

(1993) 11 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Surinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-11-1993

Acts Referred:

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

Citation : (1994) 1 ACC 478

Hon'ble Judges : A.S. Nehra, J

Bench : Single Bench

Judgement

A.S. Nehra, J.—The petitioner was convicted u/s 304A, Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- and, in default of payment, of fine, to undergo further rigorous imprisonment for 3 months, on 11-7-1986 by the Judicial Magistrate 1st Class, Dasuya, The appeal filed by the petitioner was dismissed on 10-9-1986 by the Additional Sessions Judge, Hoshiarpur, Hence, this revision petition.

2. Briefly stated, the prosecution case is as follows:

On 28-6-1985 there was marriage of Kamla, niece of Bishamber Ram PW-4 and, for that purpose, near relations like Bishamber Ram. Tirath Ram PW-10, Tarsem, Lal deceased etc. had gone to attend that marriage at Village Sariala near Dasuya. Tarsem Lal deceased was accompanied by his wife Parkasho deceased and their son Paramjit deceased, Bishamber Ram PW-4 was posted in the office of Punjab State Electricity Board as Cashier at Jalandhar Cantt. Tirath Ram PW-10, was posted as Accountant in the Punjab Roadways Hoshiarpur. Tarsem Lal deceased had come from village Bhogewal in Police Station Sadar, Jalandhar. Both Bishamber Ram PW-4 and Tirath Ram PW-10 became free from the marriage, earlier than the others, and both of them had come to the main Dasuya-Hoshiarpur Road and were standing on the turning of the road leading to village Sariala near the Octroi Post, and waiting for their other relations. At about 5.15 p.m. Tarsem Lal deceased came driving a scooter from the side of village

Sariala. His wife Parkasho and his son Paramjit were riding behind him on the pillion. At the very moment when the scooter came on the main Hoshiarpur-Dasuya Road from the side of village Sariala, Bus No. PUH-6301 of Punjab Roadways Depot, Hoshiarpur driven by petitioner Surinder Singh, came with a rash speed and struck against the scooter of Tarsem Lal. The petitioner had not blown horn. The scooter was dragged by the bus and it then struck against a shop on its right side and, after demolishing the front side of that shop, a part of its body went well within the shop. All the persons, namely, Tarsem Lal, Parkasho and Paramjit suffered injuries. Parkasho, when brought to Aujla Clinic at Garhdiwala, breathed her last, while Tarsem Lal and Paramjit, after being administered first aid at Garhdiwala were removed to Civil Hospital, Dasuya, and, from there, they were referred to C.M.C., Ludhiana where Tarsem Lal died on 29-6-1985. His dead body was brought back to the Civil Hospital, Dasuya, for its post-mortem examination. Paramjit was referred from C.M.C., Ludhiana, to P.G.I, Chandigarh, where he died on 30-6-1985 and his dead body was brought to Civil Hospital, Dasuya, on 1-7-1985 for post-mortem examination. Doctor S.N. Tiwari PW-1 conducted post-mortem examination on the dead bodies of Parkasho, Tarsem Lal and Paramjit on 29-6-1985, 30-6-1985 and 1-7-1985 respectively. Surinder Singh petitioner, driver of the bus, also received injuries. He was also admitted in Civil Hospital, Dasuya, where he remained, according to the bed-head-ticket Exhibit PD, with multiple injuries till 10.7.1985. After the accident had occurred at about 5.15 p.m. on 28.6.1985, Sub Inspector Raghbir Singh reached the spot of the accident from Garhdiwala where he recorded the statement of Bishamber Ram PW-4 about this occurrence. After completion of the investigation, the petitioner was challaned and sent up for trial.

3. The prosecution, to prove its case, examined PW-1 Dr. S.N. Tiwari, PW-2 Gulshan Kumar PW-3 Gurmit Singh, PW-4 Bishamber Ram, PW-5 Mangal Singh, PW-6 Wattan Singh, PW-7 S.I, Rattan Singh, PW-9 S.I. Raghbir and PW-10 Tirath Ram. PW-2 Gulshan Kumar took photographs of the place of occurrence (Exhibits P-1 to P-5 being the positives and Exhibits P-6 to P-10 being the negatives). PW-3 Gurmit Singh, Record Keeper of the Punjab Roadways, Hoshiarpur, proved that the petitioner was on duty on the said bus as a Driver on the day of occurrence at the relevant time. PW-7 S.I. Rattan recorded the formal FIR and partly investigated the case inasmuch as he prepared inquest report on the dead body of Tarsem Lal at C.M.C. Ludhiana. The other persons, who were cited by the prosecution as eye-witnesses, did not support the prosecution case and they are PW-5 Mangal Singh, a Tea-Stall holder near the place of occurrence, and PW-6 Wattan Singh who runs a hand-pump shop near that place. The plea taken by Wattan Singh PW was that he was not present at the spot but he came to know that, by this accident, a part of his shop was demolished and he suffered a loss of about thirty to thirty-five thousand rupees. Mangal Singh PW-5 deposed that he did not see the accident and came to know about it only when there was a loud noise of an explosion made by the bus ramming into the shop of Wattan Singh.

