

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 1644 of 2016
Date of Decision: 25.02.2019**

Labh Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Subhash Godara, Advocate
for the petitioner.

Mr. S.S.Pannu, DAG, Haryana.

HARNARESH SINGH GILL, J.

The present revision arises from the judgment and order dated 5.4.2016 passed by Sessions Judge, Yamuna Nagar at Jagadhari, vide which the appeal filed by the State of Haryana, was allowed and the petitioner having been found guilty, was convicted and sentenced for commission of offences punishable under Sections 279, 337, 338 IPC while setting aside the judgment dated 7.2.2014 passed by Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari vide which the petitioner was acquitted in case FIR No. 543 dated 21.11.2009 registered under Sections 279, 337, 338 IPC at Police Station City Jagadhari.

As per the prosecution case, petitioner Labh Singh was driving a bus bearing No. HR58-8886 on 21.11.2009 at Bus Stand, Jagadhari. Kapil Kalra (PW-2), the eye witness, made a statement that after closing of the

school, he along with other children of the village, was standing at Bus Stand, Jagadhari along with Vicky Singh son of Jarnail Singh. At about 2.30 P.M., the aforesaid bus belonging to the Yamuna Nagar Depot, driven by petitioner Labh Singh, in a rash and negligent manner came there. When the bus was to leave for Naraingarh, the driver of the bus had applied the brakes and the passengers started boarding the bus. In the process of such boarding, the driver suddenly accelerated the speed of the bus, as a result of which Vicky Singh (PW-1), who was boarding the bus through the front door, fell down and the rear tyre of the bus had ran over his right arm. On seeing this, the bus driver ran away from the spot leaving the bus there. Injured Vicky Singh was taken to Jindal Hospital. Initially, the FIR was registered initially under Sections 279/337 IPC, but after obtaining the case summary of the injured, Section 338 IPC was added.

Charges were framed against the accused under Sections 279, 337, 338 IPC to which the petitioner pleaded not guilty and claimed trial.

Before the trial Court, complainant Kapil Kalra and injured Vicky Singh were examined as PW-2 and PW-1, respectively. Both the witnesses, in their examination-in-chief, stated that they had come to know about the name of the driver of the bus as Labh Singh, later on.

As per the trial Court, no identification parade was conducted in the present case. This is an admitted fact that the injured and the complainant did not know petitioner Labh Singh, but they identified him in the Court. As per the trial Court, the identification in the Court does not carry any value. Even the injuries on the person of Vicky Singh were not proved beyond the shadow of reasonable doubt. The petitioner was, accordingly, acquitted by the trial Court vide judgment dated 7.2.2014.

The Appellate Court after taking into consideration the evidence on record and the deposition of PW-2 Kapil Kalra, in examination-in-chief that the accident took place due to rash and negligent driving of the bus driver Labh Singh and he identified the petitioner as driver of the offending bus, held the petitioner guilty and vide judgment/order dated 5.4.2016, convicted him for commission of offences punishable under Sections 279, 337, 338 IPC and sentenced him as under:-

<i>Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
<i>279 IPC</i>	<i>Rigorous imprisonment for six months.</i>	<i>Rs. 1,000/-</i>	<i>Simple imprisonment for one month.</i>
<i>337 IPC</i>	<i>Rigorous imprisonment for six months.</i>	<i>Rs. 500/-</i>	<i>Simple imprisonment for fifteen days.</i>
<i>338 IPC</i>	<i>Rigorous imprisonment for one year.</i>	<i>Rs. 1,000/-</i>	<i>Simple imprisonment for one month.</i>

Learned counsel for the petitioner has submitted that as per the prosecution Vicky Singh had received injuries on his right arm but no MLR had been placed on record. Moreover, as per Ex. PW-3/A and Ex. PW-4/C, Dr. Yogesh Jindal, stated, while endorsing the application of the police station incharge that the patient had left the hospital against the medical advice on 21.11.2009. Learned counsel for the petitioner has further argued that no MLR had been prepared and regarding the injury, no CT Scan or any other document was placed on record. He has further submitted that the conductor of the bus had not been examined nor the duty roster was placed on record before the Courts below, which could indicate that petitioner Labh Singh was on duty when the accident in question took place. Moreover, attention of this Court has been drawn towards the statement of

PW-2 Kapil Kalra, wherein he stated that no statement was given to the police regarding the said occurrence. Reliance has been placed on ***Girdhari versus State (NCT of Delhi) 2012(1) RCR (Criminal) 951, Vinod Kumar versus State of Haryana 2015(1) RCR (Criminal) 532, Sudershan Kumar versus State of Himachal Pradesh 2015(1) RCR (Criminal) 496 and Raja alias Raj Singh alias Sukhmeet Singh versus The State of Haryana 2009 (5) RCR (Criminal) 747.***

