
(1997) 02 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 262 of 1987

Tarsem Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Citation : (1998) 1 AICLR 288 : (1997) 2 RCR(Criminal) 785

Hon'ble Judges : V.S.Aggarwal, J

Advocate : P. Bali, Vikas Cuccria, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. This is a revision petition filed by Tarsem Singh (hereinafter described as "the petitioner") directed against the judgment of the learned Additional Sessions Judge, Amritsar dated 28.2.1987.

2. The relevant facts are that on 8.3.1992 Jagir Singh Jassa Singh (deceased), Kundan Singh (deceased) besides Pappu son of Swinder Singh aged about 4 years were standing near the Saw Mill of Joginder Singh Sarpanch of village Bala Chak. An oil tanker bearing registration No. PNO 4175 came at a high speed from the side of Tarn Taran. Petitioner was driving the same. It rammed into the space where the abovesaid persons were standing. Jassa Singh, Kundan Singh and Pappu received multiple injuries. They were removed to the hospital. The truck stopped only because of certain logs of wood that were lying there. After investigation the challan was submitted against the petitioner with respect to the offences punishable under Sections 304A/279 and 337 IPC because as a result of the injuries, Kundan Singh and Jassa Singh died.

3. The learned trial Court held that petitioner guilty of the offences punishable under Sections 337 and 304A IPC. For the offence punishable under Section 304A IPC the petitioner was sentenced to undergo rigorous imprisonment for 1 year and a fine of Rs. 200/-. In default of payment of fine, he was to further undergo rigorous imprisonment for one month. With respect to the offence

punishable under Section 337 IPC he was sentenced to undergo rigorous imprisonment for 2 months. Both the sentences were directed to run concurrently. The appeal filed by the petitioner in the court of Sessions was dismissed on 28.2.1987.

4. The short submission made by the learned counsel for the petitioner in this regard was that petitioner has been held guilty only on the basis of his statement made under Section 313 Cr.P.C. He urged that on basis of the statement that he had lost control on the vehicle, the petitioner could not be held guilty.

5. The answer in this regard can be probed from perusal of Section 313 Cr.P.C. It reads :

"313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case;

Provided that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Perusal of Section 313 Cr.P.C. reveals that the Court has to examine the accused and put questions to him about the circumstances appearing against him in evidence. This provision has been enacted so that the accused can personally explain his version of the incident, if any. No oath is to be administered. This is a statutory and valuable right of the petitioner accused. Subsection (4) of Section 313 Cr.P.C. makes the position clear that answers given by the accused can be taken into consideration in the trial which may show that he has committed or not committed the offence. The Code of Criminal Procedure, therefore, permits taking into consideration the answers so given.

6. If it is a confession, the Court can certainly act on it provided it is concluded that the same has been made voluntarily. In the case of *Dhirendra Chandra v.*

State of U.P., 1991(1) Crimes 522 the Allahabad High Court had considered this aspect. In the cited case, the accused in his examination under Section 313 Cr.P.C. admitted the guilt. The bloodstained dagger was recovered on the basis of his disclosure statement and pointing out. It was held that the accused in that case was rightly convicted.

7. Not only that, even if the statement is made by an accused and it can be separated from the rest of the statement, the Court can act on it. In one of the earlier decisions of the Supreme Court in the case of Karnail Singh and another v. State of Punjab, AIR 1954 SC 204 the accused had admitted in his statement that he was present near the scene of the incident. The Supreme Court held that this statement was distinct and separate from his explanation as to how he received the injuries. It could be used in evidence that he was present at the scene of the incident. The admission could be taken into account. This Court in the case of Ram Dhan v. State of Haryana, 1974 C.L.R. 47 while considering the scope of Section 342 of the old Code (equivalent to Section 313 of the Code of Criminal Procedure, 1973) had held that prosecution has to stand on its own legs and not simply act on the statement of the accused made during the course of his examination.

8. The Supreme Court had also considered the separation of inculpatory statement if possible from exculpatory statement made by the accused in the case of Nishi Kant Jha v. State of Bihar, AIR 1969 SC 422. It was noted that exculpatory statement made by the accused was inherently improbable. Therefore, the inculpatory statement could be considered. Same view prevailed in the case of Mohan Lal and another v. Ajit Singh and another, AIR 1978 SC 1183. It was held that the inculpatory statement which accords with the evidence on the record could be taken into consideration.

9. It is obvious from the aforesaid that if there is an outright confession, conviction can be based on it. The statement of the accused in any case can be taken into consideration. Inculpatory statement can be separated from the other part of the statement and the Court can act on it.

10. In the present case, the petitioner admitted that he was driving the vehicle and had lost control over the same. Not only his own statement but other evidence on the record permitted the Court to come to the same conclusion. Ex.PD is the site plan which reveals that the two deceased were standing on one side, away from the pavement of the road. The accused petitioner while driving the truck jumped the road on the left side and over ran the injured and the deceased. When read with the statement made by the petitioner, it is clear that he was driving the truck rashly and negligently. There is no ground thus to interfere.

11. Confronted with that position it had been urged that the sentence in any case may suitably be reduced. This aspect of the plea necessarily must prevail. The incident pertains to about 15 years ago. The petitioner has already undergone a

part of the sentence. After such a long time directing him to undergo rest of the sentence, would not meet the ends of justice. Therefore, it is in the fitness of things if the sentence is reduced to the one already undergone. I order accordingly.

Subject to the modification above, the petition fails and is dismissed.