

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.798 of 2017
DECIDED ON: 13.02.2019

AVTAR SINGH

...PETITIONER...

VERSUS

STATE OF PUNJAB

...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Arihant Goyal, Advocate,
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision, petitioner has laid challenge to order dated 21.01.2017 of the appellate court, whereby appeal of the petitioner was dismissed, thereby affirming the judgment of conviction and order of sentence dated 07.04.2015 of the trial court, holding the petitioner guilty under Sections 279, 304-A and 337 IPC and sentencing him to undergo rigorous imprisonment for two years and pay fine of ₹1000/-. In default of payment of fine to further undergo simple imprisonment for 15 days under Section 304-A IPC and further sentenced to undergo rigorous imprisonment for a period of 3 months and pay fine of ₹500/-. In default of payment of fine to further undergo simple imprisonment for 05 days under Sections 279 and 337 IPC.

Briefly, the petitioner was booked, tried, held guilty and sentenced in the matter as narrated above in the opening part of the

judgement, on the allegations that in the evening of 29.01.2011, the petitioner, while driving offending bus bearing registration No.PB-03C-9981 coming from the opposite side in a rash and negligent manner and also in high speed, hit motorcycle bearing No.PB 21C-1955, on which, Malkit Singh, Karamjit Kaur and Jaskaran Singh were riding. As a result thereof, Malkit Singh and Jaskaran Singh succumbed to their injuries on the spot, whereas Karamjit Kaur received multiple injuries.

Being aggrieved, petitioner approached first appellate court, but remained unsuccessful, as his appeal too, was dismissed vide judgment dated 21.01.2017.

Learned counsel for the petitioner contends that the petitioner was not apprehended at the spot. No identification parade was conducted. The site plan relied upon by the prosecution was not prepared on the spot, rather was prepared while sitting in the police station, which fact has been specifically mentioned in the impugned judgment. As per mechanical report, there was no damage even to the offending bus or to the motorcycle. Therefore, story put forth by the prosecution is completely false. Both the courts below have wrongly relied upon prosecution witnesses, ignoring the fact that all were related to the deceased. No eye-witness was examined by the prosecution.

On the other hand, learned State counsel pleaded the legality

and validity of judgments of both the courts below, contending that

identity of the petitioner was established for causing impugned accident in question beyond shadow of doubt. Photographs were taken after the removal of bus to a short distance from the accident spot.

Having given anxious consideration to the rival submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow:-

1. No question of law, much less substantial, has been raised in this petition.

2. Both the courts below have recorded concurrent findings against the petitioner holding him guilty under Sections 279, 337 and 304-A IPC and sentenced as narrated above.

3. This Court, being revisional court, has a very limited jurisdiction, which can only be exercised on 3 following infirmities:-
(i) if the courts below have exceeded their jurisdiction; (ii) have exercised their jurisdiction illegally and; (iii) have not exercised their jurisdiction diligently.

4. Learned counsel for the petitioner has not been able to point out any such infirmities.

5. Both the courts below have already dealt with the arguments raised by learned counsel for the petitioner before this Court. Therefore, their further dealing would amount to repetition and wasting precious time of the Court.

6. Complainant-Gurdeep Singh as PW-3 had witnessed the accident and categorically testified that after causing the accident,

petitioner alighted from the offending bus and disclosed his name to him. Testimony of complainant is further corroborated by injured Karamjit Kaur, who was accompanying two deceased at the time of accident. Therefore, it cannot be said that identify of the petitioner was not established beyond doubt, in causing the accident in question.

7. The relationship of the material prosecution witnesses with the deceased persons is not sufficient to disbelieve their testimony unless some ill-will or motive of them against the petitioner is proved. Statements of material witnesses have gone unrebutted and unchallenged. Even their credibility could not be impeached despite lengthy cross-examination.

8. Photographs and site plan are always taken/clicked after the commission of the crime. In the instant case, photographs were taken after removal of the bus to a short distance from the place of accident, which fact is, in itself, does not give any benefit to the petitioner. Site plan prepared while sitting in police station, must have been prepared after visiting the spot. Non-preparation of site plan by the investigating officer strictly in accordance with the spot, is not a circumstance, of which the petitioner can be given benefit of doubt, inasmuch as, it is well settled proposition of law that for any illegality or infirmity committed by the investigating officer, accused cannot be benefited to the detrimental of the complainant. Perusal of impugned judgment of the trial court shows that in the photographs collected, blood/oil stains were available at the spot of accident, which was

sufficient to hold that accident had taken place at the relevant time. More so, the petitioner admitted his presence on the spot. It has come in the judgment of the trial court that both the riders of the motorcycle were crushed under the tyres of the bus, which suggests that offending bus was being driven by the petitioner in a rash and negligent manner.

9. Prayer of learned counsel for releasing the petitioner on probation cannot be accepted, inasmuch as Hon'ble Supreme Court in **Dalbir Singh Versus State of Haryana 2000(2) RCR (Criminal) 816** has held that the Courts should not, as a normal rule, invoke the provisions of the Probation of Offenders Act when the accused is convicted of the offence under Section 304-A IPC for causing the death of a human being by rash or negligent driving. It is needless to mention that in the impugned accident caused by petitioner, two persons have lost their life.

I have gone through judgments of both the courts below, they are well reasoned, being based on appreciation of facts and thus, do not require any interference by this court.

Dismissed.

Copy of this order be sent to concerned Chief Judicial Magistrate.

13.02.2019

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**Whether speaking/reasoned
Whether reportable**

**(RAMENDRA JAIN)
JUDGE**

**Yes/No
Yes/No**