

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-1988-2008(O&M)

Date of Decision:-18.10.2022

Pawan Kumar.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sat Narain Yadav, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed against the order dated 11.09.2008 passed by the learned Sessions Judge, Narnaul vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 22.11.2006 passed by the learned Sub Divisional Judicial Magistrate, Mohindergarh has been dismissed.

2. The case of the prosecution is that on 15.06.1997 at about 4.30 PM Head Constable Desh Raj along with constable Satbir and Constable Kailash Chand were present on the platform of the railway station in Mohindergarh. Shyam Sunder Sharma Station Master presented a memo to Head Constable Desh Raj to the effect that he received information from Guard. As per the information received, train no.9701 UP Express had

collided with an empty private bus at a level crossing gate near Gudha Kemla Station. The driver and the conductor of the bus were in serious condition. They were taken to the hospital by the villagers. Engine No.6359 was also damaged. It was stated that the driver of the bus was driving his vehicle in a rash and negligent manner. He had damaged the train engine while driving the bus. On receiving the memo a formal First Information Report No.303 dated 15.6.1997 under Sections 279/336/337 IPC and 161 of Railway Act was registered against the driver of the Bus. During the course of investigation, the bus bearing no.RJ-18p-0618 was taken into possession. The conductor and the driver were later on admitted to All India Institute of Medical Science at New Delhi. The conductor of the bus namely Ramesh Kumar succumbed to his injuries caused due to the rash and negligent driving by the driver of the bus namely Pawan Kumar-petitioner.

3. After completion of investigation the challan was submitted and thereafter charges came to be framed against the petitioner under Sections 279/336/337/304-A IPC and 161 of Railway Act.

4. In order to substantiate its case, the prosecution examined Krishan Avtar son of Mangal Ram as PW-1, Satish Kumar Assistant as PW-2, Sub Inspector Suresh Pal as PW-3, Vijay Kumar son of Amar Singh as PW-4, Madan Lal son of Chuni Lal as PW-5, Subash son of Kirori Lal as PW-6, Satish Kumar son of Sadhu Ram as PW-7, Shyam Sunder Sharma as PW-8 and Bhoop Singh Motor Mechanic as PW-9. The Statement of the accused/petitioner under Section 313 Cr.PC was recorded and all the incriminating material was put to the accused-petitioner who denied all the allegations but failed to lead evidence in his defence.

5. The prosecution examined Krishan Avtar as PW-1 who was the driver of the train at the time of accident. He stated that one Satish Kumar was also sitting with him as an Assistant. He was crossing the unmanned level crossing near Gudha Kemla station. He had applied all the brakes, but due to negligent driving by the driver of the bus, the train collided with the bus. He deposed that the crossing was an unmanned level crossing, where this accident took place. He deposed that the driver of the bus tried to cross the railway line, when the train was coming to Mohindergarh. PW-2 Satish Kumar Assistant Driver of the train appeared in the court. As per his statement he was working as an Assistant at the time of the accident. He was sitting with the driver Krishan Avtar. He stated that the driver of the bus was driving his vehicle in a rash and negligent manner, therefore, this accident took place. The driver of the train had applied all its brakes and every effort was made to prevent the accident. He identified the accused/petitioner present in the court. PW-3 Suresh Pal Sub Inspector appeared in the court. He was posted at the All India Institute of Medical Science, New Delhi. On 15.6.1997 he handed over the dead body of Ramesh Kumar to his legal heirs after the post mortem. PW-4 Vijay Kumar was a formal witness in this case. He was surety at the time of taking the offending vehicle on Superdari. PW-5 Madan Lal appeared in the court. He was also a formal witness in this case. He took the vehicle on Superdari. PW-6 Subhash son of Kirori Lal appeared in the court. As per his statement deceased Ramesh Kumar was his real brother, who was posted as a conductor on the offending bus. He deposed that he was not present at the time of accident. PW-7 Satish Kumar appeared in the court. He took the photographs after the accident and produced the same on the file. PW-8

Sham Sunder Sharma retired station superintendent appeared in the court. As per his statement he had made the complaint to the police after he received information from the Guard. He deposed that he was not present at the time of accident, although, he made a complaint on the basis of a memo received from the Guard on duty. PW-9 Bhoop singh, Motor mechanic appeared in the court. He mechanically examined the offending vehicle and found the bus to be damaged.