Per contra, learned counsel for the State, has argued that the prosecution has been able to prove its case beyond the shadow of reasonable doubt. He has further argued that even in the crime detailed form and as per the map, the place of occurrence has been proved by the prosecution and the registration certificate of the bus in question was also taken into possession. Learned State counsel has also stated that as per the *ruqa*, complainant Kapil Kalra PW-2 had specifically named the driver. He prays that the petition be dismissed and the judgment passed by the Appellate Court be upheld.

I have gone through the contentions raised by the learned counsel for the petitioner and the learned State counsel and have gone through the record of the Courts below with their able assistance.

It is a case in which PW-1 Vicky Singh received injuries on his right arm. As per record, he was taken to Jindal Hospital but Ex. PW-3/A, a noting was given by Dr. Yogesh Jindal on 25.11.2009 that the patient left the hospital on 21.11.2009 against the medical advice. The accident in question took place on the same day. No MLR or CT Scan has been produced which could indicate the injuries on the person of Vicky Singh.

The statements of Kapil Kalra and Vicky Singh show that they did not know

about the name of the driver of the bus and he was identified in the Court for the first time, as there was no identification parade. It is evident from the statement of the injured and the eye witness that without the signal of the conductor, the bus started moving and in that process, Vicky Singh had received injury. Therefore, the conductor of the bus was a material witness, who was not produced by the prosecution and nor any justification has been given.

Though the prosecution did not examine the conductor of the bus, yet the fact remains that the injured had suffered fractures in his pelvis and both bones of the right forearm. Even the said fact stood proved from the testimony of Dr. Yogesh Jindal (PW4). The FIR in the present case had been registered on 21.11.2009. The petitioner, though did not undergo any part of his substantive sentence, yet admittedly he has been facing the agony of trial for the last 9 years. Besides, the petitioner is not a previous convict. Thus, no useful purpose will be served by sending the petitioner behind the bars. It is a fit case, where the petitioner, who is otherwise not reflected to be a previous offender, can be released on probation.

In my view, Sections 360 and 361 of the Code of Criminal Procedure would mandate a Court to consider the release of an accused on probation.

Section 360 Cr.P.C. reads as under:-

360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any

woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating

or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to

observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

The Hon’ble Supreme Court in ***Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245***, while considering such mandate, has held to the following effect:-

“3. The appellant herein was convicted under Sections 379 and 411 Indian Penal Code and was sentenced to rigorous imprisonment for one year as 3.5 kg of nonferrous metal was recovered from his possession. On an appeal being filed, the conviction under Section 379 was affirmed. The appellant carried the matter in revision, but the revision also stood dismissed. All along the case of the appellant was that the recovery from the Tiffin carrier kept on the cycle would not tantamount to recovery from the possession of the appellant, and this contention has been negatived and rightly so. When the matter was listed before this Court, a limited notice was issued as to why the provisions of Section 360 of the Criminal Procedure Code should not be made applicable. Pursuance to the said notice, Mr. Singh, the learned standing counsel for the State of Bihar has entered appearance. From the perusal of the judgment of the

learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forum below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then shall record in its judgment the specific reasons for not having done so. (Emphasis Supplied). This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the CrPC. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

Similar is the view taken by this Court in ***Akhtar and another vs. State of Haryana, 2013(8) RCR (Criminal) 2992*** and ***CRR No. 1087 of 1987*** titled ***Bachna Ram versus State of Haryana.***

Keeping in view the totality of the case and after going through the record, it is a fit case to release the petitioner on probation while upholding his conviction.

Resultantly, while upholding the conviction of the petitioner

under Sections 279, 337, 338 IPC, his substantive sentence of imprisonment is set aside. Instead, he is ordered to be released on probation for a period of one year subject to his executing bonds to the satisfaction of the Chief Judicial Magistrate concerned, undertaking to keep peace and be of good behaviour for the said period and to appear and receive the sentence as and when called upon to do so in case of violation of any of the conditions of the bonds.

However, keeping in view the facts and circumstances of the case, the petitioner is directed to pay an amount of Rs.10,000/- as compensation to be paid to the injured. The amount of fine imposed by the learned Sessions Judge, Yamuna Nagar, shall be treated as costs of proceedings.

Revision petition stands disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

February 25, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes