

STATE OF PUNJAB

v.

BALWINDER SINGH AND ORS.
(Criminal Appeal No. 47-48 of 2012)

JANUARY 6, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Penal Code, 1860:

ss. 304-A, 337 and 279 - Five deaths caused due to rash and negligent driving and by colliding of two vehicles - Sentence - Held: While considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence - For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt of the accused beyond reasonable doubt - Further, the criminal courts cannot treat the nature of the offence u/s 304A as attracting the benevolent provisions of s.4 of the Probation of Offenders Act, 1958 - Order of High Court reducing the sentence to the period already undergone i.e. 15 days, set aside - Accused sentenced to six months RI each with fine - Probation of Offenders Act, 1958 - s. 4 - Sentence/Sentencing.

In a motor accident, caused by the collision between a bus and a truck due to rash and negligent driving by the drives of both the vehicles, five persons travelling in the bus lost their lives. The trial court convicted the accused-drivers u/ss304-A, 337 and 279 IPC and sentenced each of them to two years rigorous

A imprisonment u/s 304-A and six months rigorous
imprisonment u/ss 337 and 279 IPC. In the appeal, the
Additional Sessions Judge confirmed the conviction and
sentence. However, the High Court, in revision while
confirming the conviction reduced the sentence to the
B period already undergone, which was for 15 days.

Allowing the appeals filed by the State, the Court

C HELD: 1. It is not in dispute that the trial court on
appreciation of evidence and accepting the version of the
prosecution witnesses convicted the respondents u/s
304A IPC. To bring a case of homicide u/s 304A IPC, the
conditions are: (1) There must be death of the person in
question; (2) the accused must have caused such death;
and (3) that such act of the accused was rash or negligent
D and that it did not amount to culpable homicide. [para 6-
7] [50-B; 51-F-G]

E 2.1. While considering the quantum of sentence to be
imposed for the offence of causing death or injury by rash
and negligent driving of automobiles, one of the prime
considerations should be deterrence. For lessening the
high rate of motor accidents due to careless and callous
driving of vehicles, the courts are expected to consider
all relevant facts and circumstances bearing on the
question of sentence and proceed to impose a sentence
F commensurate with the gravity of the offence if the
prosecution is able to establish the guilt beyond
reasonable doubt. Further, the criminal courts cannot
treat the nature of the offence u/s 304A IPC as attracting
the benevolent provisions of s.4 of the Probation of
G Offenders Act, 1958. [para 10-11] [52-E-H]

H on.
Dalbir Singh vs. State of Haryana, 2000 (3) SCR 1000
= (2000) 5 SCC 82; *B. Nagabhushanam vs. State of
Karnataka*, 2008 (8) SCR 444 =2008 (5) SCC 730 - relied

2.2. In the instant case, the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days cannot be accepted. Merely because the fine amount has been enhanced to Rs.25,000/- each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers of the bus and the truck. Accordingly, the order of the High Court is set aside and a sentence of rigorous imprisonment for six months with a fine of Rs. 5,000/- each is imposed on the accused. [para 12] [53-B-D]

Case Law Reference:

2000 (3) SCR 1000 relied on para 8

2008 (8) SCR 444 relied on para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 47-48 of 2012.

From the Judgment & Order dated 04.11.2009 of the High Court of Punjab & Haryana at Chandigarh in CrI. Revision Nos. 653 & 655 of 2000.

Ashok Aggarwal, (Gen. Punjab), Manjusha Wadhwa, R.K. Pandey, H.S. Sandhu, Mohit Mudgil, Kuldeep Singh for the Appellant.

Sudhir Walia, Abhishek Atrey, K.G. Bhagat, Dattareya Vyas, Vineet Bhagat for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are filed against the common final judgment and order dated 04.11.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal

- A Revision Petition Nos. 653 and 655 of 2000 for nature of
offence and quantum of sentence whereby the High Court partly
allowed the revision petition and reduced the quantum of
sentence awarded by the Judicial Magistrate, 1st Class,
Amritsar as upheld by the Additional Sessions Judge, Amritsar
B under Sections 304A, 337 and 279 of Indian Penal Code, 1860
(in short 'IPC').

