

(2005) 03 P&H CK 0195

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 737 of 1998

Jai Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 11, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 337

Citation: (2005) 14 CriminalCC 681

Hon'ble Judges: M.M. Aggarwal, J

Bench: Single Bench

Advocate: Gaurav Mohunta, for the Appellant; R.D. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Aggarwal, J.

Jai Ram petitioner had been convicted for offence under Sections 279/337/304-A by the court of Shri Sanjeev Jindal, Judicial Magistrate 1st Class, Palwal, vide judgment dated 7.11.1996 and sentenced to undergo RI for six months and to pay a fine of Rs. 1,000/- u/s 279 IPC. In default of payment thereof to further undergo RI for two months; to undergo RI for six months and to pay a fine of Rs.500/- u/s 337 IPC. In default of payment thereof to further undergo RI for two months and to undergo RI for two years and to pay a fine of Rs.5,000/- u/s 304-A IPC. In default of payment of fine to further undergo RI for Six months. He had filed an appeal which had been dismissed by the court of Additional Sessions Judge, Faridabad vide judgment dated 4.7.1998. Against that judgment, the present revision was filed.

2. The case of the prosecution against the present petitioner was that on 11.10.1992 Ashok Kumar and his family members were travelling in a Maruti Van No.DID 8003 from Palwal to Delhi. Udaypal was driver of that van. At about 10 a.m. when they had reached half kilometre ahead of village Baghola, a private bus No.DL-JP-2124 came from the opposite side i.e. Ballabgarh, being driven rashly and negligently by

the present petitioner. It had caused head-on collision with the van, as a result of which Sudha wife of Ashok Kumar, Sumeet (son) aged 8 years and Puneet aged about 6 years died. Ashok Kumar had also received injuries. He got the case registered. After completion of the investigation, the accused was challaned. He faced trial. He was convicted and sentenced as aforesaid his appeal had been dismissed.

3. Counsel for the petitioner pointed out that there is in fact, no evidence against the petitioner as PW2 Ashok Kumar had identified him only in the court and that is no identification. He pointed out that no identification parade was arranged earlier. He also pointed out that there is no evidence against the petitioner as PW1 Mamta does not say anything as against the petitioner-accused. She says that she did not see the driver and also could not say if the van was overtaking the Tonga when occurrence took place. From the statement of Ashok Kumar, it was pointed out that Ashok Kumar had, in fact, identified a wrong person in the court and had further stated that he had not seen the face of the driver and also could not say if on that day there had been rain.

4. The occurrence in this case had taken place at about 10 a.m. on 11.10.1992. The statement of Ashok Kumar had been made before the police at 11.45 a.m. on that very day and in this statement, name of Jai Ram accused-driver has been mentioned and it was further been mentioned that accused had run away after leaving the bus.

5. FIR in this case had been very prompt. The name of the accused-driver is mentioned in the FIR. When there was crowd and many persons were standing in the court and the witnesses had come present after a long time of the occurrence, then possibility of pointing out to a different person as an accused in the court cannot be ruled out especially in an accident case like present one when the witnesses had seen the accused only for a short time at the time of occurrence and the accused had run away. Ashok Kumar PW2 in this case had been examined after about two year of the occurrence. However, Ashok Kumar is very clear in his statement that the accused present in the court, had caused the occurrence by his rash and negligent driving of the bus.

6. From the above, I do not find any infirmity in the findings of the trial Magistrate and that of the First Appellate Court whereby it had been held that the case of the prosecution against the accused-petitioner was duly proved. As such, this petition is dismissed as far as conviction of the petitioner for offence under Sections 279/337/304-A IPC is concerned.

7. Counsel for the petitioner had lastly pointed out that the occurrence took place 13 years back. The petitioner was a young man at that time and now he is of middle age and has a family to support and that a lenient view in the quantum of sentence be taken. He has prayed that accused-petitioner should be released on probation.

8. In this case, three persons had died and Ashok Kumar had received injuries. I do not find a fit case where the benefit of the Probation of Offenders Act should be given to the petitioner. However, the petitioner had remained in custody for about 1-1/2 months. No useful purpose will be served by sending the petitioner in jail at this stage. It is directed that if accused-petitioner deposits a sum of Rs.50,000/- for payment as compensation to Ashok Kumar, husband of the deceased and father of one of the children died, then the sentence of imprisonment shall stand reduced to the period already undergone by him. Let this compensation be deposited in the court of the trial Magistrate, Palwal within a period of three months from today, failing which the accused-petitioner shall undergo the remaining part of the sentence.

With this modification in the sentence, this criminal revision is dismissed.