

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-672-SB-2006

Date of decision:-28.2.2020

Harpreet Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.I.S. Brar, Advocate
for the appellant.

Ms.Amarjit Kaur Khurana, D.A.G., Punjab.

H.S. MADAAN, J.

Accused Harpreet Singh faced trial by learned Sessions Judge, Bathinda, who vide judgment dated 25.3.2006 convicted him for an offence under Section 304-A IPC and vide order of that very date sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

The accused-convict – Harpreet Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be

acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that on 30.11.2004 complainant Ajay Kumar son of Darshan Singh had got his statement recorded with ASI Jaskaran Singh (hereinafter referred to as the Investigating Officer) from Police Post, Civil Lines, Bathinda stating therein that he is a resident of Sirki Bazar, Bathinda; he along with Kishori Lal son of Ram Gopal was employed at shop of M/s Gupta Enterprises situated in Gandhi Market, Bathinda; on 29.11.2004 the complainant along with Kishori Lal was going to the shop on a scooter bearing registration No.PB-03G/8803 from the house of the proprietor of the shop; the scooter was being driven by the complainant on which Kishori Lal was the pillion riding; at about 6:30 p.m. when they reached near Sepal Hotel, Bathinda, then a bus bearing registration No.PB-29B/9629 came from behind being driven at a very fast speed and in a rash and negligent manner without blowing horn and the side of the bus struck against their scooter on the left side as a result of which both the riders of the scooter were dragged by the bus along with their scooter; on an alarm being raised by them, the driver of the bus stopped the bus and fled from the spot; Kishori Lal had become unconscious due to the injuries sustained by him in the incident; he was taken to the hospital of Dr.Mela Ram and from where due to his serious condition he was referred to Dayanand Medical College and Hospital, Ludhiana; Kishori Lal succumbed to the injuries on 30.11.2004 at about 5:30 a.m. The complainant had disclosed the name of driver of the bus as Harpreet Singh.

On the basis of such statement, formal FIR was recorded.

The investigation in the case started. The Investigating Officer along with other police officials had gone to the spot and prepared rough site plan of the place of occurrence. The ill-fated scooter of the complainant was taken into police possession along with its registration certificate vide a recovery memo. The bus bearing registration No.PB-29B-9629 belonging to Godara Bus Service, Faridkot along with its registration certificate were seized vide recovery memo Ex.PG. The Investigating Officer then went to Dayanand Medical College and Hospital, Ludhiana and conducted the inquest proceedings with respect to the dead body of Kishori Lal, preparing a report in that regard. He also recorded statements of witnesses. He also got conducted postmortem on the dead body of Kishori Lal and received copy of postmortem report. Accused Harpreet Singh was produced before the Investigating Officer on 3.12.2004 by Darbara Singh, Conductor when he was formally arrested. Accused had produced the photocopy of his driving licence before the Investigating Officer, which was taken into police possession.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Chief Judicial Magistrate, Bathinda.

On presentation of challan in the Court of learned Chief Judicial Magistrate, Bathinda, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 304 IPC is exclusively triable by Court of Sessions, learned Chief Judicial Magistrate, Bathinda committed the case to the Court of learned Sessions Judge, Bathinda vide order dated 6.1.2005.

On receipt of case in the Court, learned Sessions Judge, Bathinda, observing that prima facie charge for offences under Sections 304 Part-II or in the alternative under Section 304-A IPC and 279 IPC was disclosed against accused, he was charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined in as many as eight witnesses as per the details below:

PW1 Dr. Ajay Pal Singh, who had performed the postmortem examination on the dead body of Kishori Lal in Civil Hospital, Ludhiana on 30.11.2004 at 4:40 p.m. and had found six injuries on his person deposed in that regard proving copy of postmortem report as Ex.PA and pictorial diagram showing the seats of injuries as Ex.PA/1.

PW2 Constable Ranjit Singh, who had mechanically tested the scooter involved in the incident at Police Station Kotwali, Bathinda on 4.12.2004 proved his report as Ex.PD. According to him, the scooter was in working condition and its engine, horn, head lights and indicator were also in order.

PW3 Satpal Gupta is the Proprietor of the shop where deceased and Ajay Kumar had been working. He had stated that deceased Kishori Lal was his employee and on 29.11.2004, he along with Ajay Kumar had taken their scooter, which was in the name of his father's sister and the said scooter met with an accident; that on receiving telephonic message, he reached at the spot; the scooter and bus were entangled with each other and both the vehicles were taken into police possession. This witness further stated that Kishori Lal was

removed to the hospital of Dr.Mela Ram, however Kishori Lal succumbed to his injuries on 30.11.2004.

