

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Revision No.1019 of 2017 (O&M)
Date of Decision: August 21, 2018

Jagdev Singh
.....PETITIONER(s).

VERSUS

State of Punjab
....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. R.V.S. Chugh, Advocate
for the petitioner (s).

Mr. Sandeep Kumar, D.A.G., Punjab.

SURINDER GUPTA, J.

The present revision petition has been filed against the judgment dated 06.12.2016 passed by learned Additional Sessions Judge, Ludhiana, dismissing the appeal filed by the present petitioner-convict against the judgment of conviction and order of sentence both dated 19.12.2014 passed by learned Judicial Magistrate 1st Class, Ludhiana vide which the petitioner was convicted for the offences punishable under Sections 279 and 304-A of Indian Penal Code(for short-IPC) and sentenced as follows:-

Sr. No.	Under Section	Sentence.
1	279 IPC	Rigorous imprisonment for a period of Six months and to pay fine of Rs.1000/- and in default of payment of fine, further SI for a period of ten days.
2	304-A IPC	Rigorous imprisonment for a period of two years and to pay fine of Rs.2000/- and in default of payment of fine, further RI for a period of 20 days.

Case of prosecution, in brief, is that on 22.10.2008 at about 8.30 a.m., complainant Dr. Nazar Singh was going for his duty in his car towards village Fatehgarh Panj Graiyan, District Sangrur, where he was posted. When he crossed village Gill, a bus of Libra company bearing registration No.PB-13M-8937 was going ahead of his car at a high speed. It was being driven by its driver (petitioner Jagdev Singh) in a rash and negligent manner. The driver of the bus tried to cross one vehicle and in the process, hit a motorcycle coming from opposite side. The driver and pillion rider of the motorcycle namely Arshdeep and Vikramjit Singh fell on the ground and due to the multiple injuries suffered by them in the accident, both died at the spot. The petitioner stopped the bus and then fled away from the spot.

On the statement of Dr. Nazar Singh, FIR No.222 dated 22.10.2008 was registered for the offences punishable under Sections 279, 304-A & 427 IPC, at Police Station Sadar Ludhiana. Dead body of both the deceased were taken to the hospital for post-mortem examination. Offending bus, motorcycle and other articles were taken into possession and rough sketch of the place of occurrence was prepared. After completion of investigation, challan against the petitioner was presented in the Court.

On finding a prima facie case, petitioner was charge sheeted for the offences punishable under Sections 279, 304-A and 427 IPC to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined Head Constable Satish Kumar as PW1, Complainant Dr. Nazar Singh as PW2, Mechanic HC

evidence of prosecution was closed by order.

Entire incriminating evidence was put to the petitioner while recording his statement under Section 313 Code of Criminal Procedure, which he denied and pleaded his false implication.

In his defence evidence, petitioner-accused examined Harjinder Singh as DW1 and after tendering copies of award dated 03.05.2012 passed by MACT, Ludhiana as Ex.DA and Ex.DB and closed his evidence.

Learned trial Court on the basis of evidence before it, held that the bus in question was being driven by the petitioner in a rash and negligent manner and the accident was caused due to rash and negligent driving of the petitioner; convicted and sentenced him as detailed in opening para of this judgment.

In appeal, this fact also came on record that the petitioner has also been convicted and sentenced for the offences punishable under Sections 279, 304-A and 427 IPC in case bearing FIR No.10 dated 21.01.2010 registered at Police Station City Malerkotla, which was registered after about 15 months of the present incident.

Learned counsel for the petitioner has argued that Dr. Nazar Singh, complainant, who appeared as PW1 before the trial Court, has admitted that there was no rashness and negligence on the part of petitioner and the accident was not caused due to rash and negligent driving of the bus bearing registration No.PB-13M-8937 by the petitioner. Both the Courts below have committed grave error while observing that the accident was caused due to rash and negligent driving of petitioner. In the alternative, he

