

(2011) 03 P&H CK 0746

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Rev. No. 815 of 2005 (O and M)

Harwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 15, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 279, 304A

Hon'ble Judges: Gurdev Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Gurdev Singh, J.

The Petitioner/accused-Harwinder Singh, has preferred this revision against the judgment dated 21.4.2005 passed by Additional Sessions Judge (Ad hoc), Hoshiarpur, vide which he dismissed the appeal filed by the accused against the judgment dated 5.1.2001 passed by Judicial Magistrate, Ist Class, Hoshiarpur, convicting him for the offences under Sections 279 and 304A IPC and sentencing him as under:

Costs

304A
IPC
Rs.
5000/-

2. As per the prosecution version, on 7.11.1998 Swaran Singh deceased and Kamaljit Singh, complainant P.W. 3, had come to the shop of Ramji, situated in the Bus Stand of Mahilpur, for purchasing clothes etc..After making the purchases, they came out of the shop and had just taken a turn for going to their village when the accused

came driving the bus bearing registration No. PB-12A-8843 (hereinafter referred to as the bus), after taking a turn around the Octroi from the side of Garhshankar and without blowing any horn, and while driving the same negligently, struck the same in Sawarn Singh as a result of which he fell down and the front wheel of the bus brushed with his head. After arranging for the conveyance, the complainant was removing the injured/deceased to the doctor, but he succumbed to his injuries on the way. On the same day, Jeet Lal ASI P.W. 5, along with other police officials, was present in the limits of Mahilpur in connection with patrolling. When he reached near the new bus stand Mahilpur, the complainant met him and made his statement Ex.P.W. 3/A regarding this accident. The ASI after making his endorsement Ex.P.W. 5/A upon the same, sent that to the police station, on the basis of which formal FIR Ex.P.W. 5/B was recorded against the accused under Sections 279 and 304A IPC. Accompanied by the complainant, ASI went to the place of accident and prepared rough site plan Ex.P.W. 5/C with the correct marginal notes. He prepared inquest report Ex.P.W. 5/D in respect of the dead body of the deceased and sent the same to Civil Hospital for post mortem examination. On the same day the bus involved in the accident was taken into possession vide memo Ex.P.W. 5/E. The autopsy on the dead body of the deceased was performed by Dr. Rachhpal Singh P.W. 1, who found ante mortem injuries on the same and gave his opinion that the cause of death was due to shock and hemorrhage, as a result of injuries No. 3 and 4, which were sufficient to cause the death of the deceased in the ordinary course of nature. On 8.11.1998, the accused was arrested, who produced his driving license before the ASI and the same was taken into possession vide a recovery memo. On that very day the bus was mechanically tested by Neeraj Kumar Constable Mechanic P.W. 6, who found the same to be in mechanical order and gave his report Ex.P.W. 6/A. On 13.11.1998, Pargat Singh Inspector Punjab Roadways produced the registration certificate of the bus before ASI and the same was taken into possession vide a recovery memo. The documents, viz. entry register regarding the bus Ex.P.W. 7/A, way bill of the bus Ex.P.W. 7/B and the copy of the duty register Ex.P.W. 7/C bus, were also taken into possession by the ASI. After the completion of investigation, the challan was put in before Judicial Magistrate, Ist Class, Hoshiarpur, who found sufficient grounds for presuming that the accused committed offences punishable under Sections 279 and 304A IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial. To prove his guilt prosecution examined Dr. Rachhpal Singh P.W. 1, Dr. Gian Chand P.W. 2, Kamaljit Singh P.W. 3, Tarsem Singh P.W. 4, Jit Lal ASI P.W. 5, Neeraj Kumar Constable P.W. 6, Kamaljit Singh Duty Clerk, P.W. 7 and Dilbagh Singh, Clerk P.W. 8. After the evidence was closed by the prosecution, the accused was examined and his statement was recorded u/s 313 Code of Criminal Procedure. The incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his innocence. He stated that his bus was never involved in any accident with a bicycle and the number of the bus was wrongly given by the complainant in order to claim compensation regarding the death of the deceased.

He was called upon to enter on his defence and he examined Darshan Singh D.W. 1 in his defence evidence.