PW4 Constable Sandeep Kumar testified with regard to his having mechanically tested the bus in question and he proved his report as Ex.PH.

PW5 Rajinder Kumar stated that he took snaps at the spot, positives of which being Ex.P1 to Ex.P5 and negatives Ex.P6 to Ex.P10.

PW6 Dr.Pawan Kumar had brought the medical report pertaining to Kishori Lal. According to him Kishori Lal was admitted in Dayanand Medical College and Hospital, Ludhiana on 29.11.2004 against CR No.200485860. He had examined him on 29.11.2004 at 11:30 p.m. and found the following injuries:

1. Lacerated wound on left side of knee joint 8 cm transverse lacerated wound with formity of length.
2. Bruise on abdomen in hypogastrium measuring 6 x 8 cm.
3. One irregular wound along with injury No.2 in the posterior aspect of right side of pelvis and elbow joint.

According to this witness, the nature of the injuries was grievous and probable time that elapsed during the injuries was less than 12 hours. Copy of the MLR was proved as Ex.P1 and pictorial diagram as Ex.PI/1. The witnesses stated that it was a case of road side accident and the patient had died on 30.11.2004 at 6:30 a.m.

PW7 Ajay Kumar provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW8 ASI Jaskaran Singh, the Investigating Officer of the case deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and has been falsely implicated in the case. He denied that any such accident had taken place with his bus. According to the accused, the accident had taken place due to the negligence of Kishori Lal himself because he was driving the scooter at a very fast speed and when he tried to cross the road, he could not stop the same due to the failure of the brakes, as such hit the scooter against the divider of the road, in the process, sustaining injuries to which he had succumbed later on; that the bus was taken into police possession from the bus stand on the next day at 6:30 p.m.

In defence evidence, the accused had examined DW1 Chhinderpal Singh and DW2 Darbara Singh, who supported his defence version.

After hearing arguments, learned trial Court convicted and sentenced accused Harpreet Singh as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the parties besides going through the record.

In this case, PW7 Ajay Kumar – complainant eye-witness provided the ocular version of the incident supporting the prosecution story on material aspects. Although he was cross-examined at length on behalf of the accused but he stuck to his guns and could not be shattered on material point. A few minor contradictions and variations in his

statement do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witness had deposed in a natural and truthful manner unlike tutored witness who depose in a parrot like manner. I find presence at the spot of this witness to be likely and probable and account given by him to be worthy of reliance.

No cogent or convincing reason has been suggested or proved prompted by which, the accused might have been involved in this case wrongly.

The medical evidence duly corroborates the ocular evidence. PW1 Dr.Ajay Pal Singh, who had conducted the postmortem on the dead body of Kishori Lal as well as PW6 Dr.Pawan Kuamr, who had treated Kishori Lal injured while he was still alive at Dayanand Medical College and Hospital, Ludhiana on 29.11.2004 had deposed in that regard.

The corroboration was lent by PW3 Satpal Gupta, Proprietor of the shop where deceased along with Ajay Kumar was employed.

The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve

the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

The defence evidence does not seem very convincing or plausible. DW1 Chhinderpal Singh, special attorney of the proprietor of the bus and DW2 Darbara Singh, working as conductor in the bus obviously had a favourable inclination towards the bus driver so as to save him from the punishment. Therefore, their statements are not of much value.

Learned counsel for the appellant/accused has raised various contentions. First being that there is delay of 15 hours in lodging report regarding the incident making the prosecution version doubtful. However, I do not find this contention to be having much force. The incident had taken place on 29.11.2004 at about 6:30 p.m. After the incident the natural reaction of the complainant and other persons would have been to remove the injured to hospital so as to provide medical aid to him rather than leaving the injured unattended and firstly going to the police to report regarding the accident. Their conduct has been quite natural. Furthermore, as deposed by PW6 Dr.Pawan Kumar from Dayanand Medical College and Hospital, Ludhiana, the injured was brought to their medical institute on 29.11.2004 and he had examined him there observing three injuries, which were grievous in nature. He stated that he had sent intimation to the police and Kishori Lal had died on 30.11.2004 due to the injuries at 5:30 a.m. In that way, the police had been informed with regard to arrival of injured Kishori Lal at Dayanand Medical College and Hospital, Ludhiana. The injured had succumbed to the injuries on 30.11.2004. At that day, complainant Ajay Kumar had

gone to the Police Station Kotwali, Bathinda and got his statement recorded regarding the incident. Therefore, there has not been any unnecessary or unexplained delay in reporting the matter to the police. Even otherwise, delay alone does not have any adverse affect on the prosecution story unless it is accompanied with some other reason like motive for false implication or previous enmity between the parties. None of that sort is alleged or proved in this case. The complainant had no reason to implicate the accused in this case falsely or to depose against him to secure his conviction.