3. Brief facts:

- C (a) On 30.10.1992, one Dhian Singh-the Complainant (PW-
3), after attending the last rites of one of his relatives at Village
Mustabad, Amritsar was returning to Batala along with his
family members in a Jhang Transport Bus bearing No. PB-02-
D-9485. The bus was being driven at a very high speed by the
driver-Respondent No. 1 herein. When the aforesaid bus
D reached the bus stand at Mudhal, at that time, a truck bearing
No. PB-02-C-9665 which was being driven by Respondent No.
2 herein was coming from the opposite side at a very high
speed. Both the drivers were driving their vehicle at a very high
speed and in rash and negligent manner, as a result of which,
E both the vehicles collided with each other and two passengers,
namely, Darshan Singh s/o Bela Singh and Banso w/o Ajit
Singh died at the spot. The other passengers, namely, Sonia,
Dalbir Singh and Ramandeep were taken to the Civil Hospital
but later on they succumbed to their injuries.
- F (b) On the basis of the complaint of Dhian Singh, FIR No.
125/92 was registered under Sections 304A, 279 and 337 of
IPC and after formal investigation the case was forwarded to
the Court of Judicial Magistrate, 1st Class, Amritsar. The Judicial
G Magistrate, by order dated 14.12.1998, convicted both the
accused persons and directed them to undergo rigorous
imprisonment for 2 years each for the offence under Section
304A and to pay fine of Rs. 200/- each, in default, to further
undergo rigorous imprisonment for two months and to also
H undergo rigorous imprisonment for a period of six months each

for the offence punishable under Sections 337 and 279 IPC. A

(c) Aggrieved by the judgment and order dated 14.12.1998, the accused persons preferred an appeal before the Additional Sessions Judge, Amritsar. Vide judgment dated 20.05.2000, the Additional Sessions Judge upheld the judgment and order passed by the Judicial Magistrate, 1st Class, Amritsar. B

(d) Questioning the same, the respondents herein filed Criminal Revision Petition being Nos. 653 and 655 of 2000 qua nature of offence and quantum of sentence before the High Court. The High Court, by order dated 04.11.2009, while confining to the question of quantum of sentence only, reduced the sentence of the accused persons to the period already undergone (15 days) and in addition thereto, enhanced the fine to an amount of Rs. 25,000/- each. C D

(e) Against the order of the High Court, the State of Punjab has filed these appeals before this Court by way of special leave petitions. E

4. Heard Mr. Ashok Aggarwal, learned senior counsel for the appellant and Mr. Sudhir Walia and Mr. K.G. Bhagat, learned counsel for the respondents.

5. Before the High Court, the respondents, who preferred the revisions, did not dispute the finding relating to negligence rendered by the courts below and confined their submissions to the quantum of sentence only and prayed that the sentence be reduced to the period already undergone. In support of the above claim, they pointed out that they had suffered a protracted trial for about 17 years and had already undergone custody for 15 days, therefore, prayed for lenient view by modifying the sentence. On the other hand, on behalf of the State, it was submitted that inasmuch as the negligence was proved beyond reasonable doubt, therefore, no leniency should be shown to the accused. The High Court, without taking note F G H

A of the seriousness of the matter, namely, due to the negligence
of the two drivers, five persons traveling in the bus died, merely
because of protracted trial of about 17 years and both of them
had served sentence for a period of 15 days, reduced the same
to the period already undergone and enhanced the fine to an
B amount of Rs.25,000/- each.

6. It is not in dispute that the trial Court on appreciation of
evidence and accepting the prosecution witnesses convicted
the respondents for an offence under Section 304A. The said
C section reads as under:

304A. Causing death by negligence.- Whoever causes
the death of any person by doing any rash or negligent act
not amounting to culpable homicide, shall be punished with
imprisonment of either description for a term which may
D extend to two years, or with fine, or with both."

7. Section 304A was inserted in the Penal Code by the
Indian Penal Code (Amendment) Act 27 of 1870 to cover those
cases wherein a person cause the death of another by such
E acts as are rash or negligent but there is no intention to cause
death and no knowledge that the act will cause death. The case
should not be covered by Sections 299 and 300 only then it
will come under this section. The section provides punishment
of either description for a term which may extend to two years
or fine or both in case of homicide by rash or negligent act. To
F bring a case of homicide under Section 304A IPC, the following
conditions must exist, namely,

- 1) There must be death of the person in question;
- G 2) the accused must have caused such death; and
- 3) that such act of the accused was rash or negligent and
that it did not amount to culpable homicide.

