

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3243-2009 (O&M)
Date of Decision : 02.11.2019

Mohan Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present : Mr. Deepak Sabherwal, Advocate for the petitioner

Mr. Hittan Nehra, Addl. AG, Punjab

ANIL KSHETARPAL, J.(ORAL)

Present revision petition has been filed against the judgment passed by learned Sub Divisional Magistrate, Phagwara convicting the petitioner under Sections 279, 304-A, 427 IPC. He has been sentenced as under:-

“Taking into consideration the facts and circumstances of the case, the convict is sentenced to undergo RI for three months under Section 279 IPC and R I for 1 ½ years and to pay fine of Rs.2000/- under Section 304-A IPC, in default of payment of fine, the convict shall further undergo RI for three months, directing the substantive sentence to run concurrently.”

In appeal, Court of Sessions has affirmed the judgment while

dismissing the appeal.

Brief facts of the case as noticed by the Court of Sessions are as under:-

“The brief history of the case is that Daulat Ram, Sanjiv Kumar and Resham Singh were working in a brick kiln of Satpal Chopra near Phagwara. On 27.1.2006, in the evening, they all have come to Phagwara to purchase some articles to be used in a function on the next day. At about 8:30 a.m Daulat Ram on his scooter and Resham Singh and Sanjiv Kumar on a tractor were going back to the side brick kiln from Phagwara after having purchased the said articles. Resham Singh was driving the tractor and Sanjiv Kumar was sitting with him on the tractor. They were going together. After reaching at the crossing on the main road near Bone Mill Madhopur, they stopped for a while and were looking for clearance of the road to turn toward their side on the crossing. Resham Singh had just started taking the turn on the crossing towards his side when a bus of Kartar Company came from the side of Phagwara being driven in a rash and negligent way by its driver and struck the same against the tractor trolley being driver by Resham Singh at a very slow speed, as a result of this, the tractor trolley turned turtle and both Resham Singh and Sanjiv Kumar received multiple injuries. Immediately, Daulat Ram with the assistance of Ambulance of Police

Post Chaheru, Phagwara, took both the injured to Civil Hospital, Phagwara, where they died after some time.

On receipt of information in Police Post Chaheru, ASI Hussan Lal alongwith some other police officials reached Civil Hospital, Phagwara where Daulat Ram met him and he recorded his statement. Ex. PA and then, he made his endorsement Ex.PA/1 on the same, sent the same to the Police Station, on the basis of which formal FIR Ex.PA/2 was recorded. Then, he prepared the inquest report Ex.PD and Ex. PE of deed bodies of Resham Singh and that of Sanjiv Kumar, respectively. Then, he went to the place of accident, where, he took the photographs of the place of accident and prepared a rough site plan Ex.PF. He also took into possession the said bus bearing No. PB-08-AS-7651 into possession vide memo Ex.PB. The tractor trolley was also taken into possession vide recovery memo Ex.PC. R.C, route permit, insurance and driving licence of the driver of the bus were taken into possession vide memo Ex.PG. The bus and the tractor were got mechanically tested from the Mechanic and has submitted his test report. The accused was arrested and the statements of all the witnesses were recorded and after completion of investigation, challan against the accused was presented in the Court.”

This Court has heard learned counsel for the parties at length

and with their able assistance has gone through the judgments passed by the

Courts below and the record. Accident in question took place on a highway which had a crossing. The deceased were travelling on a tractor trolley which was to take turn from the aforesaid crossing. Only eye witness examined to prove rash and negligent driving is PW 2 Daulat Ram has stated as under:-

“I have also not recorded in my statement Ex.PA that Sanjiv Kumar has given a signal to turn towards madhopur side. I belong to Una (HP).

xxxx

I was parallel to the tractor trolley, when this accident has taken place. Before the accident, I was behind the tractor trolley. I stopped my scooter in order to see whether any vehicle is coming from the backside or not, because I have to cross the road in order to go to village Madhopur. Resham Lal has also stopped his tractor for turning towards Madhopur in order to see whether any vehicle was coming from the backside or not. I also stopped my scooter at some distance from tractor trolley. I have seen the bus coming from Phagwara side. Resham Singh has also seen the bus coming from Phagwara side. Vol. But the bus was at a high speed. It is wrong to suggest that this accident has taken place due to negligence of Resham Ram because he has turned his tractor towards Madhopur side in order to cross the road inspite of the fact that he has seen the bus.

I have asked driver of said tractor not to cross the road

because the bus is coming from Phagwara, but even then he turned his tractor trolley towards Madhopur side. Vol. said he did not listen my voice.

xxx

There was no dipper on the trolley. All the bus passengers have also seen the accident, which were 20/25 in numbers.”

From the reproduced portion of PW2 Daulat Ram's depositions, following facts are clear:-

- i) tractor trolley had no side indicators in order to give signal before taking turn.
- ii) tractor trolley was to take a turn on the crossing;
- iii) that tractor trolley driver had stopped his tractor before turning towards village Madhopur and had seen the bus coming from Phagwara side.
- iv) Daulat Ram had asked driver of the tractor trolley not to cross road because the bus was coming from Phagwara but still he took a turn towards Madhopur side.

On examination of the aforesaid reproduced statement of the only eye witness, this Court is of the view that a finding arrived at by the Courts below holding that the petitioner was rash and negligent at the time of accident while driving the bus is erroneous. It is undisputed that bus was travelling on a highway as it was to go straight. On the other hand, tractor trolley was to take a turn. It was the duty of the driver of the tractor trolley to be careful. A bus travelling on a highway cannot be expected to drive

slowly. However, no doubt the driver of a vehicle has to be watchful/careful

while driving. Once the alleged eye witness who was also to go towards Madhopur side had stopped his scooter while waiting for the alleged offending bus to pass, the driver of the tractor trolley should have also waited. In fact the eye witness has stated that he had asked the driver of the tractor trolley-deceased not to cross the road because the bus is coming. Thus, the eye witness could apprehend the risk in crossing the road. However, driver of the tractor trolley failed to take note thereof. Before an accused can be convicted for having committed offence of rash and negligent driving, it is the duty of the prosecution to prove its case beyond reasonable shadow of doubt. In the present case, on critical analysis of the evidence which has been extracted above, it is apparent that prosecution has failed to discharge the onus which lay on it. Hence, the judgments passed by the Courts below are set aside.

Petition stands allowed.

(ANIL KSHETARPAL)
JUDGE

02 .11.2019

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No