4. In his statement u/s 313 of the Code of Criminal Procedure, the petitioner admitted the accident and the fact that he was driving the bus at that time but he denied that he was driving the bus rashly or negligently. According to him, he was at a distance of only a few feet from Sariala turning when the scooter of the deceased Tarsem Lal came on the main road from the side of Sariala Link Road and it was being driven at such a rash speed that all of a sudden, it was in front of the bus. He further stated that he made every effort to save the scooter and even took the bus to the right side with the result that it struck against the shop of Wattan Singh PW-6. He attributed the entire negligence and fault to Tarsem Lal deceased. The petitioner examined Malkiat Singh, Conductor of the Bus, who also ascribed the fault to the scooter-driver.

5. According to Tirath Ram: PW-10, Tarsem Lal deceased was to take the scooter towards Hoshiarpur side and, for that purpose, he had to cross the Hoshiarpur-Dasuya Road, whereas the bus was coming from the side of Hoshiarpur. It is also in evidence that the turning from the side of Sariala to the main Dasuya-Hoshiarpur Road is a blind curve. Reference to plan Exhibit PW-8/Q would show that the accident probably occurred at point "A" in the plan, on the main Hoshiarpur-Dasuya Road away from the junction of that road with the Sariala Road. In fact, it was more towards the extreme passage side but on the main road itself. Tirath Ram PW-10 has also stated the Bus Stand, Garhdiwala was just at a distance of 125 Yards from the place of the accident and the Municipal limit of that town had already started. No doubt, there is the statement of this witness (PW-10) that, on account of existence of an octroi post at the turning to. Sariala, a vehicle coming from the side of Hoshiarpur cannot be seen by a person coming from the side of village Sariala and vice versa, yet had the accident taken place at the very junction of the two roads, then the matter would have been different but the accident took place after the kucha portion of the Hoshiarpur-Dasuya Road and more than three-fourths of the main road itself had been covered by the scooter. It does take time for a. Scooter, even at a speed, to cover the distance and, whatsoever that time may be, it was sufficient period for an on-coming bus driver to have applied its brakes to save the accident. The place of occurrence is on the right side of the driver and not on his left side. The petitioner could have saved the accident if, instead of going towards his right side, he had kept the bus towards the left side. What actually happened is that the bus was driven on the wrong side, i.e., towards the right side and it violently dashed into the shop of Wattan Singh PW. 7.

6. Mr. G.S. Grewal Senior Advocate, counsel for the petitioner, has contended that, since Tarsem Lal deceased was approaching the main road from a link road, therefore, he should have been careful and should have stopped his scooter for the on-coming traffic when he reached the metalled portion of the road. The learned Counsel for the petitioner has referred to *Gurcharan Singh v. State of Punjab* 1986(2) C L R 19 where an accident took place between a bus and a cyclist but the evidence was that the deceased cyclist did not care to stop his cycle for noticing the on-coming traffic and abruptly came in front of the bus

while coming from the link road on his right side. In spite of the apparent similarities of the facts of the present case with the facts of the above cited authority, it has to be noticed that the occurrence did not take place at the moment Tarsem Lal came on the metalled portion of the road but it occurred when he had already covered at least two-thirds to three-fourths portion of the road. Again, the bus could not be stopped by the petitioner till it was stopped by the impact with the solid wall of the shop. The photographs on the file clearly show that the front portion of the bus was smashed and the bricks and other rubbles let loose from the building of the shop had covered most part of the roof of the bus. The photographs also show that the bus had dragged the scooter with it underneath its body. These facts speak much against the petitioner and prove his rash and negligent manner of driving the bus within the municipal limits. Therefore, there is no force in the argument of the learned Counsel for the petitioner and the same is rejected.

7. The learned Counsel for the petitioner has urged that the petitioner is a driver of long-standing and has been driving public buses without any complaint or major accident., that he is a first offender and that, therefore, this is a fit case in which the petitioner should be released on probation. In support of his argument, he had relied on *Sadhu Ram v. State of Haryana* 1983 (1) C LR 420.

8. After hearing the learned Counsel for the parties, I find no force in this contention of the learned Counsel for petitioner. In *Sadhu Ram*,''s case (supra), the driver of the Haryana Roadways was supplied with a bus which was not roadworthy as the brakes of the bus were loose, the driver of that bus also stopped the bus at some distance which showed that he was not callous or indifferent to what had come by and the driver had also undergone some of his sentence during the trial. The facts of the case relied upon by the learned Counsel for the petitioner are not applicable to the facts of the present case, Moreover in *Sadhu Ram*''s case (supra) only a Young boy had died in the accident, whereas, in the present case, three persons have been killed in the accident.

9. In view of the above mentioned discussion, there is no merit in the revision petition and the same is dismissed.