The next contention raised by learned counsel for the appellant/accused was that the presence of complainant Ajay Kumar at the spot is doubtful since his such presence is not recorded in Dayanand Medical College and Hospital, Ludhiana and rather as stated by PW6 Dr.Pawan Kumar from that hospital, injured had been brought to the medical institute on 29.11.2004 by his brother Chhotu Ram.

Whereas learned State counsel has controverted that argument vehemently. I on my part feel that merely because name of the complainant is not recorded in the hospital record of Dayanand Medical College and Hospital, Ludhiana does not mean that he was not present at the spot and had not seen the incident/accident. When several persons accompany an injured to the hospital, the doctor may note down names of one or two persons and in that way, the name of Chhotu Ram, a real brother of injured could have been recorded in place of name of the complainant. The very fact that it was the complainant, who had statedly removed the injured to hospital after the accident and had proceeded to lodge report regarding the incident/accident with the police goes to

shows that he was very much present at the spot and had seen the incident.

Another argument advanced by learned counsel for the learned counsel for the appellant was that the driver of the scooter stated to be the complainant, had not received any injury in the incident. If he was actually there driving the scooter on which the deceased was pillion riding after hit of the bus, he would definitely suffered the injuries. That argument does not convince me. The side of the bus coming from behind having hit the scooter in the process, the deceased got injured. The very fact that the complainant driver of the scooter had not suffered any serious injury does not rule out the fact that he was driving the scooter at the relevant time.

Learned counsel for the appellant/accused had then concentrated towards the sentence part stating that the incident relates to the year 2004 i.e. 16 years earlier. Now the appellant is a middle aged person and it would not serve any purpose if he is taken into custody and send to jail to undergo imprisonment. In support of his contention, he has referred to a few judgments. However, I am not inclined to accept his request. The accused by his rash and negligent driving on a public way had brought an end to life of an innocent person. The roads are proving to be killing grounds for the reasons that many vehicle drivers drive thereon in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road and such type of elements have to be dealt with sternly otherwise there would be more instances of casualties due to road side accidents. In this incident, no leniency can be shown to the accused – convict. The request

in that regard is declined.

As regards the judgment referred to by learned counsel for the appellant i.e. **Roshan Versus State of Haryana, 2019(4) Law Herald (P&H) 2878**, wherein dealing with a case under Section 279 and 304-A IPC, a Co-ordinate Bench of this Court had observed that no doubt, the menace of road accident in resulting in loss of life of citizens, however, a proper balance has to be maintained. The incident had taken place 16 years back. The petitioner happened to be the first offender and was on bail for about seven years, therefore sending the petitioner behind bars at this stage would be very harsh and inequitable.

The observations had been made by the Bench on facts of the particular case considering the antecedents of the accused and mitigating circumstances. Therefore, this judgment cannot be taken to be binding precedent with the facts of the present case being different.

In second judgment i.e. **State of Punjab Versus Saurabh Bakshi, 2015(2) RCR(Criminal) 495**, it was a case where accused was convicted under Section 304-A IPC and sentenced to two years rigorous imprisonment, the High Court had reduced the sentence to 24 days. The Apex Court had set aside the order of High Court observing that in a way amounted to mockery of justice and sentence of six months was awarded.

The third judgment referred to by learned counsel for the appellant was **Jaspal Singh Versus U.T., Chandigarh, 2015(4) RCR(Criminal)953**.

As observed already the facts of each case are different and sentence is awarded to accused/convict taking into consideration various

factors i.e. the nature and type of the offence, the age of the victim, the mitigating circumstances, if any, operating in favour of the accused etc. While considering the factors calling for taking of lenient view with regard to sentence imposed upon accused, at the same time it has to be ensured that justice is done to the aggrieved members of the family, who had lost one of them. A person cannot be allowed to go scot free merely because of the reason that on account of heavy pendency in the Court, the appeal filed by him came up for hearing after several years. If a criminal is treated with leniency for such like reason, then every attempt shall be made by the accused to prolong the matter and a wrong message would go around that one can commit a heinous crime then get away it leniently if that person is able to stretch the proceedings to the extent possible or for any other reason the proceedings get stretched. The accused cannot be allowed to have any benefit by default. The Courts while doing substantial justice are to ensure that faith of the people in the system does not get shaken and nobody remains under any misconception that one could commit a very serious crime and then get away with it on one excuse or the other.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Harpreet Singh is on bail in terms of the orders passed by this Court. The bail order is

cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Bathinda.

28.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No