

**Devinder Singh Vs. State of Punjab**

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**Court :** Punjab and Haryana

**Decided On :** Mar-09-2010

**Judge :** Kanwaljit Singh Ahluwalia, J.

**Appellant :** Devinder Singh

**Respondent :** State of Punjab

**Disposition :** Petition allowed

**Judgement :**

**Kanwaljit Singh Ahluwalia, J.**

1. Devinder Singh son of Avtar Singh, a Driver of Haryana Roadways, Hisar Depot, was named as accused in case FIR No. 14 dated 10.4.1998 registered at Police Station Sadiq, under Sections 279 and 304-A IPC.

2. The Court of Judicial Magistrate 1st Class, Faridkot, held the petitioner guilty for an offence under Sections 279 and 304-A IPC. He was sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000/-, for an offence under Section 279 IPC. In default of payment fine, to undergo further rigorous imprisonment for a period of one month. He was further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- for an offence under Section 304-A IPC. In default of payment of fine, to undergo further rigorous imprisonment for a period of five months. Both the

sentences were ordered to run concurrently.

3. Aggrieved against the judgment of conviction and order of sentence awarded by the Judicial Magistrate 1st Class, Faridkot, the petitioner had preferred an appeal. The lower Appellate Court upheld the conviction and maintained the sentence with slight modification to the effect that half of the amount of fine, if recovered, shall be paid to the legal heirs of deceased Niranjan Singh as compensation.

4. Jagjit Singh PW.3 had made a statement Ex.PD to Roop Singh, Assistant Sub Inspector, PW.4 on 10.4.1998 at about 8.00 P.M. In the statement, Jagjit Singh stated that he was a resident of village Dhab Sher Singh Wala and was doing labour work. On 10.4.1998 at about 6/6.30 P.M., he along with his father Niranjan Singh was coming from village Bhag Singh Wala, where they had gone to leave her sister Paramjit Kaur in her matrimonial home. They were going on their separate mopeds to Sadiq to purchase vegetables etc. and his father was going ahead of him on his Moped. When his father had reached near the crossing of Kingre Chowk to take a turn towards Sadiq, then one bus of Haryana Roadways bearing registration No. HR-39-7003 came from Muktsar side at a very high speed in a rash and negligent manner. The bus collided with the moped of Niranjan Singh who fell down on his side towards Sadiq. The bus dragged Niranjan Singh at some distance. The name of driver of the offending bus was lateron learnt as Devinder Singh, resident of village Lali, Police Station Ratia, District Fatehabad, Haryana. On reaching near his father, the complainant found that he had received multiple injuries on his head, legs and arms and he had died due to the injuries. At that time Balbir Singh son of Bhag Singh, resident of village Kingre, had also reached at the spot, to whom he had narrated the whole incident. The complainant, after leaving Balbir Singh near the dead body of his father, went to Police Station to lodge a report, then the police party had met him on the Sadiq crossing (chowk). It was stated that Devinder Singh, driver of the offending bus, after disclosing his name, had decamped from the spot.

5. The above said FIR was investigated and a report under Section 173 Cr.P.C. was submitted.

6. The Court of Judicial Magistrate 1st Class, Faridkot, on 2.7.1998, had charged the petitioner for an offence under Sections 279 and 304-A IPC. The charge stated that on 10.4.1998 at about 6/6.30 P.M., the petitioner drove a vehicle bearing registration No. HR-39-7003 at Muktsar Road in a manner so rash or negligent as to endanger human life and thereby committed an offence punishable under Section 279 IPC. It was further stated that on the same date and time, by driving the bus in a rash and negligent manner, the petitioner had caused the death of Niranjn Singh and thereby committed an offence punishable under Section 304-A IPC. The petitioner pleaded not guilty and claimed trial.

7. The prosecution had examined Dr. K.K. Aggarwal as PW.1, who had conducted the autopsy on the dead body of Niranjn Singh, on 11.4.1998 at 9.10 A.M. He had detailed the injuries suffered by the deceased and stated that the cause of death in this case was laceration of brain matter as a result of injury No. 1, which was sufficient to cause death in the ordinary course of nature.

8. PW.2 Balbir Singh, Clerk from the office of the District Transport Officer, Faridkot, had proved the vehicle bearing registration No. PB-04-B-3442 Hero Majestic in the name of Pardeep Kumar son of Lahori Ram, which was subsequently transferred in the name of Abdul Nabi.

9. Jagjit Singh, complainant, had appeared as PW.3 and had reiterated as to what was stated in his statement Ex.PD. In cross-examination, this witness had stated as under:

The driver remained standing at the spot wherefrom he ran away when I proceeded towards Police Station. The passengers had told me the name of driver. The accused had not disclosed his name to me. The passengers had disclosed the name of accused before the arrival of police.

