

(1992) 07 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Revision No. 702 of 1985

Amir Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 17, 1992**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 304A, 427

Citation: (1993) 1 ACC 496 : (1994) ACJ 194**Hon'ble Judges:** Harmohinder Kaur Sandhu, J**Bench:** Single Bench**Advocate:** M.S. Sethi, for the Appellant; H.S. Sidhu, A.A.G., for the Respondent

Judgement

Harmohinder Kaur Sandhu, J.

As per case of the prosecution on 10th May, 1982, Kulwant Singh, son of Kundan Singh, a resident of village Chahal Khurd, brought his sugarcane to Batala Sugar Mill in his tractor-trolley. After selling the sugarcane when he was to return to his village, Gurbachan Singh, son of Ujjagar Singh, a resident of village Sarwali, took a lift and sat in the trolley. When the tractor-trolley reached near the house of one Puran Singh in Model Town, Batala, bus No. PJA 243 came from the side of Gurdaspur at a high speed and struck against the trolley as a result of which Gurbachan Singh fell on the road and received injuries on his head. Bus was being driven in a rash and negligent manner by Amir Chand. Injured was taken to the hospital where he expired on the next day on account of injuries received in the accident. Statement of Kulwant Singh was recorded on the basis of which case was registered against Amir Chand, driver of the bus. Bus was taken into possession and after completion of the investigation, challan was presented in court. Amir Chand was tried for offences under Sections 427/304A of the Indian Penal Code by Judicial Magistrate, 1st Class, Batala. Charge u/s 304A of the Indian Penal Code was held to have been proved against him for which he was ordered to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1,000/-. Aggrieved by this judgment dated

4th January, 1985, Amir Chand filed an appeal. The appeal was, however, dismissed by the appellate court of Additional Sessions Judge, Gurdaspur, on 10.5.1985 and conviction and sentence passed by the trial court were affirmed. Amir Chand has now filed the present revision petition assailing his conviction.

2. The case of the prosecution was supported by Kulwant Singh, PW 1 and Dalbir Singh, PW 2. The prosecution also examined Gurdeep Singh, Mechanic, who had checked bus No. PJA 243 and prepared report, Exh. PW 3/A.

3. The contention of the revision petitioner during trial was that no accident had taken place due to his rash and negligent driving of the bus. In fact, the driver of the tractor was negligent and was going at a fast speed. All of a sudden he turned the tractor towards Model Town and due to this abrupt turning the person who was sitting in the trolley fell down, otherwise the bus in question never touched the trolley.

4. I have heard Mr. M.S. Sethi, learned counsel for the revision petitioner and Mr. H.S. Sidhu, Assistant Advocate General, Punjab, for the State.

5. The medical evidence on record shows that death of Gurbachan Singh was caused on account of an injury received by him, which admittedly was caused when he fell from the trolley. The only question to be determined in this case is whether the accident occurred due to the rash and negligent driving of Amir Chand, revision petitioner, or it was the driver of the tractor who was at fault. The accident is alleged to have taken place at about 2 p.m. on May 10, 1982, but no report was lodged with the police by Kulwant Singh, driver of the tractor, on that day alleging that the accident occurred on account of rashness and negligence of the revision petitioner. The case of the prosecution rests only on the testimony of Kulwant Singh whose conduct was quite suspicious and detracted from the evidentiary value of his testimony. The other witness Dalbir Singh was uncle of Kulwant Singh. He was a resident of village Chahal and his presence at the place of the accident was highly unnatural and improbable. At the most he was a chance witness whose testimony cannot be safely relied upon. Puran Singh whose house was situated near the place of the accident and who had witnessed the accident was not examined by the prosecution. According to Dalbir Singh, immediately after the accident, Puran Singh had reported the matter to the police but that statement of Puran Singh has not been produced. The testimony of the alleged eyewitnesses is not corroborated by the photographs of the spot. The Investigating Officer did not explain as to why the photographs of the spot were not taken when he learnt about the accident soon after its occurrence.

6. The contention of the revision petitioner was that his bus had not touched the tractor-trolley and it was on account of abrupt turning taken by the driver of the tractor, while he was driving it at a fast speed which led to the fall of Gurbachan Singh from the trolley. If the bus had struck the trolley with such a great impact so

as to overturn the tractor-trolley, then it must have also suffered some damage but the report of the mechanic, Exh. PW 3/A, shows that bus was not damaged at all and everything was intact. This report itself lends support to the version given in defence. Considering the evidence on record, I am of the view that charge against the revision petitioner was not proved beyond reasonable doubt. I, therefore, accept this revision petition, set aside the conviction and sentence of the petitioner and acquit him of the charge. Fine, if deposited, be refunded to him.