

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2816-2011

Date of Decision: 8.03.2019

Sadhu Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Premjit S. Hundal, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, Assistant A.G., Punjab.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence punishable under Sections 279, 337, 304-A IPC. Vide judgment and order dated 28.1.2009, learned Judicial Magistrate, Ist Class, Ludhiana, held the petitioner guilty under the aforesaid Sections and sentenced him to undergo RI for 2 months under Section 279 IPC and to pay a fine of Rs.500/- and, in default of payment fine, to further undergo simple imprisonment for seven days; six months RI under Section 337 IPC and to pay a fine of Rs.500/- and, in default of payment of fine, to further undergo simple imprisonment for seven days, and one year RI under Section 304-A IPC, and to pay a fine of Rs.500/- and, in default of payment of fine, to further undergo simple imprisonment for one month.

Aggrieved there-against, the petitioner preferred an appeal before the learned Sessions Judge, Ludhiana. However, vide judgment dated 24.10.2011, the appeal filed by the

petitioner had been dismissed by the learned Additional Sessions Judge, Ludhiana. Still aggrieved, the petitioner has preferred the present revision petition.

As per the prosecution case, on 2.12.2000, complainant Amarjit Singh got his statement recorded to the effect that on 2.12.2000 itself, he along with his nephew Manjit Singh and son Joginder Singh, was travelling in a Maruti car bearing registration No. DAC6438, whereas his other nephew, namely, Ant Pal along with his wife, Harbans Kaur and their children as also Paramvir Singh (son of his other nephew) were travelling in the Gypsy bearing Registration No. HP-25-0730. They all had gone to the house of the in-laws of Ant Pal Singh at village Bomba, Police Station Samrala, to enquire about the well being of Ant Pal Singh's brother-in-law. At about 3.30 p.m., when they had reached about 50/60 yards to Bhaini Sahib Chowk, at that time, the Gypsy driven by his nephew Ant Pal, which was going in front of Maruti car, was hit by a bus of Punjab Roadways, being driven at a very high speed by a Sikh driver. Later on the complainant came to know that the name of the bus driver was Sadhu Singh with the registration number of the bus as PB-12B-9813. As a result of the aforesaid, the Gypsy was torn into pieces. The complainant's nephew Ant Pal Singh, had received injuries, whereas his wife Harbans Kaur died at the spot itself. All the three children, who were sitting on the back seat, had also received injuries. While the complainant was busy in taking care of the injured and the deceased, Sadhu Singh, driver had fled from the spot. The injured were removed to the hospital at Ludhiana for the treatment. The aforesaid accident

had occurred due to the rash and negligent driving of Sadhu Singh, bus driver. A ruqa was sent by the police for registration of the FIR. Bus and Gypsy involved in the accident, had been taken in possession by the police vide separate memos. Subsequently, one Avtar Singh had produced accused Sadhu Singh and he was arrested and later released on bail.

After completion of the investigation, challan was presented in the Court. Having found a prima-facie case, charges under Sections 279, 337, 304-A IPC were framed against the accused.

The prosecution examined PW1-Dr. S.K. Sharma, Medical Officer, PW2-Sukhdarshan Singh, PW3-Manjit Singh, PW4-HC Jagir Singh, PW5-Harleen Puri, PW6-Kamaldev Sharma and PW7-Emmanuel Vinod Kumar.

Statement of the accused under Section 313 Cr.P.C. was recorded wherein he stated that he had falsely been implicated and claimed trial.

The learned trial Court had, as stated above, convicted and sentenced the petitioner-accused under Sections 279, 337 and 304-A IPC and sentenced him for the various substantive sentences, as stipulated in the first para of the judgment. On appeal, the learned Appellate Court had upheld the conviction and sentence of the petitioner.

I have heard the learned counsel for the parties and with their able assistance gone through the record of the case.