6. Based on the evidence led, the petitioner came to be convicted by the court of Sub Divisional Judicial Magistrate, Mohindergarh vide judgment and order of sentence dated 28.11.2006 as under:-

Name of Convict	Under Section	Sentence
Pawan Kumar	279 IPC	RI 02 months with fine of Rs.500/- and in default of payment of fine further RI for 15 days
	304-A IPC	RI 01 year with fine of Rs.1000/- and in default of payment of fine further RI for 02 months.

7. Aggrieved by the judgment and order of sentence dated 28.11.2006 passed by the Trial Court, the appellant preferred an appeal, which came to be dismissed by the Court of learned Sessions Judge, Narnaul leading to the filing of the present revision petition against the aforementioned two orders.

8. The learned counsel for the petitioner contends that there was no evidence that the petitioner was driving the bus at the time of accident. No test identification parade was conducted to establish the identity of the petitioner more so when the witnesses did not known him prior to the occurrence. His identification for the first time in court was insufficient to

affix liability upon him.

He contends that there was no material on the file to establish that the bus was being driven in a rash and negligent manner. The statement of PW-1 Krishan Avtar was to the effect that the occurrence took place at an unmanned railway crossing and the topography of the area was such that the railway crossing was not visible from a distance to the petitioner. Therefore it could not be held that the bus was being driven at a high speed or that the bus driver was negligent.

He lastly contends that even otherwise, since the petitioner was the only bread winner of the family and had faced the agony of Trial since 1997, he deserves the concession of grant of probation.

9. The Counsel for the State on the other hand submits that the offence is well proved as is apparent from the concurrent findings of guilt recorded by the courts below. He contends that the identity of the petitioner has been established from the statements of the driver of the train Krishan Avtar who was accompanied by Satish Kumar, Assistant. Both of the said witnesses appeared in the witness box as PW-1 and PW-2 and asserted that the accident was the consequence of rash and negligent driving of the petitioner. He contends that as per the mechanic's report the front and back portion of the bus was damaged and since the occurrence took place at an unmanned railway crossing, the petitioner being the driver of the bus ought to have been aware while driving the vehicle. He thus contends that there is no merit in the present petition and same ought to be dismissed.

10. I have heard the learned counsel for the parties at length.

11. In the present case the identity of the petitioner has been clearly established by PW-1 Krishan Avtar, driver of the train and PW-2 Satish

Kumar, being his Assistant. The petitioner was the bus driver and Ramesh Kumar the conductor were both injured in the accident which subsequently lead to the death of Ramesh Kumar, conductor. Since the train had come to a halt at the spot, PW-1 and PW-2 had ample opportunity to identify the petitioner as the bus driver at the spot. Apparently the occurrence had taken place at an unmanned crossing and it was the duty of the accused/petitioner being the driver of the bus to drive the bus carefully and at a low speed so as to avoid any mishap. The occurrence had taken place as the petitioner drove the bus rashly and negligently so as to cross the railway level crossing before the arrival of the train leading to the accident. Further PW-9 who had conducted the mechanical examination of the bus has testified that the brakes were intact. There is no evidence on the file to show that the brakes of the bus had failed prior to the accident. Therefore no benefit can be extended to the petitioner on that count.

Thus it is clearly established that the occurrence in question took place on account of the rash and negligent driving of the petitioner who has been duly identified at the spot by the witnesses who are the most natural witnesses.

In view of the above, I find no merit in the present revision petition and the same is therefore dismissed.

12. With regard to the imposition of sentence, the Hon'ble Supreme Court in ***Chandramohanan Nair Vs. State of Kerala 1994 SCC (Cri) 1750*** has reduced the sentence to 03 months rigorous imprisonment on account of the fact that the occurrence had taken place in the year 1981.

The Punjab & Haryana High Court in ***Bhagwant Singh Vs. State of Punjab 2010(1) RCR (Criminal) 435*** has reduced the sentence to a

period of 03 months and 10 days where the occurrence had taken place on 08.02.1987.

The Rajasthan High Court in the case of *Ramsahai Vs. State of Rajasthan* 2020(2) Crl. L.R.(Raj.)665 has reduced the sentence to a period of 03 months and 07 days.

Keeping in view the aforementioned precedents, since the occurrence in the present case pertains to the year 1997 and the petitioner is a first time offender, I modify the sentence and reduce it to a period of 03 months. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

October 18, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No