petitioner has suffered agony of trial for the last about 10 years. He has also sought concurrent running of sentences awarded to the petitioner in this case and another FIR No.10 dated 21.01.2010 registered for the offences punishable under Sections 304-A, 279 and 427 IPC at Police Station City Malerkotla, where also, petitioner has been awarded sentenced to undergo rigorous imprisonment for 2 years for the offence punishable under Section 304-A, rigorous imprisonment for 2 months under Section 279 and rigorous imprisonment for 6 months under Section 427 IPC. In support of his contention, he has relied on Full Bench judgment of this Court in case of ***Jang Singh Vs. State of Punjab 2008(1) R.C.R. (Criminal) 323; Naresh Vs. State of Haryana 2016(3) R.C.R. (Criminal) 824; Baljinder Singh Vs. State of Haryana and another 2007(2) R.C.R. (Criminal) 207, and Kewal Singh Vs. State of Punjab 1987(1) R.C.R. (Criminal) 662.***

Learned State counsel has argued that statement of Dr. Nazar Singh PW2 duly proves that the accident was caused due to rash and negligent driving of the offending bus by the petitioner. It was a single road though wide enough and the petitioner in the process of overtaking a three-wheeler, hit the motorcycle coming from the opposite side resulting in death of both occupants of the motorcycle. At the time of accident, bus was on right hand side of the road and motorcycle was on it's correct left hand side. Dr. Nazar Singh has nowhere stated that petitioner was not rash and negligent while driving the bus. It is proved on record that petitioner has also caused accident resulting in death of a person and was convicted and sentenced in case bearing FIR No.10 dated 21.01.2010, registered at Police

petitioner has no merits that sentences awarded to him in both the cases should run concurrently as he was convicted and sentenced in two separate and independent incidents.

Firstly, I look into the submission of learned counsel for the petitioner regarding the correctness of observations of Courts below that the accident was caused due to rash and negligent driving of the offending bus by the petitioner. Learned Appellate Court while appreciating statement of PW2 Dr. Nazar Singh has observed in para 14 as follows:-

“14- Accused has not disputed that he is an employee of Libra Bus Service to which the offending Bus belonged. PW2 stated that he had seen accused at the spot. Accordingly he was identified in court also. It was enough an evidence for prosecution to establish the identity of accused driver of offending Bus. The argument of Ld. Counsel for appellant raised now that no time-table of said Bus or route duty was brought on file seems without any force. Accused himself admitted the presence of offending Bus at the spot. It also is visible in the above noted photographs. Accused also admitted the collision of this Bus with ill-fated motorcycle and death of both its riders. Additionally, PW2 complainant also identified the accused as the wrongdoer. Latter, therefore, could produce abovesaid evidence regarding time-table, route duty etc. from his employer to show his non-presence and his duty at some other place on the fateful day. Nothing was done by him in this regard. He can not be given any benefit for non-bringing of such evidence by ignoring the deposition of PW2 who categorically identified him as driver of offending bus.”

A note was also taken of the fact that the offending bus has

gone extra yards to its right while crossing the vehicle going ahead of it. On perusal of the statement of Dr. Nazar Singh, who appeared as PW2, I find that he is the natural witness of the occurrence. He was going behind the offending bus and stated that petitioner was driving the bus in rash and negligent manner, who while attempting to overtake a vehicle, hit the motorcycle coming from the opposite side, resulting in death of both the occupants of the motorcycle. He has stated that bus was at slow speed but this bald statement is not sufficient to absolve the petitioner, when he has stated that he was following the bus at the speed of 60-70 kmph. The three-wheeler which, bus of the petitioner was trying to overtake, was at the speed of 40-50 kmph. The speed is to be seen as per the site where accident took place. On a two-lane highway, the speed of even 100 kmph may not be termed as rash driving and at a crowded place, speed of 40 kmph may be termed as rash driving. The rashness and the negligence of the petitioner is evident from the fact that while attempting to cross the three-wheeler, he had not taken care of the motorcycle coming from the opposite direction and hit the same. While overtaking, the driver of a vehicle is required to be very cautious. The vehicle, which is overtaking, comes on the wrong side of the road, thereby, obstructing the passage of the vehicles coming from the opposite side. The driver, who is overtaking has to ensure before attempting the overtaking that he has enough free passage on the other side and the vehicle coming from the opposite side will not be hit or obstructed. In this case, petitioner without bothering about this fact, tried to overtake a three-wheeler and in the process hit the motorcycle, resulting in death of two

On perusal of the evidence and judgments of the Courts below, I find no legal or factual infirmity calling for any interference in the finding regarding the rash and negligent driving of the offending bus by the petitioner at the time of accident, as recorded by the Courts below. Consequently, judgments of the Courts below are upheld and so is conviction of petitioner under Section 279 and 304 A IPC.