Learned counsel for the petitioner has vehemently argued that the prosecution did not examine complainant-Amarjit Singh and so is the position as regards the Investigating Officer, Jaspal Singh. Still further, it has been contended that Manjit Singh (PW3) in his cross-examination deposed that the Gypsy was being driven on wrong side without giving any signal. Yet further, the learned counsel has submitted that the accident in question had occurred in a broad day-light, however, no eye-witness of the occurrence, had been examined. This itself shows that the prosecution has failed to prove its case against the accused-petitioner, beyond the shadow of reasonable doubt.

On the other hand, the learned State Counsel, while refuting the arguments advanced on behalf of the accused-petitioner, has argued that the guilt of the accused stood proved by the prosecution by leading cogent and convincing evidence. The link evidence in the case being complete in nature, no fault can be found with the well reasoned findings recorded by the learned Courts below. Learned State counsel has further argued that being the driver of a bus, which is a bigger vehicle (as compared to the Gypsy), as a prudent driver, it was the bounden duty of the petitioner-accused to drive the bus at a moderate speed with utmost care, caution and circumspection, giving due care and diligence to the other users of the road (i.e. the drivers of the other vehicles). Thus, a prayer for the dismissal of the present petition has been made.

After hearing the learned counsel for the parties and having gone through the records of the case, it is revealed that while recording the finding of conviction and sentencing the petitioner accordingly, the learned Courts below repelled the plea raised by the petitioner as regards non conducting of the Test Identification Parade, for the reason that in his statement under Section 313 Cr.P.C., the petitioner had himself admitted that it was he who was driving the bus in question at the time of occurrence. Thus, there remains nothing to be dilated in this regard and the argument raised by the learned counsel in this regard does not merit acceptance.

Still further, the learned Courts below had categorically found that had the conduct of the petitioner been upright, he would not have fled away from the scene. The learned trial Court had noticed that PW4-HC Jagir Singh deposed in his testimony that the road on which the accident did occur was wide enough and four vehicles at one time could cross one another. Thus, if a vehicle from the opposite side had turned to the extreme right, the same could have been easily sighted by the driver of the vehicle coming from the opposite direction. It was further noticed that due to impact of the bus, a smaller vehicle like Gypsy was bound to get shattered and turtle. It was further found that no conclusion regarding the Gypsy going on a wrong side, could be drawn on the basis of the site plan.

As per the custody certificate placed on record by the learned State counsel, the petitioner has already undergone a period of 2 months 5 days.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Mahadeo Hari Lokre Vs. State of Maharashtra, 1972 CrL. L.J. 49, to contend that when a passenger suddenly crosses a road without taking note of the approaching vehicle, the driver of the vehicle cannot be held liable. Still further, while relying upon the judgment of this Court in Sunil Vs. State of Punjab, 2014(10) RCR (Criminal) 2479, it is contended that if this Hon'ble Court comes to the conclusion that the conviction of the petitioner is to be upheld, then the substantive sentence imposed upon the petitioner may be reduced to the one already undergone by him.

The Hon'ble Supreme Court in State of Punjab Vs. Saurabh Bakshi, 2015(2) RCR (Criminal) 495, while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. 1 year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a

way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

As the petitioner has undergone a period of 2 months 5 days out of the maximum sentence of one year imposed upon him besides other substantive sentences for lesser periods, therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court, the plea of the learned counsel for the petitioner for reducing the sentence imposed upon the petitioner to the period already undergone by him, cannot be accepted.

Admittedly, death of Harbans Kaur wife of Ant Pal had occurred in the accident due to the rash and negligent driving of the petitioner. Still further, both the Courts below have convicted and sentenced the petitioner on the basis of the evidence on record. Learned counsel for the petitioner could not point out any material illegality or perversity in the findings

recorded by the Courts below, which may warrant interference by this Court in its revisional jurisdiction.

However, taking into consideration the agony of trial faced by the petitioner for the period of 18 years and petitioner being first offender, his sentence is reduced to six months on all counts. The petitioner shall surrender before the trial Court, to undergo the remaining sentence of six months, excluding 2 months and 5 days, already undergone by him.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

8.3.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No