

**(2008) 07 P&H CK 0127**

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

**Case No:** Criminal Revision No. 471 of 2001

Sohan Singh and another

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** July 11, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 304A

**Citation:** (2009) 1 RCR(Criminal) 636

**Hon'ble Judges:** Harbans Lal, J

**Bench:** Single Bench

**Advocate:** A.P.S. Deol, with Mr. Devinder Bir Singh, for the Appellant; Manjari Nehru, D.A.G., Punjab, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Harbans Lal, J.

This revision petition has been preferred by Sohan Singh as well as Nazar Singh against the judgment dated 13.3.2001 rendered by the Court of learned Additional Sessions Judge, Ludhiana, whereby he dismissed the appeal against the judgment/order of sentence dated 27.5.1999 rendered by the Court of learned Judicial Magistrate, Jagraon, whereby each of the petitioner was convicted u/s 304-A of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- and in default of payment of the same, the defaulter to further undergo simple imprisonment for 1 month.

2. The minimal facts of the prosecution case are that on 24.8.1996 at 7.50 A.M. Roshan Lal, complainant was standing at the Bus Stand of Village Sadarpura for fetching grocery from Sidhwan Bet for his grocery shop along with other passengers. Harjinderpal Singh (deceased) son of his wife's brother, a student of 10+1 Class was also standing there for boarding the bus. Meanwhile, a bus bearing

registration No. PJG 3256 of Punjab Roadways driven by Sohan Singh came there. Nazar Singh (petitioner) was conductor of this bus. Some passengers were getting into the bus from the front window, whereas other one were boarding the bus through the rear window. He also boarded the bus from the rear window. Harjinderpal Singh and other children were getting into the bus through the front window. Sohan Singh Driver moved the bus. Kewal Singh, Principal of Senior Secondary School, Sidhwan Bet and other members of the staff of the same School as well as the passengers raised hue and cry about it. The driver and conductor moved the bus in a negligent manner despite there being a hue and cry. Harjinderpal Singh fell down and was crushed by the hind tyre of the bus. He was removed to Civil Hospital, Sidhwan Bet where he succumbed to the injuries. The accident occurred owing to the negligence of Sohan Singh Driver as well as Nazar Singh Conductor. Roshan Lal made this statement before Gurcharan Singh SI, who having made his endorsement thereunder, sent it to the Police Station Sidhwan Bet, where on its basis, the case was registered. This Sub Inspector prepared the rough site-plan showing the place of accident, conducted the inquest proceedings on the dead body and got the same subjected to post-mortem examination, took the aforementioned bus along with the documents including the driving license into possession along with Photostat copy of the identity card of Nazar Singh accused, got the offending bus mechanically tested. After completion of investigation, the charge sheet was laid in the Court of Illaqa Magistrate for trial of the accused. Sohan Singh as well as Nazar Singh were charged u/s 304-A of IPC, to which they did not plead guilty and claimed trial.

3. In order to substantiate its allegations, the prosecution has examined PW-1 Kulwinder Singh Photographer, PW-2 Kewal Singh, PW-3 Mangat Singh, PW-4 Roshan Lal, PW-5 Hakam Singh, PW-6 Dr. S.K. Gupta, PW-7 SI Gurcharan Singh (investigator), PW-8 Jagraj Singh and closed its evidence.

4. On closure of the prosecution evidence, when examined u/s 313 of the Code of Criminal Procedure, both the accused denied all the incriminating circumstances appearing in the prosecution evidence against them. They examined Hakam Singh DW-1 in their defence.

5. After hearing the Assistant Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced the accused as noticed earlier. Feeling aggrieved with their conviction/sentence, they preferred appeal which was dismissed on 13.3.2001 by the Court of learned Additional Sessions Judge, Ludhiana. Being undaunted and dissatisfied with the judgments delivered by both the Courts below, Sohan Singh as well as Nazar Singh have preferred this revision petition.

6. I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

7. Mr. A.P.S. Deol, Senior Advocate appearing on behalf of the petitioners, urged with great eloquence that Roshan Lal is the maternal uncle of Harjinderpal Singh and thus he is interested in the success of the case and his presence at the Bus Stand for boarding the bus is highly improbable. As regards Kewal Singh PW-2, if he had witnessed the occurrence at 7.30 A.M, he could not have been present in the School at 18.20 A.M. and, thus, his presence is also rendered highly doubtful. He further contended that their presence is also not established by any circumstantial evidence in the nature of bus ticket etc. as the same have not been produced and proved and, thus by no stretch of imagination, they can be deemed to be present at the time of alleged accident. He further pressed into service that even if the presence of Sohan Singh Driver is established, he cannot be said to have acted with culpable negligence causing this accident and furthermore there is no evidence to reveal that the deceased fell down from the bus on account of negligent driving of the driver. To buttress this stance, he has sought to place abundant reliance upon the observations made by the Apex Court in re: Mohammed Aynuddin @ Miyam v. State of Andhra Pradesh, 2000 (3) RCR (Crl.) 619. He further canvassed at the bar that as alleged by the prosecution, Harjinderpal Singh fell down from the bus while boarding it from the front side window and received injuries on the back of his head and thereafter he was entangled in the rear tyre of the bus and sustained injuries on his abdomen whereafter the passengers raised noise for stopping the bus and on learning about it, the driver stopped the bus, but in the face of this evidence, it cannot be presumed that the driver committed culpable negligence. He further contended that merely because the passenger fell down from the bus while boarding the same, no presumption of culpable negligence can be drawn against Sohan Singh petitioner and furthermore no act of rashness or negligence has been attributed to Nazar Singh, Conductor (petitioner No. 2).

