

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3770-SB-2015 (O&M)
Date of Decision:- 21.07.2018

Milkha Singh

.... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Ms. Shuchi Sodhi, Legal Aid Counsel
for the appellant.

Ms. Seena Mand, DAG, Punjab
assisted by ASI Sukhwinder Singh.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the appellant challenging the judgment of conviction dated 26.02.2015 and order of sentence dated 27.02.2015 passed by learned Additional Sessions Judge, Amritsar. The appellant was held guilty under Sections 304 Part II and 337 of the Indian Penal Code,1860 (for short, 'IPC') and was sentenced as under :-

<i>Sr. No.</i>	<i>Offence under Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
1	304 Part II IPC	Rigorous imprisonment for a period of 5 years	Rs.50,000/-	Rigorous imprisonment for a period of 3 months
2	337 IPC	Rigorous imprisonment for a period of 6 months	Rs.500/-	Rigorous imprisonment for a period of 15 days

All the sentences were ordered to run concurrently.

The brief facts as narrated by the prosecution are that on 30.07.2012, an information was received from Harjinder Singh son of Gopal Singh, Helper, Signal Management, Railway Station Beas, regarding a rail accident between rail No.30008 and school bus bearing registration No.PB-09-L-9929. The police party reached the spot. The accident took place at an unmanned railway crossing when the driver of the said bus brought the bus from side of Cheema Bath, Link Road. While he was crossing the railway line, the accident occurred resulting in death of four children and leaving nine children injured. The postmortem of four girls, who died in the accident, was conducted at Govt. Medical College, Amritsar. FIR No. 55 dated 30.07.2012 was registered at Police Station G.R.Ps, Amritsar, under Sections 304, 279, 427, 337, 338 of IPC. After completion of investigation, challan against the accused was presented.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Sessions Judge, Amritsar on 23.11.2012. The accused was charge sheeted on 02.01.2013.

In order to prove its case, the prosecution examined as many as twenty five witnesses which included three child witnesses, who were travelling in the bus.

The appellant was examined under Section 313 Cr.P.C. and all incriminating circumstances and evidence were put to him. He denied the same and pleaded his false implication in the case but no evidence was produced in defence.

Learned counsel for the appellant contended that the accused has been wrongly convicted under Section 304 Part II instead of Section 304-A of IPC. It was contended that evidence produced, never brought the

offence within the ambit of Section 304 Part II. The only thing proved was that the accident occurred due to rash and negligent act of the appellant.

Learned State counsel contended that because of the act of the appellant, four children lost their lives and nine suffered injuries. It was further argued that it was well within the knowledge of the accused that his act is likely to cause death. The prosecution has been able to prove its case relying upon the witnesses and the evidence led. The State counsel had produced the custody certificate that the appellant had already undergone 2 years, 5 months and 29 days of actual sentence till 23.09.2016 and thereafter this Court suspended his sentence on 23.09.2016.

FIR was registered on receiving an information regarding the accident between the rail and the bus at Gate No.C-8, KM No.4/8-9. A memo Ex.PW1/A was received by ASI Surinder Singh, Incharge of out post GRP Beas. A Ruqa Ex.PW11/B was sent on the basis of which FIR was registered. The police party reached the spot and found that bus bearing registration No.PB-09-L-9929 met with an accident with rail No.30008. The bus was taken in possession, inquest of the dead bodies were prepared. The identity of the accused driver was proved by the prosecution by deposition of PW9 Manjit Singh, eye witness and three child witnesses, PW20 Jobanpreet Singh, PW21 Karan Kumar, PW22 Gursewak Singh. The principal of the school Narinderpal Kaur-PW23 proved the appointment of accused as driver of bus. The police officials, who reached the spot, deposed before the Court and supported the case of prosecution. The pilot of locomotive deposed as PW5 to prove the factum of accident. Dr. Jatinderpal Singh and Dr. Alok Khandpal Singh who conducted the post-mortem deposed as PW15 and PW25, to prove that the death occurred due

to accident.

Manjit Singh PW9 stated that the bus passed his 'Peter Rehra' and the accused was driving the bus at a high speed, he signalled the accused to slow down the bus but he without paying any heed drove the bus towards the railway crossing where bus met with an accident. Three child witnesses, namely Jobanpreet Singh PW20, Karan Kumar PW21 and Gursewak Singh PW22 were examined after the rationality test. They stated that the accused was driving the bus very fast, in spite of hues and cries raised by the children that the train is coming, the appellant tried to cross the railway line.

The fact regarding the accident between the bus being driven by the accused with rail No.30008 is proved. Another fact that the said accident resulted into death of four children and nine children suffered injuries is also proved. The only issue required to be considered is; whether an offence under section 304 Part II is made out or it is a case falling under Section 304-A?

The accident occurred at an unmanned railway crossing. If the accused had acted responsibly he should have brought the bus to a halt and on being satisfied that no train is coming, should have proceeded to cross the railway line. Witnesses consistently deposed that driver tried to cross in spite of the fact that train was coming and hue and cry was raised by them. This may be an error of judgment on the part of the appellant in an endeavour to cross before the train comes. Statement of PW9 Manjit Singh was to effect that accused was driving the bus at high speed and tried to cross unmanned crossing even after seeing the train.

Section 304 and 304 A are quoted below:-

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The requirement under section 304 Part II is that an act is done with the knowledge that it is likely to cause death but there is no intention to cause death. The essential requirement under Section 304-A IPC are rashness and negligence. Section 304-A does not cover more serious charges of culpable homicide. It only punishes death of any person caused by rash and negligent act. A rash and negligent act which resulted in an error of judgment, as in this case, would come within the ambit of Section 304-A of IPC.

The accident occurred at about 7.45 a.m. The accused in an

anxiety that students should reach the school on time was driving the bus at

very high speed and to save time, he attempted to cross the railway line before the train reached unmanned railway crossing. His negligence and miscalculation resulted in accident.

In the case in hand though rashness and negligence of the accused is proved but the knowledge that the act is likely to cause death is missing. The death caused in itself would not be a determining factor to cover the case under Section 304 Part II of IPC. The accused tried to beat the speed of approaching train to cross the railway line but he failed. It was unfortunate that four children lost their lives. It is not a case where the accused had willfully driven the bus with an intention to cause accident.

Reliance in this regard is placed on the decision of the Supreme Court in case of **Prabhakaran vs. State of Kerala, AIR 2007 SC, 2376.** The Supreme Court, in a case where bus ran over a 10 year old boy in the middle of road, considering the facts of the case held that the case is not covered under Section 304 Part II of IPC but converted to one under Section 304-A IPC.

Considering the factual scenario, conviction under Section 304 Part II of IPC is altered to under Section 304-A of IPC. The maximum punishment under Section 304-A is of two years, or with fine, or with both. Punishment is altered and accused is given the maximum punishment of two years and the fine of Rs.50,000/- imposed upon him is upheld. The conviction of the accused under Section 337 of IPC is upheld and imprisonment of 6 months and fine of Rs.500 is sustained

Since the appellant had already undergone two years, five months and twenty nine days of imprisonment and has thus completed the sentence. His bail bonds in the present case be released.

The appeal is partly allowed.

21.07.2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No