

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

CRR-2799-2009(O&M)

Date of decision:-29.1.2020

Varinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.Harpreet S. Maan, Advocate for
Mr.Rajinder Goyal, Advocate
for the petitioner.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

Briefly stated, facts of the case as per the prosecution story are that criminal machinery in this case was set into motion by complainant Jaswant Singh son of Gajjan Singh, who on 22.10.2002 got his statement recorded with SI Kehar Singh (hereinafter referred to as the Investigating Officer/I.O.) from Police Station Kharar, wherein he stated that he was employed as driver with Ambala Bus Syndicate on bus bearing registration No.PB-12-E-9303; on that day, he was driving the said bus on route Rajpura to Ropar; there were several passengers travelling in the bus; Baldev Singh was on duty as conductor in the bus in question; at about 9:50 a.m., when the bus was about 200 yards short of Rinku Dhaba in the area of village Sante Majra and Baldev Singh,

Conductor was issuing tickets to the passengers, a half body truck loaded with earth having registration No.CH-01-Z-4678 being driven in a rash and negligent manner and at a high speed came from the opposite side; since the truck was coming in a zig-zag manner, the complainant took the bus towards left side on the katcha portion of the road, however, the truck struck the bus on the right side injuring several passengers and causing damage to the bus; after hitting the bus, the truck had come to a standstill; the truck had also suffered considerable damage; after the accident the driver of the truck came down and gave his name as Varinder Singh son of Dev Lal of Chandigarh; while the complainant bus driver was taking care of the injured passengers, the truck driver slipped away; the complainant and Baldev Singh, Conductor stopped certain other vehicles and rushed the injured passengers to Civil Hospital, Kharar.

The Investigating Officer SI Kehar Singh appended his endorsement below such statement made by the complainant and sent ruqa to the police station, on the basis of which formal FIR was registered. The Investigating Officer called a Photographer to the spot, who took snaps of the scene of the accident. The accidental vehicles were taken into possession. The site plan of the place of accident was prepared. The driving licence of the complainant and registration certificate of the bus were taken into police possession. Statements of witnesses were recorded. During the course of investigating, the Investigating Officer got both the vehicles involved in the accident mechanically tested from a mechanic. Accused Varinder Singh was arrested in this case on 24.10.2002. His driving licence and registration certificate of the truck were also taken into

possession. Injury reports of the injured persons were also taken into possession from Civil Hospital, Kharar. Offence under Section 338 IPC was added.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Kharar.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Kharar, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Sub Divisional Judicial Magistrate, Kharar finding that charge for offence under Sections 279, 338 and 427 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined in as many as seven witnesses as per details below:

PW1 complainant Jaswant Singh deposed as per his version given in his statement to the police Ex.PA. He proved seizure memo Ex.PB and Ex.PC vide which the accidental vehicles had been taken into police possession.

PW2 Baldev Singh, Conductor of the bus did not toe the line of prosecution and rather stated that he did not know anything regarding the accident since he was busy in issuing tickets to the passengers; that he did not know the registration number of the truck and could not identify

the accused. He was declared a hostile witness at the instance of learned State counsel, who was allowed to put question to him in the form of cross-examination.

The medical evidence in this case was provided by PW3 Dr.Amardeep Singh, who stated that on 22.10.2002 while posted at Civil Hospital, Kharar, he had medically examined Dara Singh, Chaman, Sukhwinder Kaur, Rajinder Singh, Sanjay, Darbara Singh and Amar Singh injured. He proved their MLRs Exhibits PB to PM and x-ray films Ex.P1 to Ex.P3. He stated that after x-ray examination injuries No.1 and 2 on the person of Dara Singh were declared to be grievous in nature. Similarly after x-ray examination, injury No.1 on the person of injured Chaman was declared to be grievous in nature.

PW4 Sanjay Kumar had brought the summoned record stating that in terms of that record truck bearing No.CH-01-Z-4678 is registered in the name of Sunaina Sharma, resident of Chandigarh, copy of registration certificate being Ex.P4.

PW4 Surjan Singh (wrongly numbered again), Assistant in the office of DTO, Ropar had brought the summoned record with regard to bus bearing registration No.PB-12-E-9303 stating that it is registered in the name of Ambala Bus Syndicate, Ropar. He proved copy of registration certificate as Ex.PW4/A.

