

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

CRA-S-4337-SB-2016

Date of decision:-11.5.2022

Brajesh Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Argued by: Mr.Sahil Khunger Advocate for
Mr.M.S. Bedi, Legal Aid Counsel for the appellant.

Mr.Harbir Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Brajesh Singh son of Attar Singh, resident of Mohalla Shiv Nagar near Railway Crossing, Jalandhar was tried by Sessions Judge, Jalandhar in case FIR No.1 dated 3.1.2015 for the offences under Sections 304, 337, 338 and 427 IPC and 174 & 175 of the Railways Act, 1989 (hereinafter referred to as the Act), Police Station GRPS Jalandhar.

2. Briefly stated, facts of the case as per the prosecution story are that on 3.1.2015 at about 8:40 a.m. while the appellant-accused was posted as gate-man on the railway crossing having Gate No.KM-6/8-9 Gate 6-C near Railway Station Khojewal, he had kept the railway crossing gate open and when a tractor trolley being driven by Chhote Lal was passing through the railway crossing gate, then it was hit by train No.4JF/74934DN, resulting in death of three persons, namely, Bhajan Singh, Paramjit Singh and Chhote Lal and in that very incident grievous

hurt was caused to Luies Yonus Tirkey and Smt.Surinder Kaur, who were travelling in the train thereby committing offence under Section 304 IPC i.e. culpable homicide not amounting to murder and causing grievous and simple hurt by an act endangering life or personal safety of others punishable under Sections 338 and 337 IPC respectively and in addition committing offence of mischief causing loss/damage to the amount of Rs.50/- and upwards. Further allegations against him were that he while working as railway servant, had obstructed the running of the train No. 4JF/74934DN as well as endangered the safety of the railway passengers and persons crossing the railway gate by his rash and negligent act and omission due to disobedience of the instructions/directions under the Railway Act, 1989.

3. On completion of trial the accused was convicted for the offences under Sections 304-A and 338 IPC and under Section 175 of the Railways Act, 1989 vide judgment dated 1.11.2016 and vide order of the even date, he was sentenced as under:

Offence	Rigorous imprisonment	Fine	In default of payment of fine
304-A IPC	2 years	Rs.2,00,000/-	Rigorous imprisonment for 4 months
338 IPC	2 years	Rs.1,000/-	Rigorous imprisonment for 1 month.
175 of The Railways Act	2 years	Rs.1,000/-	Rigorous imprisonment for 1 month.

All the substantive sentences were ordered to run

concurrently. It was ordered that out of the fine imposed, Rs.50,000/- be paid to the nearest legal heirs of deceased Bhajan Singh, Rs.50,000/- to the nearest legal heirs of deceased Paramjit Singh; and Rs.50,000/- to the nearest legal heirs of deceased Chhote Lal. An amount of Rs.25,000/- each was ordered to be paid to injured Lonjinus Tirkey and Surinder Kaur, whereas remaining amount of Rs.2,000/- was directed to be applied in defraying the expenses incurred by the prosecution.

4. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused/appellant had preferred the present appeal before this Court, which was put up on 3.12.2016 when it was Admitted for regular hearing. On an application having been filed by the Appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed on 21.2.2017. Now the case has come up for regular hearing.

5. I have heard learned counsel for the Appellant-accused and learned State counsel besides going through the record.

6. Learned trial Court by proper appraisal of facts and correct interpretation of law has rightly come to the conclusion that though the prosecution had not been able to bring home guilt to accused for the offences under Sections 304 and 308 IPC as well as under Section 174 of the Act, thereby acquitting him of those offences it had successfully established that on 3.1.2005 at about 8:40 a.m. while appellant/accused was posted as gate-man on the railway Gate No.KM-6/8-9 Gate C-6 near Railway Station Khojewal, he kept the said railway crossing gate open, due to which the tractor trolley driven by Chhote Lal passed through the

railway crossing gate and train N.4JF/74934DN struck against the tractor trolley, resulting in death of three persons, namely, Bhajan Singh, Paramjit Singh and Chhote Lal, besides causing grievous hurt to Luies Yonus Tirkey and Smt.Surinder Kaur and furthermore the Appellant/accused being a railway servant while being on duty endangered the safety of railway passengers and the persons crossing the railway gate by his rash and negligent act and omission by disobeying the instructions, directions and rules made under the Act. In that way, he was convicted for the offences under Sections 304-A, 338 of IPC as well as under Section 175 of the Act.

