

**(2005) 08 P&H CK 0034**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 378 of 1992

Roshan Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

**Date of Decision:** Aug. 17, 2005

**Acts Referred:**

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

**Citation:** (2006) 1 RCR(Criminal) 795

**Hon'ble Judges:** Surya Kant, J

**Bench:** Single Bench

**Advocate:** P.S. Kang, for the Appellant; J.S. Dhillon, Addl. A.G. Punjab, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

Surya Kant, J.

This criminal revision petition has been directed against the judgment and order dated 16.8.1990, passed by the Chief Judicial Magistrate, Ropar, holding the Petitioner guilty of an offence u/s 304-A IPC and sentencing him to undergo RI for 9 months and to pay a fine of Rs. 500/- and in default thereof, to undergo further RI for one month, as well as against the judgment dated 12.5.1992, passed by the learned Additional Sessions Judge, Ropar, whereby his appeal against the aforementioned conviction and sentence was also dismissed.

2. This criminal revision petition came up for hearing on 2.6.1992 and while admitting the same, the Petitioner was admitted to bail to the satisfaction of learned Chief Judicial Magistrate, Ropar.

3. As per the prosecution case, Swaran Singh son of Karora Singh Saini, resident of Hazara Jhakhian, informed the police on 27.6.1988 at about 11 a.m., that he along with Bachan Singh son of Uttam Singh of his village (since deceased) was going to Kiratpur Sahib. Bachan Singh was on his cycle and was about 20 yards ahead of him

and the complainant was following the deceased on his cycle. When they reached near bus stand Bunga Sahib, bus bearing No. DPE- 9646 came there from the opposite side, which was being driven by the Petitioner in a rash and negligent manner. The bus hit the cycle of Bachan Singh, who was dragged by the bus for some distance and on account of injuries suffered by him, Bachan Singh succumbed on the spot only. The occurrence was witnessed by Prem Chand, a shopkeeper who was at his shop at that time. On the aforementioned statement, ASI Sarwan Das made endorsement Ex. PE/1 and the case was formally registered vide Ex. PE/2. After completing the investigation, Petitioner was put to trial under Sections 279 and 304-A IPC and having been found guilty has been sentenced, as referred to above.

4. While assailing the finding returned by the Courts below in relation to the rash and negligent driving of the Petitioner and/or being responsible for causing the accident in question, learned Counsel for the Petitioner has contended that Swaran Singh, PW is a relation of the deceased whereas PW Gurdev Singh was not shown present by the complainant in his first and untutored version as contained in Ex. PE/1. It is argued that if the eye- witness account of these two persons is discarded, there is overwhelming evidence on record to suggest that the bus was being driven at a normal speed and the deceased all of a sudden came in front of the bus and was himself responsible for the accident. Alternatively, Sh. Kang, learned Counsel for the Petitioner has argued that the occurrence had taken place in the year 1988 and at that time the Petitioner was about 47 years of age. It is argued that during the interregnum, namely, when the trial was pending and/or after his conviction when the Petitioner was pursuing his remedy before the appellate or the revisional Court, he has already retired from service and is now an old person of more than 60 years of age. It is argued that out of total sentence of 9 months awarded by the Courts below, the Petitioner has already undergone actual sentence of about one month and at this juncture of life, it will neither serve the cause of justice nor of equity if he is subjected to undergo remainder of the sentence. It is, thus, argued that it is a fit case for invoking power u/s 4 of the Probation of Offenders Act, 1958. Reliance has been placed on a judgment of this Court in *Balbir Singh v. State of Haryana*, 2004 (3) RCR (Crl.) 310.

5. On the other hand, learned State counsel has argued that from the evidence on record which has been correctly appreciated by the Courts bellow, it is established beyond any doubt that the Petitioner was driving the bus in a rash and negligent manner and is solely responsible for the accident. It has also been argued that having regard to the gravity of the accident in which an innocent person lost his life, no mercy should be shown to the Petitioner by releasing him on probation.

6. I have heard learned Counsel for the parties at length and have gone through the evidence on record with their assistance.

7. It goes without saying that PW-2 Prem Chand is a shopkeeper belonging to the village other than that of the deceased. His shop is located on the road where the accident had taken place. He is not at all an interested witness. The aforesaid eye witness has given a meticulous account of the occurrence and he being a totally impartial witness, the Courts below are fully justified in relying upon his ocular version. This Court in exercise of revisional jurisdiction has no factual basis either to disbelieve the said witness or to discard his statement. He appears to be a natural witness who must have opened his shop by 11 a.m., when the accident took place. His statement alone is sufficient to hold the Petitioner guilty. Consequently, concurrent finding of fact recorded by the Courts below, so far it pertains to the conviction of the Petitioner u/s 304-A IPC, does not call for any interference and is accordingly upheld.

8. Coming to the second contention, it is a fact that the occurrence had taken place in the year 1988 and the Petitioner faced trial for two years. He was enlarged on bail while admitting this revision petition on 2.6.1992. During this period of 13 years, the Petitioner has retired from service and going by his age which finds mention in the judgments of the Courts below, he appears to be about 62 years old. Having regard to these peculiar facts and mitigating circumstances, there appears to be no service to the cause of administration of criminal justice and/or to the society if the Petitioner is directed to undergo the remainder of the sentence. Consequently, while upholding the conviction of the Petitioner u/s 304-A IPC, the sentence of imprisonment of 9 months as awarded to him by the Courts below is modified to the extent that instead of undergoing the above mentioned actual sentence, the Petitioner is directed to be released on probation on furnishing surety bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of CJM, Ropar, subject to the further condition that fine of Rs. 500/- imposed by the Courts below, is enhanced to Rs. 5,000/-, which the Petitioner is directed to deposit within two months from today. He is also directed to give an undertaking to keep peace and to be of good behaviour for one year and to appear and undergo sentence as and when called for.

With these modifications, the criminal revision petition stands disposed of.

Order accordingly.