

Criminal Revision No.1855 of 2008 (O&M)

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

Criminal Revision No.1855 of 2008(O&M)

Date of Decision : 9.5.2018

Nasib Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr.Davinder Lubana, Advocate
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant revision petition against the judgment of conviction dated 09.10.2006 and order of sentence dated 12.10.2006, passed by the learned Chief Judicial Magistrate, Panchkula, vide which the petitioner has been convicted and sentenced to undergo rigorous imprisonment for a period of 03 months and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days under Section 279 Indian Penal Code (in short the 'Code') and rigorous imprisonment for a period of 06 months and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 01 month under Section 304-A of the Code. He also assailed the judgment dated 13.09.2008, passed by the learned Addl. Sessions Judge (Adhoc) Fast Track Court, Panchkula,

dismissing the appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence.

The brief facts of the present case are that complainant Jeet Singh alongwith his wife Smt. Bachni Devi were travelling in a tempo. They got down at a kacha berm of the road and when the complainant was giving fare to the tempo driver in the meanwhile, his wife was in the process of crossing road. At that time, a Haryana Roadways bus came at a very high speed without blowing any horn and hit her and she died at the spot. It is alleged that the said bus was driven by its driver in a rash and negligent manner.

On completion of investigation, final report under Section 173 Cr.P.C. was submitted against the petitioner. After conclusion of trial, he was convicted and sentenced as stated above.

The appeal preferred by the petitioner against the said judgment was also dismissed vide judgment dated 13.09.2008.

I have heard learned counsel for the petitioner and have gone through the record.

Learned counsel for the petitioner has submitted that the name of the petitioner is not mentioned in the FIR; that no identification parade was conducted and that he has been falsely implicated in this case; that the trial court failed to appreciate the evidence on record and wrongly passed the judgment of conviction and order of sentence which has been further wrongly upheld by the first appellate court.

On the other hand, learned State counsel has submitted that identification of the petitioner has been duly established being the driver of

the Haryana Roadways bus and then there is no need of any test identification parade. He endorsed the findings of the courts below and urged for dismissal of the appeal.

I have give my thoughtful consideration to the rival contentions.

First of all coming to the contention regarding the identification of the petitioner being the driver of the offending bus. The name of the petitioner is not mentioned in the FIR. Even the physiognomy of the driver of the ill fated bus is not stated therein. It is a case of the prosecution that the star witness i.e. complainant Jeet Singh was busy in giving fare to the driver of the tempo and at that time his wife started crossing the road without noticing that the bus was coming on the road. Thus it transpires that he could not see the face of the driver as his face was towards the opposite side that is why the physiognomy of the driver is not mentioned in the FIR.

The investigation agency relied upon the identification memo Ex.PW1/C which has been prepared in the police station on 06.09.1999 when petitioner was in custody of police. It was imperative on the part of the petitioner to hold a test identification parade in a proper manner as per rules prescribed for the purpose. Getting identified a person already in the custody of the police has no importance under the provisions of law and the practice is not fair on the part of investigating officer.

To establish his identification, another document is placed on the record is the duty chart Ex.PW3/A, produced from the office of Haryana Roadways Corporation, but the same is not signed by the

appellant. Even otherwise, mere producing of the duty chart, *ipso facto*, does not establish if it was the petitioner who was actually driving the bus at the time of accident. The available evidence that of the conductor and the passengers have been withheld without any acceptable reason.

Apart from it, the accident had taken place due to sheer negligence of the deceased. It is highly improbable as to how deceased could not notice the bus coming towards her. She was crossing the road all of a sudden and could not notice the running bus. Hon'ble Supreme Court in *Mahadeo Hari Lokre vs. The State of Maharashtra 1972 (4) SCC 758* had discussed the similar preposition of law. In that case, the deceased was suddenly crossing the road and hit by the bus. It was observed as under:-

“It must be said that there is really no good evidence on the side of the prosecution to show how exactly the accident took place. All that PW2 Vijay Kumar, the friend of the deceased, was able to say was that the deceased left him at point B. Since the deceased came under the left front wheel, it can be only inferred that he must have crossed the road to the Western Side. That seems to be borne out by the F.I.R. Of PW1 Dayanand who says that when he was standing near point C he saw Ravikant going by the C.P. Tank Road towards tin batti, that is, towards the North and at that time he saw bus dashing against him with its left side mudguard. The High Court has, in one place, held that while Ravikant was going along the road from South to North, he was suddenly dashed by the bus coming from behind. In the first place, it is rather difficult to hold that Ravikant would be walking in that street from South to North some 14 away from the Western Korb of the road. Secondly in his evidence before the Court Dayanand, PW1 did not stick to this case in the F.I.R. He

stated that Ravikant was actually crossing from the Western Side of the road to the Eastern Side of the Road. If that is true, it will only mean that Ravikant was not dashed from behind as he was going towards North but the impact took place when he was crossing the road from West to East. The High Court was not quite clear on the point and so it observed at another place 'that was precisely the reason why he (appellant) could not see the man walking ahead of him or trying to cross the road in front of his bus'. If Ravikant was walking along the street in front from South to North and the bus was coming from behind, it can be legitimately said that the driver of the bus would see him in front and if he dashed against Ravikant as he was walking along, that would undoubtedly amount to negligence on the part of the driver. It may have been, perhaps, fool-hardy on the part of Ravikant to walk in the middle of the road about 14' away from the Kerb. But that would not justify the bus driver knocking him down after taking due note that he was walking straight in front of the bus. But the case assumes a different complexion if we agree with the sole eye witness in the case Dayanand PW1 that at the time of the impact Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking note of the approaching bus there was every possibility of his dashing against the bus without the driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road the bus driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore, it will not be possible to hold that the bus driver was negligent."

The law laid down by Hon'ble Supreme Court in **Mahadeo**

Hari Lokre's case (supra) is fully applicable in the case in hand. Deceased

after alighting from the tempo suddenly started crossing the road when her

husband was still busy in giving fare to the tempo driver. She failed to notice the running bus coming from the opposite side.

To the mind of this Court, prosecution failed to establish that the appellant was driving the bus in a rash and negligent manner. The Courts below failed to appreciate this fact and wrongly passed the impugned judgments and order of sentence.

As a result, the instant appeal stands accepted. Judgment of conviction and order of sentence as well as judgment of first appellate court are set aside.

09.05.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No