

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

**CRR-2413-2006 (O&M)
Date of decision : 12.11.2018**

Kuldeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Rana, Advocate for
Mr. S.S. Rana, Advocate for the petitioner.
Mr. Karanbir Singh, AAG, Punjab.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Heard.

Present criminal revision petition is against the judgment dated 12.9.2006 passed by learned Sessions Judge, Ludhiana affirming the judgment dated 11.11.2005, passed by learned Judicial Magistrate Ist Class, Ludhiana vide which appellant-petitioner was convicted and sentenced to undergo rigorous imprisonment for six months under Section 279 of the Indian Penal Code and further rigorous imprisonment for 1½ years under Section 304-A of the Indian Penal Code. Both the sentences were ordered to run concurrently.

Brief facts of the case are that on 27.12.2000, complainant Kuldeep Singh accompanied by his cousin Varinder Singh were coming to *Doraha* on their separate bicycles for getting their hair cut. In the chowk, on

the G.T. road towards Khanna side, there was a langer of tea. After having a cup of tea, complainant-Kuldip Singh met with one Bhajan Singh, co-villager who accompanied them and all of them started on their respective bicycle for *Doraha*. Varinder Singh (now deceased) was going ahead to them and when they reached near the chowk, the offending bus bearing registration No. PB-23-9995 came from behind i.e. from Khanna side rashly & negligently and while coming on the wrong side hit the bicycle of Varinder Singh. As a result of which Varinder Singh fell down on the road. The driver of the bus stopped the bus and came to the injured. On the asking of the complainant-Kuldip Singh, he disclosed his name as Kuldeep Singh son of Gurdev Singh resident of Lalheri Kalan. At this, several people started gathering at the spot and bus driver ran away leaving the bus at the spot. Varinder Singh succumbed to the injuries at the spot. Police party headed by ASI Hakam Singh, after recording the statement prepared the inquest report. Site plan was also prepared. Photographer was also called at the spot to click the photographs on the same day. The bus was got mechanically examined in which no defect was found in the bus. Subsequently, accused was arrested on 28.12.2000. After completion of the investigation, challan was presented and the accused was charge sheeted for the offence punishable under Section 279/304-A of the Indian Penal Code to which the accused pleaded not guilty and claimed trial.

In support of its case, prosecution examined Dr. S.K.Sharma, Civil Hospital, Ludhiana as PW-1, Sunil Kumar, Photographer as PW-2, Chanan Singh, Mechanic as PW-3, Kuldip Singh son of Jarnail Singh-complainant as PW-4, ASI Hakam Singh as PW-5 and Bhajan Singh as

PW-6. After closing the prosecution evidence, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein accused denied all the allegations.

After going through all the evidence available on record, learned Judicial Magistrate Ist Class, Ludhiana vide order dated 11.11.2005 convicted and sentenced the accused-petitioner under Sections 279/304-A of the IPC. Appeal filed by the accused-petitioner was also dismissed by learned Sessions Judge, Ludhiana vide order dated 12.9.2006 affirming the judgment of conviction and order of sentence dated 11.11.2015 passed by Judicial Magistrate Ist Class. Against the said order, petitioner filed the present criminal revision petition.

In this case, admittedly, as per the statement of the doctor S.K.Sharma, deceased-Varinder Singh got the head injury and died on the spot. Bhajan Singh-eye witness was also examined but he did not support the prosecution version and turned hostile. However, Kuldeep Singh-complainant was examined and stated that the accused brought the bus from behind and hit the bicycle of Varinder Singh as a result of which he died on the spot.

A suggestion was put to Kuldeep Singh that bus stopped and again proceeded towards its journey which was denied by the witness. Statement of the photographer-Sunil Kumar shows that he clicked the photographs on the date of accident i.e. on 27.12.2000 in which a bus was also found parked.

Learned counsel for the petitioner has argued that in the site plan prepared by the police, bus is not shown. However, this submission

was falsified in view of the testimony of Sunil Kumar-photographer who clicked the photographs on the same date in which bus is found parked at some distance. He further contends that photographer took the photographs of the bus only. However, from the photographs, on the side of the bus, road also can be seen showing that bus was on the road and not at any other place. He further argued that Kuldip Singh-witness has not stated that the bus was being driven rashly and negligently and that Court cannot presume it.

Learned counsel for the petitioner refers to the authority in *(1998) 8 Supreme Court Cases 493*, titled as *State of Karnataka vs. Satish*. A perusal of the record shows that bus came from behind at high speed and was driven rashly and negligently. Though in the statement, Kuldip Singh PW-4 has not specifically stated that bus was driven rashly and negligently but the fact that bus came from behind and near a chowk hit a cyclist goes to show that bus driver was negligent as well as rash in driving the bus. When there was a chowk, bus is supposed to slow down as the passer by from the link road may come on the G.T. Road near the chowk. Both the courts below have believed the statement of Kuldip Singh.

Learned counsel for the petitioner further submits that in this case, test of identification parade was not done. Reliance is placed on the authority of Supreme Court in *(1979) 3 Supreme Court Cases 319*, titled as *Kanan and others versus State of Kerala* and *2002 (2) RCR (Criminal) 720* titled as *Satpal vs. State of Haryana*.

I am of the view that in this case, test of identification parade was not required as the accused was named in the FIR and his identification

was established.

Learned counsel for the petitioner further argued that the witnesses have not stated the speed of the bus. Mere omission of telling the approximate speed of the bus is irrelevant when it was proved that bus was driven rashly and negligently. There are concurrent findings of two courts below, there is no ground to interfere in the same.

Faced with this situation it is argued that sentence passed on the petitioner under Section 304-A of the Indian Penal Code is quite harsh. Considering the facts and circumstances of the case, rigorous imprisonment of 1½ years under Section 304-A of the Indian Penal Code is reduced to rigorous imprisonment for 01 year remaining part of the sentence is maintained.

With the above modification, revision is dismissed. Let the petitioner who is on bail be arrested to undergo remaining part of the sentence.

(KULDIP SINGH)
JUDGE

12.11.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No