3. I have heard learned Counsel for both the sides.

4. It has been submitted by learned Counsel for the accused that an illegality was committed by the trial Court and Appellate Court while relying on the solitary statement of Kamaljit Singh complainant P.W. 3, who was an interested witness. According to the investigating officer, there were shops near the place of accident but neither any shop-keeper was joined in investigation nor statement of any such shop-keeper was recorded. The prosecution story stands falsified from the statements of Neeraj Kumar Mechanic P.W. 6, who mechanically tested the bus and Kamaljit Singh Duty Clerk P.W. 7, who produced the records of the bus in the Court. As per those records, the bus started from Nawanshahr at 12.20 PM and the alleged accident took place at a distance of hardly 10 KMs from that place. The bus would not take two hours to cover such a short distance as according to the complainant the accident had taken place at 2.15 PM. Neeraj Kumar P.W. 6 did not find any dent in the bumper of the bus nor any blood stains were found, which shows that the same was not involved in the accident. He further submitted that the identity of the accused was not established during the trial as, according to the complainant, the accused was not known to him previously and no test identification parade was held during investigation. In the last, he referred to the defence evidence produced by the accused and according to him from that evidence it stands proved that no accident took place with the bus of the accused and he has been falsely implicated. He prayed for his acquittal and in the alternative to release him on probation, being a government employee.

5. Learned State counsel tried to controvert all these submissions of the learned Counsel for the accused by contending that conviction can be based even on the solitary statement of the witness and that the identity of the accused stands fully established from the evidence produced by the prosecution. The statement made by Kamaljit Singh is based upon the record and the direct evidence produced by the prosecution is to be preferred as compared to that record. Merely on the ground that no dent or blood stains were found on the bus, the direct evidence so produced by the prosecution is not to be disbelieved.

6. The re-appreciation and re-appraisal of the evidence, while exercising the revisional jurisdiction, is permissible only when the Court comes to the conclusion that the findings recorded by the trial Court or the appellate Court are perverse or illegal or are based on misreading of the evidence. After having examined the records, in the light of the submissions so made by learned Counsel for the accused, I have come to the conclusion that the findings of the trial Court or the appellate Court do not suffer from any such perversity or illegality nor it can be said that those are based on misreading of the evidence. It is now well settled that conviction of the accused can be recorded even on statement of a solitary witness, if the same is

found to be trustworthy and reliable. Kamaljit Singh complainant P.W. 3, while making his statement in the Court, unfolded the prosecution version and nothing material could be elicited during his cross-examination, which may show that he is a witness not worthy of belief. No doubt, the investigating officer omitted to record the statement of any other witness for proving the factum of accident, but the same cannot be made a ground for not placing reliance on the statement of the complainant, who had no animus to depose against the accused. It cannot be said that the prosecution failed to establish the identity of the accused in the Court. He was duly identified by this complainant. In addition to that, there is a statement of Kamaljit Singh P.W. 7 that on the day of accident it was the accused who was the driver of the bus. Even Darshan Singh D.W. 1, examined by the accused in his defence, has made a statement that on 07.11.1998 the accused was driver on this bus, which had started from Nawanshahr and he boarded the same at Mahilpur.

7. There is no dispute about the fact that when Naresh Kumar Mechanic P.W. 6 had tested this bus, he did not find any blood stain on the same. The question arises, whether there was any possibility of any blood falling on any portion of the bus? It is very much clear from the statement of the eye-witness that there was no such possibility. After the bus struck against the deceased, he fell down and it was the front wheel of that bus which brushed with his head.

8. It was stated by Darshan Singh D.W. 1 that the bus in question was intercepted by the police and was taken to the police station at 1.00 PM and that the same was never involved in the accident and in spite of the protest by the passengers, a false case was made against the accused. However, a perusal of the evidence on the file makes it clear that no reliance is to be placed on the statement of this defence witness. The accused himself asked from the investigating officer, during his cross-examination, as to the place from where the bus was recovered. He stated that this bus was impounded at the distance of 1 Km from the place of accident. It was stated by Kamaljit Singh P.W. 3, during his cross-examination, that driver of the bus had taken the same, after the accident, to a distance of 50/60 yards and after that it was stopped by the passers by. It stands proved from the evidence that after the accident the accused tried to escape with the bus, but the same was stopped by the persons, who were present there and they did not allow him to escape from that place.

9. No ground is made out for setting aside the well recorded conviction by the trial Court, which was upheld by the Appellate Court. Keeping in view the nature of the offence and the circumstances in which the same was committed and the fact that the accused after the accident tried to escape from the spot, I do not think it proper and expedient to release him on probation.

10. The revision petition is dismissed accordingly. The accused be taken into custody for undergoing the sentence so imposed upon him.

11. Records be returned forthwith.