PW5 Sukhwinder Kaur, injured provided the ocular version of the incident supporting the prosecution story on material points.

PW6 Kehar Singh, Retd. Inspector, who had carried out the investigation in this case deposed in that regard.

PW7 Chaman injured also provided the eye-witness account so did PW7(wrongly numbered) Sanjay Kumar, another injured. They supported the prosecution story.

With that the prosecution evidence stood closed.

Statement of 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 had been falsely involved in this case.

Accused did not lead any evidence in his defence.

The trial Court had formulated following points for determination:

1. Whether on 22.10.2002 at about 9:50 A.M., in the area of village Sante Majra accused Varinder Singh, drove truck bearing No.CH-01-Z-4678 on a public way in a manner so rash and negligent as to endanger human life and personal safety of others;
2. Whether on the said date, time and place accused Varinder Singh while driving the said truck in the said manner cause simple and grievous hurt to Sanjay, Amar Singh, Darbara Singh, Dara Singh, Sukhwinder Kaur, Chaman and Rajinder Singh;
3. Whether on the said date, time and place accused committed mischief by causing loss to the bus bearing No.PB-12-E-9303 beyond the amount of Rs.50/-.

On completion of trial, after hearing learned counsel for the parties, Sub Divisional Judicial Magistrate, Kharar has made observations in para No.15, which for ready reference are being reproduced as under:

15. *In view of the foregoing discussion, it is held that accused Varinder Singh while driving the offending truck in a rash and negligent manner and at a high speed on a public way on 22.10.2002 caused accident with the bus being driven by complainant Jaswant Singh and it caused injuries simple as well as grievous in nature to a number of passengers. So accused Varinder Singh committed offences under Sections 279, 337 and 338 IPC. Although he has not been specifically charge sheeted for offence under Section 337 IPC but finding that he has been charge-sheeted for offence punishable under Section 338 IPC, he can be convicted for offence punishable under Section 337 IPC, without being any specific charge for the same. So far as the offence under Section 427 IPC is concerned, accused cannot be held guilty thereof as there was no intention of the accused to wrongful loss or damage to the bus. There is no evidence to show that he will cause wrongful loss or damage to any person by injuring any property. As such, accused Varinder Singh is held guilty and is convicted for offences under Sections 279, 337 and 338 IPC.*

Vide order of the even date, accused was sentenced as under:

Under Section	Sentence
279 IPC	R.I. for six months
337 IPC	R.I. for six months
338 IPC	R.I. for 1 ½ years and fine of Rs.500/- and in default of payment of fine to undergo S.I. for one month.

All the sentences were ordered to run concurrently.

The accused/convict felt aggrieved by the said judgment of his conviction and order of sentence and had approached the Court of Sessions by way of filing an appeal. However, learned Additional Sessions Judge, SAS Nagar (Mohali) vide judgment dated 26.10.2009 dismissed the appeal with following observations:

“9. The trial Court has recorded the conviction of the appellant for the offence under Section 337 IPC also and awarded the sentence to the appellant thereunder. This Court finds that the trial Court could not appreciate that charge under Section 337 IPC was not framed against the appellant in this case. Since charge under Section 337 IPC was not framed against the appellant by the trial Court, therefore, no conviction thereunder can be recorded by the trial Court. Consequently, the judgment of conviction for the offence under Section 337 IPC and order of sentence qua the sentence under Section 337 IPC cannot be sustained in this appeal and they deserve to be set aside with regard to the offence under Section 337 IPC and are set aside accordingly. This Court finds that the graver charge for the offence under Section 338 IPC would comprehend the charge for the offence under Section 337 IPC and, as such, no useful purpose would be served by remanding the case on this point. The appellant has been facing the trial since long. Since the graver offence under Section 338 IPC would

encompass the offence under Section 337 IPC, therefore, this Court while exercising its power of appeal finds that the interest of justice would be served by recording the conviction of the appellant only for the offences under Sections 279 IPC and 338 IPC. The judgment of conviction of the trial Court for the offence under Section 279 IPC and 338 IPC is affirmed in this appeal, whereas the judgment of conviction of the trial Court qua the offence under Section 337 IPC is reversed.