10. PW.4 Roop Singh, Assistant Sub Inspector, had recorded the statement Ex.PD and prepared the rough site plan Ex.PE of the spot. He had proved various facets of the investigation.

11. PW.5 Hardeep Kumar was posted as Assistant Moharrir Head Constable. Roop Singh, Assistant Sub Inspector had deposited the case property with him.
12. PW.6 Rajinder Kumar, Constable, had produced the Mechanical Test Reports of the two vehicles Ex.PE and Ex.PF, respectively.
13. PW.7 Manjit Singh had proved the photographs Ex.PW.6/1 to Ex.PW.6/6 of the vehicles at the spot. He had also proved the negatives Ex.PW.6/7 to Ex.PW.6/12.
14. PW.8 Pritpal Singh, Notary Public had proved affidavit Ex.PW.7/A regarding the transfer of the Hero Majestic.
15. PW.9 Rameshwar Dass, Clerk from the office of the District Transport Officer, Hisar, who proved the ownership of bus bearing registration No. HR-39-7003. According to this witness, the offending bus belonged to Haryana Roadways of Hisar Depot.
16. The evidence of prosecution was closed.
17. The statement of accused was recorded under Section 313 Cr.P.C. All the incriminating evidence was put to the accused. He denied the same and pleaded false implication.
18. Before the trial Court, an argument was raised that Balbir Singh, to whom Jagjit Singh, complainant, had narrated the incident, had not been examined to corroborate his testimony. No argument was raised that the prosecution has miserably failed to establish the identity of the driver of the offending bus. The trial Court had repelled the arguments regarding the identity of petitioner, by observing as under:

There is no denial of the accused that he is not the employee of the Haryana Roadways. There is no evidence from the side of the accused that on 10.4.1998 he was not the driver of bus No. HR-39-7003.
19. A further reliance was placed upon the testimony of PW.3 Jagjit Singh, who had stated that the accused present in the Court was driving the bus when the alleged accident took place. The lower Appellate Court had also observed as

under:

The appellant has never moved any application or complaint to any higher authority or his department that he has been falsely implicated in this case. Department of the appellant i.e. Haryana Roadways has also not moved any application that its bus bearing No. HR-39-7003 has been falsely implicated in this case. Appellant has also not summoned any record from his department that he was not driving the bus bearing No. HR-39-7003 on 10.4.1998. Rather PW.3 Jagjit Singh has duly established the identity of the accused by stating that the passengers of the bus disclosed him the name of the driver.

20. Mr. Amarjit Markan, Advocate, appearing for the petitioner, submits that the approach adopted by both the Courts below cannot be appreciated. The prosecution cannot be absolved of its duty to establish on record that the petitioner was a driver of the offending bus. It is stated that the prosecution had cited Pran Nath, Sub Inspector of Haryana Roadways as a witness but he was not examined. Therefore, a vital evidence was withheld from the Court regarding the posting of the person who was a driver of the bus.

21. Learned Counsel for the petitioner has further referred to the scaled site plan Ex.PF prepared by PW.4 Roop Singh, Assistant Sub Inspector, to urge that the accident had taken place due to rash and negligent driving of deceased Niranjana Singh.

22. Mr. Mehardeep Singh, Deputy Advocate General, Punjab, has stated that from the testimony of PW.3 Jagjit Singh, identity of the driver of offending bus was established.

23. In the present case, it was stated by complainant Jagjit Singh in his statement Ex.PD that the accused had disclosed his name, who had thereafter left the spot, when he proceeded towards the police station for lodging the case. In the Court, PW.3 Jagjit Singh had stated that the driver was standing at the spot, but had not divulged any information regarding his name. He further stated that the name of driver was learnt from the passengers of the bus. In these circumstances, this Court will be hesitant to place implicit reliance upon the testimony of PW.3 Jagjit

Singh regarding identity of the driver. It was incumbent upon the prosecution to examine any witness from the Haryana Roadways, who could prove the duty roster and posting of the driver of the bus. PW.4 Roop Singh, Assistant Sub Inspector, had not specified as to which passenger had named the accused as driver of the bus. This information was based on hearsay evidence. The prosecution had made no efforts to conclusively prove that the petitioner was the driver of the offending bus. No test identification parade was conducted. The accused, for the first time, was identified in the Court, when he was standing in the dock, even though identification of the accused in the Court is a substantive piece of evidence. The Courts have always looked for corroboration, which in present case is lacking. Therefore, as a matter of abundant caution, this Court will be bound to grant benefit of doubt on the ground that the prosecution has failed to prove the identity of the petitioner as driver of the offending bus.

24. Hence, the present revision petition is accepted. The conviction and sentence awarded to the petitioner by both the Courts below are set aside and he is acquitted of the charge.

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