

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.896 of 2017 (O&M)
Date of Decision: 06.04.2017

Jaswant Raj @ Jaswant Singh ... Petitioner

Versus

State of Haryana ... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Radhe Shyam Sharma, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant revision is directed against the order dated 14.02.2017 passed by the learned Sessions Judge, Ambala and whereby the appeal preferred by the present petitioner against the judgment of conviction dated 06.10.2016 and order of sentence dated 07.10.2016 has been dismissed. Petitioner was convicted for offences under Sections 279/337/304-A/427 IPC and sentenced as under:

Under Section	Sentence awarded
279 IPC	Six months RI with fine of Rs.1000/-
337 IPC	Six months RI with fine of Rs.500/-
304A IPC	One year RI with fine of Rs.500/-
427 IPC	One year RI with fine of Rs.500/-

However, all the sentences were directed to run concurrently

Brief facts that may be noticed are that on 09.11.2010, statement of Suresh Kumar son of Babu Ram was recorded and as per which he had a maruti van bearing registration No.HR-08-H-6585 and on which he employed Bhupinder Singh as driver. On 09.11.2010, Suresh Kumar as also the driver Bhupinder Singh

had started from the village towards Ambala City. The maruti van was being driven by Bhupinder Singh and Suresh Kumar was sitting on the front passenger seat. At about 1.30 P.M., when they reached village Balana, a Haryana Roadways bus bearing registration No.HR-37-B-9426 came from the side of Ambala City being driven in a rash and negligent manner and struck the maruti van. Due to impact of the collision, Suresh Kumar as also driver Bhupinder Singh sustained injuries and the maruti van was badly damaged. Suresh Kumar and driver were brought to Civil Hospital, Ambala and where from the driver was shifted to Government Medical College and Hospital, Sector-32, Chandigarh. On the next day, i.e. on 10.11.2010, Bhupinder Singh, driver is stated to have expired.

After registration of the FIR, investigation was conducted and statements of various witnesses were recorded. After concluding the investigation, final report under Section 173 Cr.P.C. was submitted in the Court of the concerned area Magistrate. Accused/present petitioner was charge sheeted on 30.05.2013 by the Court of Additional Chief Judicial Magistrate, Ambala under Sections 279/337/427/304-A IPC to which he pleaded not guilty and claimed trial.

After conclusion of prosecution evidence, the entire incriminating material was put to the accused. His statement was recorded under Section 313 Cr.P.C. Accused pleaded innocence and even though, he opted to adduce evidence in his defence but he did not produce any evidence.

After hearing counsel on either side and having appreciated evidence adduced on record, the accused/petitioner stands convicted and sentenced as aforenoticed.

Learned counsel appearing for the petitioner has raised a two fold submission. It is argued that the judgment of conviction and so affirmed by the

Appellate Court, is not sustainable in law as it is based on conjectures and surmises. Counsel contends that identity of the petitioner as driver of the offending vehicle was not established. No identification parade had got conducted and as such identification of the accused in the Court in the first time would loose its meaning. Counsel adverts to the cross-examination of PW5, Suresh wherein he had stated that he had not seen the bus number and had seen the accused for the first time in the Court. The second submission raised is that no evidence was adduced to prove the charge of rash and negligent driving. Counsel in the alternate raises a submission as regards benefit of probation to be granted to the petitioner.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the petition and the same deserves to be dismissed.

It has gone uncontroverted that the petitioner who had been granted bail had absented from trial proceedings and had been declared a proclaimed offender. Even though, statement of PW5 Suresh was recorded in the Court on 07.11.2015 i.e. after 5 years of the accident but prior thereto, Suresh had appeared in the witness box on 23.04.2013 when his statement was recorded under Section 299 Cr.P.C. and at that point of time, he had clearly disclosed the registration number of the bus to be HR-37-B-9426. He had also proved his statement made to the police authorities wherein registration number of the bus had been clearly mentioned. That apart, on the date of accident i.e. on 09.11.2010, the offending bus as well as maruti van involved in the accident were taken into possession vide memo Ex.PW5/B from the spot. Such memo stood proved by the testimony of PW2, ASI Raj Pal. Photographs Ex.P2 to P13 also established beyond doubt the

involvement of Haryana Roadways bus No.HR-37-B-9426 and maruti van No.HR-08-H-6585. The photographs also revealed damage to both the vehicles. The evidence adduced conclusively proves that Haryana Roadways bus No.HR-37-B-9426 was involved in the accident.

Insofar as the identity of the present petitioner to be the driver of the offending Haryana Roadways bus is concerned, EX.PW4/A was the duty roster proved by PW4 Shri Dev Raj, Inspector of Haryana Roadways and as per which on 09.11.2010 i.e. the date of accident, Jaswant Singh (present petitioner) was driver of the bus in question and which was to start at 12.00 noon from Ambala and to proceed for Fatehabad. The prosecution, as such, has duly proved the present petitioner to be the driver of the Haryana Roadways bus that was involved in the accident in question.

As regards the contention raised by counsel that no evidence has come forth to sustain the finding of rash and negligent driving, it may be observed that such plea is inconsistent to the previous contention noticed and dealt with i.e. the petitioner not being the driver of the vehicle in question. Be that as it may, the testimony of PW5 Suresh has not been shaken and wherein he had clearly deposed that the accident occurred due to negligent driving of the bus which was coming from opposite side in a zigzag manner and had struck against the maruti van and which was being driven on its side. Accused/petitioner did not even enter the witness box as his own witness to controvert the testimony and statement of PW5 Suresh who was sitting on the front passenger seat of the van and was as such not only a victim but also an eye witness to the accident.

The alternate submission raised by counsel regarding grant of benefit of probation to the accused under the provisions of Probation of Offenders Act is

also without merit. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court of India in **Dalbir Singh Versus State of Haryana (2000) 5 SCC 82** and wherein it was observed in the following terms:

“Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under [Section 304-A](#) IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act.”

The afore reproduced observations made by the Apex Court were also against the backdrop of an offence of rash and negligent driver of a Haryana Roadways bus.

In view of the discussion above, this Court is of the considered view that the judgment of conviction dated 06.10.2016 and order of sentence dated 07.10.2016 is upon due appreciation of evidence and by recording valid and cogent reasons. The same does not call for any interference under the revisional jurisdiction of this Court.

Petition is dismissed.

06.04.2017

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**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |