

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1691-SB-2018 (O&M)
Date of decision : 06.11.2019

Rohit Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gautam Dutt, Advocate for the appellant.

Mr. Anmol Malik, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Appellant challenges the correctness of the judgment passed by the learned Additional Session Judge, Ambala convicting him under Section 304 Part II of IPC and relevant extract of the order of sentence is as under:-

<i>Under Section 304 Part II of IPC</i>	<i>To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹25,000/- and in default of payment of fine, convict shall further undergo simple imprisonment for a period of one year.</i>
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Facts of the case as noticed by the learned Court of Sessions in para No.2, correctness whereof is not disputed, are extracted as under:-

“2. Case of the prosecution is that on receipt of telephonic message regarding accident ASI/IO Tehal Singh alongwith other police officials reached at the spot where complainant Vikas Chaudhary got recorded his statement to the effect that he was posted at SRM college, Bhurewala as

lecturer. On that day college bus number HR68A-2180 was being driven by his driver namely Pawan and daily passenger of this bus namely Aman Sharma, Lokpreet, Vivek, Yogesh, Nisha, Ajay, Amit, Satish, Amit Saini, Karan Uppal, Pritam Malkiat Singh, Sumit Garg, Vijay Pal, Manpreet, Manish Kumar, Deepak Sharma, Amir Furkhan and another staff members were present in the bus and were coming towards SRM college and SDD Global college. Driver of this bus was driving the bus on the right side and when the bus reached at Rajpura T-Point a Highway Tipper bearing registration No. HR 37-C-8635 loaded with sand came from front side being driven in a rash and negligent manner and directly hit into the bus due to which he and other above mentioned passengers of the bus received injuries and Vipin wife of Sahil, Parminder Singh S/o Balbir Singh, Manish Kumar, Kesar Singh, Ankit Gupta son of Rajiv, Deepak Sharma, Ram Kumar Sharma, Amit Furkhan son of Muneer Alam died at the spot due the injuries received in this accident. Injured and deceased were shifted to different hospitals. Accident occurred due to the rash and negligent driving of driver of Highway Tipper bearing registration no. HR37C-8685 who intentionally hit his vehicle while driving the same in a rash and negligent manner into their bus.”

It is a case of the prosecution that 8 persons have lost their lives due to the accident in question.

Prosecution in order to prove its case examined various witnesses including 12 injured who were travelling in the ill-fated bus. Bus belongs to an Educational Institution and was transporting employees and its students to the colleges.

From the careful reading of the evidence of Manish Goyal, it

has come on record that on the day of incident, he alongwith others were travelling in the bus when two tipper trucks were coming from the opposite direction. One tipper truck loaded with sand suddenly came from behind while overtaking in front of the bus and caused the accident.

Defence has not cross-examined the witnesses on this aspect that accident took place when appellant was overtaking another vehicle. The site plan Ex.P27 produced by the prosecution also proves that accident took place on the extreme left part of the road and the tipper truck was found on the wrong side of the road where it had turned turtle. It has also come in evidence that the convict had consumed alcohol and Dr. Mukesh Kumar PW38 while proving medico legal report of convict-Rohit Kumar also proved that blood sample taken for determination of the quantity of alcohol was found containing ethyle alcohol in the strength of 57.5 mg percentage. Report is Ex.P99.

Keeping in view the overwhelming evidence, learned counsel appearing for the appellant has taken an alternative argument that appellant has been wrongly convicted under Section 304 IPC. He submitted that appellant could only be convicted under Section 304-A IPC and not under Section 304 IPC. He submitted that for offence under Section 304 IPC, it has to be proved that act by which the death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Hence, he submitted that there is no evidence that the act by which the death is caused was the act with the intention of causing death.

Before submission of learned counsel for the appellant is dealt with, it would be appropriate to extract Section 304 of the Indian Penal

Code:-

“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.”

On plain reading of the above, one can easily decipher the difference between Sections 300 and 304 IPC. Section 300 provides that where it is proved that the death is caused with the intention of causing death or causing such bodily injury as the offender knows to be likely to cause death of the person or causing bodily injury sufficient in the ordinary course of nature to cause death or a person committing the act knows that it is so imminently dangerous that it must, in all probability, cause such death, or such bodily injury as is likely to cause death.

On the other hand, Section 304 IPC deals with the punishment for culpable homicide not amounting to murder. In other words, it is not necessary that the death is with the intention to cause death. The difference between Sections 304 and 302 IPC is explicit. Section 304 deals with the act by which the death is caused particularly when it is done with the intention of causing death. The stress in Section 304 is on the Act whereas stress in

Section 300 is on the motive.

In the present case, it is established on record that the appellant was driving the truck loaded with the sand after consuming alcohol. Appellant is also proved to be overtaking another vehicle and for that purpose had come in the wrong lane-extreme left side of the road. As per the provisions of Motor Vehicles Act and the Rules framed thereunder, vehicle before overtaking another vehicle has to take precautions as required under law. Vehicle before overtaking must take precautions and ascertain as to whether the vehicle would be able to overtake another vehicle going in the same direction and from opposite direction, no vehicle is coming. In the present case, from the lay out plan as also evidence of various injured witnesses, it is proved on file that the appellant had started overtaking another vehicle and for that purpose, he had come on the wrong side. He was under the influence of liquor and tipper truck he was driving was loaded with sand mud. In such circumstances, the Court has rightly concluded that the offence under Section 304 IPC is made out. Report of PW39 Assistant Sub Inspector Subhash Chander who conducted mechanical examination also proved that fact. Evidence of PW39 is also corroborated by PW43 Rajesh Soni, Crime Scene Expert. Crime Scene Expert has further proved that the truck driven by the appellant is badly damaged from the front left side and there is no mark of any accident upto 70 cm from the right edge on the front portion of the bumper whereas front portion of the bus alongwith right front portion behind the driver seat was found badly damaged. The manner in which damage was caused to both the vehicles clearly proves that the left portion of the truck struck against the right front

portion of the bus causing severe damage to the right side of the bus. The photographs of both the vehicles also proved that the impact between two vehicles was severe due to high speed.

Rash and negligent driving on a public road is dangerous as it is likely to result in the act which may cause death falling in the category of culpable homicide not amounting to murder. A person indulging in the act of rash and negligent driving particularly under the influence of liquor, resulting in loss of 8 human lives cannot thereafter successfully claim that he is not guilty of culpable homicide not amounting to murder.

Hence, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No