

(2009) 03 P&H CK 0260

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1890 of 2002

Tejwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 24, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A

Citation: (2009) 5 RCR(Criminal) 526

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Sandeep Mann, for the Appellant; T.S. Salana, D.A.G., Punjab, for the Respondent

Judgement

Harbans Lal, J.

This revision petition has been directed against the judgment/order of sentence dated 25.5.2001 rendered by the Court of learned, Judicial Magistrate First Class, Bathinda whereby he convicted and sentenced the revision petitioner to undergo rigorous imprisonment for six months u/s 279 of IPC and further sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- u/s 304-A of IPC and in default of payment of fine to further undergo rigorous imprisonment for two months and also sentenced him to undergo rigorous imprisonment for six months u/s 429 of IPC with a further direction that all the substantive sentences shall run concurrently as well as the judgment dated 12.9.2002, passed by the Court of learned Additional Sessions Judge, Bathinda vide which he dismissed the appeal.

2. The facts in brief are that on 4.10.1998, Gurlal Singh son of Natha Singh made statement before the police that on the aforesaid day in the noon as usual he left the house in connection with his work, whereas at the same time, his brother Gurjant Singh alias Janti (since deceased) also left the house for grazing young buffaloes and their male calves. When they emerged out of village, they proceeded

along with Bathinda Barnala Road. Gurjant Singh alias Janti along with male buffalo calf was going on kacha portion of the road on the left side whereas he (Gurlal Singh) was driving the male buffalo calf on the left side of the road. Around 2:30 P.M, when they covered a distance of about 500 yards on the G.T. Road towards Bathinda Cantt, meanwhile a bus bearing registration No. PB-11-C-9526 being driven rashly and negligently by the accused came from Rampura side and struck against Gurjant Singh alias Janti as well as the male buffalo calf from behind. The bus ran over Gurjant Singh alias Janti. He (Gurlal Singh) managed to escape with great difficulty. Gurjant Singh alias Janti as well as the male buffalo calf sustained injuries and as its consequence, they both expired at the spot. The bus came to halt after proceeding a little ahead. The driver as also the passengers alighted from the bus and came at the spot. Gurlal Singh along with Dalip Singh proceeded towards police station for reporting the incidence after leaving Dara Singh and Mohan Singh at the spot to guard the dead body. They came across the police officers in the cantt. area. He recorded his statement. On its basis, formal FIR was registered. The accused was arrested. After completion of the investigation, the charge-sheet was laid in the Court of learned Illaqa Magistrate for trial of the accused. The accused was charged under Sections 279/304-A/429 IPC to which he did not plead guilty and claimed trial. To bring home guilt against accused, the prosecution examined PW1 Gurlal Singh, PW2 Dara Singh, PW3 Dr. K.S. Brar, PW4 C-I Jagtar Singh, PW5 Yashpal, PW6 Dr. Suresh Kumar, PW7 Smt. Indu Bala, PW8 ASI Devinder Singh and closed its evidence. When examined u/s 313 of Cr.P.C, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded false implication. He came up with the plea that the accident did not take place due to his negligence. He did not adduce any evidence in defence. After hearing the learned Assistant Public Prosecutor for the State, the learned defence counsel and examining the evidence on the record, the learned trial Court convicted and sentenced the accused as noticed at the outset. Feeling aggrieved with his conviction/sentence, he went up in appeal which met failure as noticed earlier. Being undaunted and dissatisfied with the judgments rendered by both the Courts below, he has preferred this appeal.

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

4. Mr. Sandeep Mann, Advocate appearing on behalf of the appellant urged with great eloquence that there is no evidence to the effect that the petitioner was rash and negligent in driving the vehicle, rather on the given evidence the negligence is established on the part of the deceased as he had come in the middle of the road all of a sudden and met his fate. I regret my inability to be one with Mr. Mann for the discussion to follow hereunder:

5. As is borne out from the evidence of Gurlal Singh PW1 complainant, the bus No.PB-11-C-9526 came from Rampura side driven by Tejwinder Singh accused

present in the Court very rashly and negligently on fast speed and the same hit his brother Gurjant Singh alias Janti and male calf from behind when they were going on the extreme left hand and the bus passed over his brother Gurjant Singh and male calf. The position which emerges out is that the petitioner has admitted the accident. The question arises as to whether he was rash and negligent in driving the bus and the accident took place because of rash and negligence on his part ? As is borne out from evidence of Dr. K.S. Brar PW3, who conducted the post mortem on the dead body, crush injury on the forehead was found and all the bones of skull were found fractured into small pieces. Multiple abrasions were found present on the right abdomen near iliac as well as the left shoulder joint and left knee joint. It speaks volumes of the severity of impact of the bus which hit the deceased as well as the male buffalo calf from behind. A careful perusal of the cross-examination of Gurlal Singh PW1 as well Dara Singh PW2 eye witnesses would reveal that they withstood the test of cross-examination successfully. To put it differently, their evidence could not be impeached in any manner. Their evidence being impeccable, the conviction recorded by the learned trial Court warrants no interference and the same is upheld.