7. The conclusion so reached is fully supported by the evidence adduced by the prosecution oral as well as documentary. The material witnesses for the prosecution happened to be PW3 Abhay Kant Diwakar, Assistant Driver of the ill-fated train, whereas Harbhajan Singh was Head Driver. He had categorically stated that railway gate had been kept open by accused Brajesh Singh, resulting in the accident. PW9 Sushil Kumar Aggarwal, Assistant Divisional Engineer of Railway had inspected the spot, preparing the joint report with regard to causes and reasons for happening of the accident. PW24 Lonjinus Tirkey was travelling in the ill-fated train and he had suffered injuries in the mishap. He had stated that the gate-man of the railway crossing had kept the gate open. PW25 Smt.Surinder Kaur also travelling in the train and having suffered injuries in the mishap supported the prosecution story.

8. The medical evidence adduced also corroborates the ocular evidence inasmuch as PW16 Dr.Ravi Seth had medico legally examined

Smt.Surinder Kaur finding multiple injuries on her person. She had been operated upon also. As deposed by this witness, if surgery was not operated at proper time, the patient could have died. In that way, the injuries were dangerous to life. PW17 Dr.Parshotam Lal Mahindru had medico legally examined Lonjinus Tirkey and proved medical documents. PW18 Dr.Rajwinder Kaur had conducted postmortem examination on the dead body of Chhote Lal on 3.1.2015, preparing report in that regard, giving the cause of his death as on account of multiple injuries on vital organs sufficient to cause death in ordinary course of nature. She stated that possibility of sustaining the injuries in railway accident could not be ruled out. This doctor had also conducted postmortem examination on the dead bodies of other deceased Harbhajan Singh and Paramjit Singh finding multiple injuries on their bodies giving the same cause of their death.

9. PW26 SI Mujhail Ram, who had carried out the investigation in this case deposed in that regard. The remaining evidence adduced by the prosecution duly supports and corroborates the prosecution story.

10. It may be mentioned here that the accused could not give any plausible or convincing explanation, rather as has been observed by the trial Court he had been changing his pleas at different stages. He had taken up the plea that some unknown persons forcibly opened the railway crossing gate, which had been closed by him but that plea was abandoned by him midway.

11. Although the accused was prosecuted on the charge of culpable homicide, but the trial Court on analysis of the evidence

available on the record came to the conclusion that he was rather guilty of negligence and it was a case of accident, which had taken place on account of lack of care and caution on the part of the appellant/accused. The trial Court has dealt with the matter in a very detailed and methodical manner under various headings. Various pleas taken by the defence counsel have been discussed but not found to be convincing.

12. The impugned judgment of conviction passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Similarly with regard to the sentence portion, I find that no case is made out for reduction in sentence. The appellant/accused by his rash and negligent acts and failure to perform his official duty had caused death of three innocent persons and hurt to another two persons. He cannot be let off in a light manner by reducing the sentence of imprisonment or quantum of fine. A perusal of the custody certificate placed on record by the State counsel goes to show that he has already undergone the substantive sentence of 2 years of imprisonment on 16.1.2017 and was undergoing his sentence in lieu of fine when he was released on bail on 27.3.2017 as per the order passed by this Court by suspending his remaining sentence.

13. The impugned judgment of conviction and order of sentence are upheld, whereas the appeal is found to be without any merit and the same is dismissed accordingly.

A copy of this order be sent to Chief Judicial Magistrate, Jalandhar to recover the amount of fine from the appellant/accused and if

he fails to pay the same within a period of one month, then he be got arrested and sent to jail for undergoing imprisonment in default of payment of fine.

11.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes