

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

CRR-3934-2012 (O&M)

Reserved on : 26.05.2023

Date of Pronouncement: June 08, 2023

Mastan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Gahlawat, Advocate, for the petitioner.

Mr. Amit Shukla, AAG Punjab

HARKESH MANUJA, J.

1. By way of present revision petition challenge has been made to the judgment dated 03.11.2011 vide which the learned CJM, SAS Nagar (Mohali) convicted the petitioner under Sections 279 and 304-A IPC and sentenced him to undergo RI for six months under Section 279 IPC and RI for two years under Section 304-A IPC, besides to pay a fine of Rs.10,000/- and in default thereof to further undergo RI for six months under Section 304-A IPC as well as judgment dated 17.11.2012 vide which learned Additional Sessions Judge, SAS Nagar (Mohali) even dismissed the appeal.

2. Brief facts of the case as projected by the prosecution are that on 08.07.2006 at about 4.00 PM, Devinder Singh/ complainant alongwith his father-in-law Joginder Singh (since deceased) was going on foot from Phase-V to Gurudwara (Temple) of Phase- VI for paying obeisance. When he and his father-in-law Joginder Singh reached about 100 yards ahead of the Chowk of Dara Studio in Phase-VI,

Mohali at that time his father-in-law was going ahead of him and in the meantime a Haryana Roadways bus bearing registration No. HR-68-4376 came from the side of Kharar on full speed being driven in rash and negligent manner, without even blowing any horn, hit Joginder Singh, his father-in-law. It was alleged that thereafter, Joginder Singh fell down along the edge of the road and sustained injuries on his head as well as other parts of the body. Driver of the bus (accused/petitioner) stopped the bus and took his father-in-law Joginder Singh to Civil Hospital, Mohali in the same bus. When Devinder Singh/complainant was busy in looking after his father-in-law Joginder Singh, in the meantime, taking advantage, petitioner / driver of the bus went away. Joginder Singh was referred from Civil Hospital, Mohali to PGI, Chandigarh where he was declared brought dead. It was pleaded that accident took place on account of rash and negligent driving of the bus, being driven by Mastan Singh, petitioner at a very high speed and without blowing any horn. The statement of the complainant was recorded by ASI Sukhdev Singh which was duly signed and FIR dated 09.07.2006 was registered under Sections 279 and 304-A IPC. After the completion of investigation, Mohali Police submitted its final report under Section 173 Cr.P.C. against the petitioner who was subjected to trial.

3. Vide judgment dated 03.11.2011, the learned CJM, SAS Nagar (Mohali) convicted the petitioner under Sections 279 and 304-A IPC and sentenced him as follows:-

(i) RI for six months under Section 279 IPC:

(ii) RI for two years and to pay a fine of Rs.10,000/- or in default to further undergo RI for six months under Section 304-A

IPC.

4. Aggrieved against the impugned judgment dated 03.11.2011, petitioner filed appeal in the Court of the learned Additional Sessions Judge, SAS Nagar (Mohali), but the same was dismissed vide judgment dated 17.11.2012.

5. Present revision petition has been filed impugning both the aforementioned judgments dated 03.11.2011 and 17.11.2012 passed by the Courts below.

6. Learned Counsel for the petitioner primarily made submissions on two counts. Firstly, he submits that the presence of complainant - PW1 at the place of incident itself was doubtful as according to his statement, he took the deceased to Civil Hospital Phase VI along with the accused and then to PGI Chandigarh; but surprisingly no document has been proved on record by the prosecution to establish this. Secondly, he submits that the learned trial Court did not consider the evidence of PW-6 and the defence witness DW-1 thoroughly, where the defence witness brought the record showing that the bus in question departed from UNA for Panchkula at 15.25 PM and it was next to impossible to cover the distance of about 130KM in 35 minutes as per the story of the prosecution where it is alleged that the accident took place at 04.00 PM. In view of these submissions, he further contends that it cannot be said beyond reasonable doubt that this accident was caused by the bus being driven by the accused/ petitioner and therefore, the petitioner was liable to be acquitted.

7. On the other hand, learned State counsel submits that both these arguments have been dealt by the learned appellate Court in detail and no interference is warranted at this stage.

8. I have heard learned counsel for the parties and gone through the paper-book as well as the records of the case in detail. I find substance in the arguments raised by the learned counsel for the petitioner. It is settled principle of law that in criminal cases the case against accused should be proved beyond any reasonable doubt. Accused should be held guilty only if in the facts and circumstances of the case, no other possible explanation can come and in case of there being slightest of doubt, no matter how small it is, the benefit has to be given to the accused. In **B.N. Mutto & another v. Dr. T.K. Nandi** (1979) 1 SCC 361, the Hon'ble Apex Court observed thus:-

"It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt

begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in R.V. Fantle reported in 1959 Criminal Law Review 584.]"

9. In the present facts and based on evidence available on record, it has been argued by learned Counsel for the petitioner that the offending bus bearing No.HR-68-4376 routed from Shah Talai to Panchkula arrived at Una at 3.00 P.M. and thereafter, departed for Panchkula at 3.25 P.M. and it was not possible for it to reach Mohali within 30-35 minutes and he tried to prove the same by testimony of Ravinder Singh DW-1 who also brought on record Ex.D1 (Copy of Time-Table) and Ex.D2 (Departure of Haryana Roadways bus from Shah Talai), but the same were not believed by the Appellate Court as Ex.D1 and Ex.D2 were not bearing date, bus number besides by whom the same were issued and the documents Ex.D1 and Ex.D2 admittedly were not prepared in the presence of DW-1; nor were those attested by the competent authority.

10. However, for the aforesaid purpose, it would be beneficial to have a look at the testimony of PW-6 who also brought with him the Conductor's Driver's Day Rotta Register Ex.PW6/A pertaining to 8.7.2006. His cross-examination is worth reproducing:

"I was present at duty Inspector at Panchkula on 09.07.2006. The route of bus number HR-68-4376 was from Shah Talai (HP) to Panchkula. It starts from Shah Talai at 12:45 P.M. and reaches at Panchkula at 07:00 P.M. This bus reached well in time on 09.07.2006. It is correct that route of the said bus remained same on 07.07.2006, 08.07.2006 and 09.07.2006 and the bus kept on reaching at Panchkula at about 07:00PM for all the three days. **The time of its reaching at Mohali is about**

06:00PM/05:45 PM. It is incorrect that the bus could have reach at Mohali at 05:00 P.M. It is incorrect that I am deposing falsely.”

11. Now once, the learned Appellate Court believed his statement to determine that the bus in question was being driven by the petitioner on the fateful day, however, in that circumstance, his further cross examination gained significance wherein he stated that it was not possible for the bus to reach Mohali before 5.00 p.m. and the usual time of its reaching at Mohali was 5:45/6:00 p.m. It would require repetition that he was not a defence witness, rather he was a prosecution witness, whose testimony was not only relied upon by the prosecution, but also by the Appellate Court to establish that the offending vehicle was being driven by the accused/ petitioner and the same was required to be relied upon as substantive piece of evidence as regards the route and timings of the bus in question is concerned, which sufficiently established doubt about its involvement in the accident in question. In addition, it is also not the case of the prosecution that accused/ petitioner was apprehended at the place of incident, rather he and offending vehicle were captured on 15.07.2006. In that eventuality, the possibility of being hit by another vehicle cannot be ruled out. While the evidence available on record could be sufficient to fasten a civil liability like in a claim/MACT case, but the same cannot be considered sufficient enough to fasten criminal liability.

12. In such a scenario, other prevailing circumstances cumulatively also tilt the pendulum in favour of petitioner which are as under:-

i. This is admitted position of fact that site plan in the present

case was neither prepared in the presence of the complainant;
nor at his instructions;

- ii. As per the prosecution, statement of complainant was recorded on the next day at PGI Chandigarh at about 8.05 P.M. but the witness said that his statement was recorded at Police Station after lunch;
- iii. In this case, no independent witness was examined, though, accident took place at 4.00 pm and that too at a busy road of a city;
- iv. Neither the record from Civil Hospital, Mohali where the injured/ deceased was taken at the first instance was produced; nor even the investigating officer examined as prosecution witness;

13. In view of the discussion held above, present revision petition is allowed and petitioner is acquitted of the charges after giving him the benefit of doubt.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

June 08, 2023
sanjay

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No