10. The counsel for the appellant submitted that harsh punishment has been awarded by the trial Court to the appellant in this case. The sentence must be commensurate with the gravity of the offence. No mens rea is involved in the accident. Accidents sometime take places on account of distraction of one's thinking process or due to some other reasons. So considering the facts and circumstances of the case, this Court reduces the sentence of the appellant in this case qua the offence under Section 338 IPC, whereas the sentence of appellant for the offence under Section 279 IPC is not disturbed in this appeal and is affirmed. The sentence of appellant for the offence under Section 338 IPC is reduced to a period of nine months rigorous imprisonment, whereas the sentence of fine thereunder is maintained in this appeal alongwith its default imprisonment. With the reduction of sentence of appellant to a period of nine months for the

offence under Section 338 IPC, there is no other merit in this appeal and the same is hereby dismissed. Let the appellant be taken into custody and be sent to jail to serve out his sentences of imprisonments. Both the sentences of imprisonments shall run concurrently.

Still feeling dissatisfied by the judgments passed by the Courts below, the accused/convict has filed the instant revision petition before this Court, notice of which was given to the respondent-State, which put in appearance through counsel.

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

Learned counsel for the revisionist has contended that Baldev Singh, Conductor of the bus has not supported the prosecution story, which causes dent in the case of prosecution and benefit thereof should be given to the accused.

Whereas learned State counsel has submitted that even if statement of Baldev Singh is ignored, there is sufficient evidence on record to prove guilt of the accused in the form of statement of Jaswant Singh, driver of the bus, and Sukhwinder Kaur, Chaman, Sanjay, injured, who have supported the prosecution story on material aspects.

After hearing learned counsel for the parties, I find that the prosecution had successfully established that accused Varinder Singh was author of the accident in which several persons i.e. Dara Singh, Chaman, Sukhwinder Kaur, Rajinder Singh, Sanjay, Darbara Singh and Amar Singh had received injuries. Jaswant Singh being driver of the bus in

question, which had met with an accident and the complainant in this case, who had lodged report with regard to the mishap with the police soon after the accident is a witness, whose presence at the spot comes out to be natural and probable. Similarly other eye-witnesses namely Sukhwinder Kaur, Chaman and Sanjay Kumar having suffered injuries in the accident are stamped witnesses and their presence at the spot cannot be doubted. All those witnesses are not shown to have any motive to involve the accused in this case wrongly or to depose against him to secure his conviction. Sukhwinder Kaur, Chaman and Sanjay Kumar having suffered injuries would have been the last persons to try to screen the actual culprit and involve the accused in this case falsely since it is always earnest endeavour of such victims to ensure that the person responsible for bring misery to them is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

The ocular evidence is dully supported by the medical evidence. The investigation in this case has been conducted in a fair and impartial manner.

It is the version of the accused that he was not at fault in happening of the accident and as a matter of fact one tyre of the truck had come out of the hub, resultantly the truck was coming in a zig zag manner. In that way, the accused does not dispute the truck hitting the bus though he tried to come up with a plea that the accident had taken place not on account of any fault in his driving but due to sudden mechanical defect. However, the defence version is not proved at all on the file. The

accused having taken up a specific plea in that regard, it was for him to produce evidence in that respect but he failed to do so. The accused has not examined any mechanic in that regard. Therefore, his such plea is clearly an afterthought and seems to have been invented to escape criminal liability. However, from the overwhelming evidence adduced by the prosecution, the guilt of the accused stands established conclusively and affirmatively. The accused is specifically named in the FIR. The accidental truck had been taken in possession by the police from the spot. It is clearly established on the record that accused showed lack of care and caution while driving the offending truck on a public way in a dare devil manner throwing caution to the winds not caring for the lives of the other commuters on the road. He failed to exercise care and caution expected to him while driving the truck on the public way and by his such wrongful driving caused the accident in which several passengers of the bus suffered simple as well as grievous injuries. The accused had failed to render any reasonable or plausible explanation of his alleged false implication in this case.

The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt.

The learned counsel for the revision petitioner has prayed that sentence of the accused – convict be reduced keeping in view the fact that he is a first offender, a poor man and sole bread winner of his family. However, this request has been opposed by learned State counsel.

I on my part feel that the accused by rash and negligent driving of the bus had caused injuries to several human beings. 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.

In view of the above, I find no illegality or infirmity in the judgment passed by Additional Sessions Judge, SAS Nagar(Mohali), as regards the conviction and sentence part, those are upheld and revision is found to be without any merit and is dismissed accordingly.

Varinder Singh petitioner – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, SAS Nagar(Mohali) is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

29.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**