

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

CRR-1977-2010(O&M)

Date of decision:-13.3.2020

Madan Lal

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.P.S. Jammu, Advocate
for the petitioner.

Mr.Harpreet Kaur, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 9.4.2008 passed by Additional Chief Judicial Magistrate, Sirsa vide which he had convicted accused Madan Lal for the offences under Sections 279, 337, 338, 427 and 304-A IPC and order dated 10.4.2008 vide which the said accused was sentenced to undergo rigorous imprisonment for a period of six months under Section 279 IPC, rigorous imprisonment for a period of six months under Section 337 IPC, rigorous imprisonment for a period of one year under Section 338 IPC, rigorous imprisonment for a period of six months under Section 427 IPC and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for the offence under Section 304-A IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month, all the

sentences were ordered to run concurrently, as well as judgment dated 13.7.2010 passed by Additional Sessions Judge, Sirsa vide which the judgment of conviction and order of sentence passed by the trial Magistrate were affirmed and the appeal filed by the accused – convict was dismissed.

The accused-convict – Madan Lal, who is petitioner before this Court prays that the revision be accepted, the impugned judgments of his conviction and order of sentence passed by Additional Chief Judicial Magistrate, Sirsa and judgment in appeal by Additional Sessions Judge, Sirsa 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 10.9.1998, Head Constable Gaje Singh along with other police officials from Police Station Rania, District Sirsa was present at village Jagmalera in connection with patrolling and crime detection when at about 3:15 p.m., he received a VT message from Police Post Kariwala that an accident had taken place at Jiwan Nagar Chowk; as such, the police party proceeded towards that place and observed that an accident had taken place between the a bus and car and the injured had been taken to Civil Hospital, Sirsa; then the police party went to the said hospital; Sukhchain Singh, Vijay Kumar and Gurmail Singh injured were admitted there; HC Gaje Singh sought opinion of the attending doctor in writing with regard to fitness of such injured to make statement, however the doctor declared them unfit for that purpose; then HC Gaje Singh came across Manjit Singh son of injured Gurmail Singh, who had seen the accident and he got his statement recorded with HC Gaje Singh, in which

he stated that on that very day at about 12:00 noon while he was standing near Maruti car bearing registration No.DL-4C/8493 at Jiwan Nagar Chowk and Sukhchain Singh, Vijay Kumar and Gurmail Singh - father of complainant were talking behind the Maruti car; in the meanwhile, a private bus bearing registration No.HR-39/2929 being driven in a rash and negligent manner came from Ellenabad side and it rammed into Sukhchain Singh, Vijay Singh and Gurmail Singh, in the process, they received injuries; he, Gurnam Singh, Jeet Singh and Shamsher Singh pulled out the injured, while they were below the bus and removed them to Civil Hospital.

The statement was signed by complainant Manjit Singh. HC Gaje Singh appended his endorsement on the said statement and sent ruqa to the police station, on the basis of which formal FIR No.314 dated 10.9.1998 was registered. The police party went to the spot. The bus and maruti car were taken into possession. Statements of witnesses were recorded. Since Sukhchain Singh injured had succumbed to the injuries suffered by him, offence under Section 304-A IPC was added in the FIR. The accused was arrested in this case and released on bail since the offence happened to be bailable. During the course of investigation, statements of various witnesses were recorded. Several documents were taken into police possession.

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

On presentation of challan in the Court of Additional Chief

Judicial Magistrate, Sirsa, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Additional Chief Judicial Magistrate, Sirsa finding that charge for offences under Sections 279, 337, 338, 427 and 304-A 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 prosecution.

During the course of prosecution evidence, the prosecution examined in as many as seven PWs as per details below:

PW1 Manjit Singh complainant provided the ocular version of the incident supporting the prosecution story on material aspects. He proved the statement made by him to the police with regard to the accident as Ex.PA.

PW2 HC Gaje Singh, since promoted as ASI, who had carried out the investigation in this case deposed in that regard proving various documents.

PW3 Vijay Kumar provided the eye-witness account of the accident deposing in consonance with the prosecution story.

PW4 Prithvi Raj EHC, an attesting witness of recovery memo Ex.PE vide which RC and DL of the bus had been seized deposed in that regard.

PW5 Gurmail Singh, while supporting the prosecution story on material aspects stated that his left leg was amputated and he had become unconscious; that the driver of the offending bus had run away

and the fact that the bus was being driven by Madan Lal was brought to his notice by other passengers and he did not see the driver. On that point he was declared a hostile witness and permission was granted to the Public Prosecutor to put questions to him in the form of cross-examination which he availed of.

PW6 Dr.G.S. Somani, Medical Officer, G.H. Sirsa provided the medical evidence stating that on 10.9.1998, he had medico legally examined Gurmail Singh injured and found two injuries on his person. He proved copy of his MLR as Ex.PW6/A, pictorial diagram showing the seats of injuries as Ex.PW6/B and intimation sent from the hospital to the police with regard to arrival of the injured as Ex.PW6/C. Going further, the witness stated that on 11.9.1998, he had conducted postmortem examination on the dead body of Sukhchain Singh. He proved his postmortem report as Ex.PW6/E stating that the cause of death in his opinion was as a result of haemorrhage and shock.

PW7 Constable Amrik Singh proved the mechanical report as Ex.PW7/A.

PW8 Pawan Kumar, Photographer proved photographs of the offending vehicles.

With that the evidence of the prosecution stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to accused but he denied the allegations contending that he is innocent and has been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Additional Chief Judicial Magistrate, Sirsa convicted and sentenced the accused as mentioned supra and the appeal preferred by accused against the judgment of conviction and order of sentence passed by the Additional Chief Judicial Magistrate, Sirsa was also decided against the accused by learned Additional Sessions Judge, Sirsa, which left petitioner – accused aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record.

In this case PW1 Manjit Singh and PW3 Vijay Kumar, eye witnesses had fully supported the prosecution story on material points. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and variations in their statements 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 witnesses have deposed in a natural and truthful manner unlike tutored witnesses, who depose in a parrot like manner. I find presence at the spot of both the

witnesses to be likely and probable and account given by all of them to be worthy of reliance.

PW5 Gurmail Singh had also supported the prosecution story on several aspects. Though on the point of identity, he was not very sure and stated that bus was being driven by Madan Lal and he was so informed in that regard by other passengers as he himself had not seen him driving the bus. But then Madal Lal being driver of the bus is established from the other evidence adduced by the prosecution including statements of PW1 Manjit Singh and PW3 Vijay Kumar. 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.

The medical evidence corroborates the ocular evidence. 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.

It comes out that the accused was driving the bus 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 bus on the public way and by his such wrongful driving caused the accident in which Sukhchain Singh, an innocent person has lost his life and Vijay Kumar and Gurmail Singh suffered injuries.

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

were justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

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.

I on my part feel that the accused by rash and negligent driving of the bus had caused death of one human being and injuries to two others. 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 case, 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 judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly.

Madan Lal – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Sirsa is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

13.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No