6. Mr. Sandeep Mann, Advocate on behalf of the appellant made a miser- cordious submission that the revision petitioner being in service, having his wife and children to support may be released on probation of good conduct.

7. I have given a thoughtful consideration to this submission. He has placed reliance upon the judgments. Ram Pal v. State of Punjab, 2006 (1) RCR Cri 784, Santokh Singh v. State of Punjab, 2006 (1) RCR Cri 834, Chuni Lal v. State of Haryana, 2006 (1) RCR Cri 844 and Roshan Lal v. State of Punjab, 2006 (1) RCR Cri 795. As transpires from the record, the accident took place wayback in 1998. The petitioner has been facing the agony of trial for the past more than ten years. He is a first offender. He was admitted to bail by this Court on 24.10.2002. He is on bail for the last more than decade.

8. In re: Chuni Lal (supra), this Court was pleased to observe that the accused may be released on probation in a case under Sections 279, 304-A, 337 IPC on the following grounds :

(i) Having remained on bail for a sufficiently long period,

(ii) Accused not a previous convict and did not indulge in any criminal activity during the post conviction period,

(iii) Faced agony of trial for a considerable long period, and

(iv) being the sole bread earner.

9. In re: Rohan Lal (supra), which was also the case u/s 304-A of IPC, the occurrence was 17 years old and the accused was released on probation by this Court. Further in re: Santokh Singh (supra), which was also a case u/s 304-A of IPC, the incident was

17 years old and the accused remained in custody for 15 days. He was also ordered to be released on probation by this Court. In re: Ram Pal (Supra), which was also a case u/s 304-A of IPC, this incident was 16 years old and the accused had remained on bail for more than 13 years and was a first convict. He was also ordered to be released on probation by this Court.

10. Harking back to the facts of the current case, there is nothing on the record to show that the accused- petitioner ever misused the concession of bail. As is borne out from the record, he remained in custody for a period of one and a half month.

11. As submitted by the learned counsel for the petitioner, if the petitioner, who is the sole bread-winner of his family is sent to the prison to undergo actual sentence of imprisonment, it will ruin the entire family. The next kins of the deceased Gurjant @ Janti can still be compensated.

12. Under the above-mentioned circumstances and by placing abundant reliance upon the observations made in the authorities sought to be relied upon by the learned counsel for the petitioner, I deem it a fit case, where benefit of probation should be given. It is directed that the petitioner shall be released on probation for a period of two years u/s 4(1) of Probation of Offenders Act on his furnishing personal bond in the sum of Rs. 25000/- with one surety in the like amount to the satisfaction of the trial Court. The bonds shall be furnished within three months from the date of receipt of certified copy of judgment. During his probation period, he will keep the peace and be of good behaviour. However, he will come and receive sentence as and when required by the Court. He shall deposit Rs. 25,000/- as compensation to be paid to the next kins of the deceased Gurjant @ Janti. On deposit, this amount shall be disbursed to the next kins of the deceased.

13. Section 12 of the Probation of Offenders Act, 1958 reads in the following terms:

12. Removal of disqualification attaching to conviction. - Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release u/s 4 is subsequently sentenced for the original offence.

14. The word "disqualification" used in Section 12 ibid is stated to mean "making someone (sic-unfit) enough for something" and hence disqualification attaching to revision petitioner's conviction cannot be made the basis of his dismissal from service.

15. In re: Iqbal Singh v. Inspector General of Police and others, AIR 1970 Del 240, their lordships have observed as under :

16. Section 12 of the Act uses the word "disqualification" and the meaning given to this word in Webster's Third New International Dictionary is :

- (i) the act of disqualifying or the state of being disqualified" (protesting his disqualification from office under the new law);
- (ii) "something that disqualifies or incapacitates" (A crime conviction is automatically a disqualification for that public office).

The word "disqualify" is also stated to mean - making someone unfit for something. The further meaning given is or that the person may be deprived within the meaning of the word "disqualify" of any right or privilege. We are of the view that the words "disqualification, if any, attaching to a conviction of an offence" as used in Section 12 of the Act would include a person's losing his right or qualification to remain or to be retained in service. Section 12 of the Act, clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of Section 12 and he was saved from suffering any disqualification such as the one which resulted in his dismissal.

In view of the above observations, petitioner's having been released on probation of good conduct, his conviction shall not be a hurdle in his way to get the retiral benefits or other service benefits.