8. Even a decade ago, considering the galloping trend in
H road accidents in India and its devastating consequences, this

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Court in *Dalbir Singh vs. State of Haryana*, (2000) 5 SCC 82 A
held that, while considering the quantum of sentence to be
imposed for the offence of causing death by rash or negligent
driving of automobiles, one of the prime considerations should
be deterrence. A professional driver should not take a chance
thinking that even if he is convicted, he would be dealt with B
leniently by the court. The following principles laid down in that
decision are very relevant:

"1. When automobiles have become death traps any
leniency shown to drivers who are found guilty of rash C
driving would be at the risk of further escalation of road
accidents. All those who are manning the steering of
automobiles, particularly professional drivers, must be
kept under constant reminders of their duty to adopt utmost
care and also of the consequences befalling them in cases D
of dereliction. One of the most effective ways of keeping
such drivers under mental vigil is to maintain a deterrent
element in the sentencing sphere. Any latitude shown to
them in that sphere would tempt them to make driving
frivolous and a frolic.

13. Bearing in mind the galloping trend in road accidents
in India and the devastating consequences visiting the
victims and their families, criminal courts cannot treat the
nature of the offence under Section 304-A IPC as
attracting the benevolent provisions of Section 4 of the F
Probation of Offenders Act. While considering the
quantum of sentence to be imposed for the offence of
causing death by rash or negligent driving of automobiles,
one of the prime considerations should be deterrence. A
professional driver pedals the accelerator of the G
automobile almost throughout his working hours. He must
constantly inform himself that he cannot afford to have a
single moment of laxity or inattentiveness when his leg is
on the pedal of a vehicle in locomotion. He cannot and
should not take a chance thinking that a rash driving need H

A not necessarily cause any accident; or even if any accident
 occurs it need not necessarily result in the death of any
 human being; or even if such death ensues he might not
 be convicted of the offence; and lastly, that even if he is
 convicted he would be dealt with leniently by the court. He
 B must always keep in his mind the fear psyche that if he is
 convicted of the offence for causing death of a human
 being due to his callous driving of the vehicle he cannot
 escape from a jail sentence. This is the role which the
 courts can play, particularly at the level of trial courts, for
 C lessening the high rate of motor accidents due to callous
 driving of automobiles."

9. The same principles have been reiterated in *B. Nagabhushanam vs. State of Karnataka*, 2008 (5) SCC 730.

D 10. It is settled law that sentencing must have a policy of
 correction. If anyone has to become a good driver, must have
 a better training in traffic laws and moral responsibility with
 special reference to the potential injury to human life and limb.
 Considering the increased number of road accidents, this
 E Court, on several occasions, has reminded the criminal courts
 dealing with the offences relating to motor accidents that they
 cannot treat the nature of the offence under Section 304A IPC
 as attracting the benevolent provisions of Section 4 of the
 Probation of Offenders Act, 1958. We fully endorse the view
 F expressed by this Court in *Dalbir Singh* (supra).

11. While considering the quantum of sentence to be
 imposed for the offence of causing death or injury by rash and
 negligent driving of automobiles, one of the prime
 G considerations should be deterrence. The persons driving
 motor vehicles cannot and should not take a chance thinking
 that even if he is convicted he would be dealt with leniently by
 the Court. For lessening the high rate of motor accidents due
 to careless and callous driving of vehicles, the courts are
 H expected to consider all relevant facts and circumstances

bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt. A

12. In the light of the above principles, we express our inability to accept the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days. Merely because the fine amount has been enhanced to Rs.25,000/- each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers of the bus and the truck. Accordingly, we set aside the impugned order of the High Court and impose a sentence of rigorous imprisonment for six months with a fine of Rs. 5,000/- each. The trial Court is directed to take appropriate steps for surrender of the accused in both the appeals to serve the remaining period of sentence. The appeals are allowed to the extent mentioned above. B
C
D

R.P.

Appeals allowed.