Learned Trial Court has awarded sentence of rigorous imprisonment of 2 years to the petitioner for the offence punishable under Section 304-A IPC. Keeping in view the manner in which the accident took place, I find no reason to interfere with the quantum of sentence awarded by the Trial Court.

I have also given a careful thought to the submission of learned counsel for the petitioner seeking concurrent running of sentences in this case and in case bearing FIR No.10, as discussed above. A Full Bench of this Court in case of ***Jang Singh Vs. State of Punjab 2008(1) RCR (Crl.) 323***, has dealt with aspect of exercise of discretion of the Court to order concurrent running of sentence awarded to the petitioner in two separate cases on a reference made by a Division Bench, which was as follows:-

“It is clear from these judgments (supra), that though the Court has discretion to convert consecutive sentences into concurrent when two different offences have been committed, but the principles, method and in what manner this judicial discretion is to be exercised, has not been laid down.”

While answering the reference, Hon'ble Full Bench has

observed in para 18 of this judgment, as follows:-

“18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Criminal Procedure Code, is that, a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in *M.R. Kudva Vs. State of Andhra Pradesh, 2007 (1) RCR (Crl.) 868*. We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining

appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Section 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above cannot be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

It was, however, clarified that there are no set guidelines or principles to govern the exercise of discretion under Section 427 Criminal Procedure Code which leaves the judicial discretion with the Court to be exercised on the basis of facts and circumstances of each case.

Learned counsel for the petitioner has also relied on the

Coordinate Bench of this Court was of the view that punishments awarded to some of the accused in two separate incidents as rigorous imprisonment for 10 years and rigorous imprisonment for 7 years was on higher side and sentences awarded in both the cases of 10 years would sub-serve the interest of justice. It was under these circumstances, sentence of both the cases were ordered to run concurrently. In case of ***Kewal Singh Vs. State of Punjab (supra)***, the accused was convicted in the main case for the offence punishable under Section 307, 324 read with Section 34 IPC and in the separate case for the offence punishable under Section 27 of Arms Act, used in the same occurrence, sentences were ordered to run concurrently. In ***Baljinder Singh Vs. State of Punjab (supra)***, reliance was placed on the observations in case of ***Balbair Singh Vs. State of Punjab 1986 (2) RCR (Crl.) 566***. In ***Balbair Singh Vs. State of Punjab (supra)***, the petitioner had been convicted in different cases and sought concurrent running of sentences by filing petition under Section 482 Cr.P.C. Full Bench of this Court in case of ***Jang Singh Vs. State of Punjab (supra)***, had categorically held that it is not open for a person to seek such direction for making the sentences concurrent by moving application under Section 482 Cr.P.C.

In the present case, petitioner was convicted and sentenced for causing death of two persons due to his rash and negligent driving of bus on 22.10.2008 within the area of Police Station Sadar Ludhiana. Another FIR No.10 at Police Station Malerkotla was registered against him on 21.01.2010 i.e. after a period of about 15 months of the accident in this case for causing death by rash and negligent driving of bus. Both the incidents are separate and distinct. The sentences awarded in the other case

bearing FIR No.10 was reduced to the period of sentence already undergone while deciding the revision petition No.CRR-710-2017 on 17.11.2017, as such, the petitioner is not undergoing the sentence in that case any more.

Keeping in view the above facts and circumstances and looking into the principles laid down in case of ***Jang Singh Vs. State of Punjab (supra)***, I find no reason to allow the concurrent running of the sentences awarded to the petitioner in both the cases. The application filed by the petitioner to this effect is declined.

As a sequel of my above discussion, this revision petition has no merits.

Dismissed.

August 21, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***