8. Ms Manjari Nehru, learned Deputy Advocate General, Punjab countered these arguments by urging that there is nothing in the evidence to show that Sohan Singh Driver (petitioner) had moved the bus forward after getting signal from the conductor Nazar Singh petitioner and that being so, no assistance can be had from the observations made in re: Mohammed Aynuddin @ Miyam (supra).

I have well considered the rival contentions.

9. The only question to be determined herein is as to whether on the given evidence, the petitioner Sohan Singh can be held guilty of negligent driving. If it is found that the deceased was boarding the bus when it was in motion and fell down beneath the bus and died at the spot, no culpable negligence can be imputed to either of the petitioners. A passenger might fall down from a moving vehicle due to one of the following causes; it could be accidental; it could be due to the negligence of the passenger himself; it could be due to negligent taking off of the bus by the driver. To fasten the liability with the driver for negligent driving in such a situation, there should be the evidence that he moved the bus suddenly before the passenger could

get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. A driver, who moves the bus forward can be expected to keep his eyes ahead and possibly on the sides also. He can take the reverse motion when he assures himself that the vehicle can safely be taken backward. Merely because a passenger fell down from the bus while boarding it, presumption of negligence can be drawn against the driver of the bus. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still, a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and indifference as to the consequence. Criminal negligence is the failure to exercise duty with reasonable, proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable, proper care and precaution.

10. Reverting back to the facts of the case in hand primarily it is to be noticed as whether this accident was witnessed by Kewal Singh PW or Roshan Lal PW or by both. Roshan Lal PW is a relation witness. Of course, relationship is not a factor to affect the credibility of a witness but his evidence has to be scrutinized with due care and caution. It is in his cross-examination that 10-15 seats lay vacant in the bus and the passengers were getting into it, whereas according to cross-examination of Kewal Singh PW, the passenger's were also standing inside the bus. If the seats were lying vacant, the question of the passengers to keep standing does not arise as they would have occupied the vacant seats. If the passengers were standing inside the bus, it implies that there was already a good deal of rush and if it was so, there was no fun for the petitioners to keep the bus stationary to wait for more passengers. The bus being already jam-packed might have left the stoppage. When it was in motion, the deceased being a youth, would have run the risk to catch the bus by running and in that process, was bound to fall which ipso facto does not reflect the culpable negligence on the part of either petitioner.

11. As testified by Kewal Singh PW in his cross-examination, on that day (referring to the date of accident) he had sent his casual leave application through some boy. In this context, reference is required to be made to the evidence of Hakam Singh DW-1, who has deposed from the record being maintained in the official capacity in the School. He has deposed that on 24.8.1996 Kewal Singh Panjabi Teacher/Incharge Principal School came to the School at 8.20 A.M and remained present in the School till 2.00 P.M. It is apt to be borne in mind that the accident took place at 7.50 A.M. Hakam Singh's evidence sharply contradicts the testimony of Kewal Singh PW. Either he (Kewal Singh) is telling a lie that on the date of accident he remained on casual leave or the record produced by Hakam Singh is an outcome of fudging. In such sorry state of affairs, it is very difficult to presume the presence of Kewal Singh at the time of accident. He went on to say in his cross-examination that he had stated in his police statement that the passengers raised noise that a boy by falling has come beneath the bus. When he was confronted with his such

statement, Exh.DA it was not found so recorded therein. Thus, he has introduced material improvements. Under the stress of cross-examination, he has testified that he did not state in his police statement that due to negligence of driver the child fell down. Had the child fallen from the bus due to the negligence of the driver, this witness would have certainly got recorded so in his such statement. He further stated that in his Court statement, he got recorded that the child had come beneath the rear tyre. While volunteering, he deposed that while taking down the evidence, the word "front tyre" has been written. Thus, he has changed his stand from time to time. It is in his further cross-examination that he got free from the place of occurrence at 12.00 noon, whereafter he came to his house and did not go to the School. This evidence again is inconsistent with the above-discussed evidence given by Hakam Singh, defence witness. He regretted his inability to disclose the number of passengers who had boarded the bus from Sadarpura bus stoppage, the place of accident. This evidence explicates that the bus was in motion when the deceased endeavoured to board it. Thus, he might have fallen down from the moving bus due to his own negligence. There is no evidence to the effect that Sohan Singh petitioner moved the bus suddenly before the deceased could get into it or before getting any signal from his co-petitioner. The bus, at the time of accident, being in motion, gives rise to the reasonable amount of certainty and definiteness to the conclusion that the petitioner Nazar Singh had given the signal to move the bus to his co-petitioner by blowing the whistle and on following the same, he moved the bus. This witness Kewal Singh stated that he is unable to recollect whether the conductor had blown the whistle when the bus was to move. He has not categorically deposed that without waiting for the signal from the conductor, the driver had moved the bus. Further, this witness has stated that he is not possessed of the bus ticket. There being no ticket, it is hard to swallow his presence at the time of accident.

12. Coming to the evidence of Roshan Lal PW-4, it is his cross-examination that he cannot say whether the conductor had blown the whistle or not. If the conductor had not done so, the driver would have not moved the bus. This witness as well as Kewal Singh PW seem to have deliberately given an equivocal reply to this material question. Without there being whistle blow, the driver would have not set the bus in motion. Nazar Singh petitioner gave the whistle blow when none of the passengers was in the act of boarding or getting into the bus. Thus, there is no cogent, convincing and clear evidence to the effect that the deceased had fallen down due to the culpable negligence of the driver or the conductor of the bus. The factual scenario herein is squarely covered by the observations rendered by the Hon'ble Supreme Court in re: Mohammed Aynuddin @ Miyam (supra).

13. As a sequel of the above discussion, this revision succeeds and is accepted, setting aside the judgments of both the Courts below. Sequelly, both the petitioners are hereby acquitted of the charged offence.