude that the prosecution has miserably failed to prove on judicial file the alleged occurrence took place due to rash and negligent driving of the offending truck by the appellant/accused.”

8. While concluding that prosecution has failed to prove that the accident took place due to rash and negligent driving of the offending truck by appellant-accused-Ravi Kumar, there is no finding recorded by it that driver of the bus was negligent at the time of accident. Appellate Court vide judgment dated 06.06.2014 accepted the appeal filed by Ravi Kumar, driver of the truck.

9. Appeal of Jinder Khan came up before another Court of Additional Sessions Judge, Gurdaspur for final hearing on 08.02.2017. While holding the petitioner guilty for causing accident, learned Appellate Court observed as follows:-

“16.So far as his negligence is concerned, Banarsi Dass complainant, who was travelling in the same bus has deposed that driver of the bus was driving the same at very high speed in a negligent manner. Further it is also clear that truck was coming from Aujla Chowk side and was going towards Pathankot on highway and bus being driven by appellant-accused came from the link road and entered on the highway. So, it is always upon the driver of the vehicle, who comes from the link road and enters on the main road, to see that any vehicle is not coming on the main road. So, it is also clear that appellant-accused was driving the offending bus in negligent manner.”

10. Appellate Court also took note of the fact that it is a matter of common knowledge that a vehicle coming from a link road has to slow down and ensure that the main road, which it is likely to enter, is free from any oncoming traffic. The Appellate Court has partly relied on the testimony of Joginder Singh and Banarsi Dass. Joginder Singh (PW-1) has stated that truck driver was negligent while causing the accident, who was driving his truck in a rash and negligent manner. He has categorically stated that the bus driver was not at fault. His presence at the spot at the time of accident has been relied upon by the prosecution. He has stated that

on the day of accident at about 06.45 a.m., he was going from Tibri road to his house towards Gurdaspur side. At the time of accident, he was on Mehar Chand road. When he reached Tibri bye-pass, he found the bus coming at a fast speed from Tibri road side and the truck coming at a fast speed from the side of Aujala *chowk*. Both the truck and bus collided. No doubt driver of the bus had reached the main road from the side of link road but from the statement of PW-4 Banarsi Dass, it is evident that bus had already reached the main road when the truck came and hit the bus. This witness was sitting on front seat of the bus and could very well see the manner in which the accident took place. His testimony that truck hit the bus means that the bus was already on the main road and it was the truck which came from Aujala side and hit the bus.

11. Before proceeding further, I must take note of the fact that against conviction, driver of the truck and driver of the bus, both filed separate appeals. Both these appeals were not clubbed and were decided separately. The appeal of driver of the truck was decided by Additional Sessions Judge (A), Gurdaspur vide judgment dated 06.06.2014 while the appeal of driver of the bus was decided on 08.02.2017 by another Additional Sessions Judge, Gurdaspur. In case both the appeals had been decided together, the evidence led on file could be read in proper spirit. Learned Appellate Court while deciding appeal of the petitioner, appears to have got influenced by the observation in judgment passed by Appellate Court in case of Ravi Kumar, driver of the truck, wherein finding was recorded that it is the bus which hit the truck. The above finding is against the testimony of PW-4 Banarsi Dass. Taking note of the testimony of PW-1 Joginder Singh and PW-4 Banarsi Dass, I am of the considered opinion that

both the Courts have missed the vital evidence and have also misread the evidence on record. The prosecution has failed to prove that the accident was caused due to rash and negligent driving of the bus by petitioner. So far as grant of compensation by Motor Accident Claims Tribunal is concerned, it is a common practice that claim is preferred only against that party, which is capable of paying the same and the vehicle involved in the accident, which is either not insured and owner of which is not capable of paying the compensation, is avoided. However, without commenting on this fact, I have no other option but to hold that there was no reason for the Appellate Court to conclude that the truck had already come on the main road and was hit by the bus. The testimony of Banarsi Dass rather proves vice-versa.

12. Keeping in view above facts, I find merit in this revision petition and the same is accepted. The conclusion about rashness and negligent driving as drawn by Courts below are not only erroneous but are based on wrong appreciation of evidence on record. The prosecution has not been able to prove its case against the petitioner beyond any shadow of doubt. Giving benefit of doubt, the petitioner is ordered to be acquitted of the charge framed against him.

May 23, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No