

State Of Punjab vs Balwinder Singh Etc on 6 January, 2012

Equivalent citations: AIR 2012 SUPREME COURT 861, 2012 (2) SCC 182, 2012 AIR SCW 648, AIR 2012 SC (CRIMINAL) 353, 2012 (3) AIR JHAR R 361, 2012 CRILR(SC MAH GUJ) 175, (2012) 110 ALLINDCAS 202 (SC), 2012 (1) SCC(CRI) 706, 2012 (1) SCALE 62, 2012 ALL MR(CRI) 717, 2012 (110) ALLINDCAS 202, (2012) 1 CRILR(RAJ) 175, (2012) 2 MH LJ (CRI) 307, 2012 CRILR(SC&MP) 175, 2012 (1) KER LT 59 SN, (2012) 1 ALLCRIR 325, (2012) 1 CHANDCRIC 179, (2012) 1 CRIMES 97, (2012) 1 CIVILCOURTC 119, (2012) MATLR 133, (2011) 2 CRILR(RAJ) 1418, (2012) 1 RECCRIR 779, (2011) 4 WLC (RAJ) 707, (2011) 108 ALLINDCAS 574 (RAJ), (2012) 1 RECCRIR 424, (2012) 1 CURCRIR 129, (2012) 1 DMC 708, (2012) 1 MADLW(CRI) 497, (2012) 3 PUN LR 125, (2012) 3 RAJ LW 2606, (2012) 1 SCALE 62, (2012) 1 UC 553, (2012) 4 CGLJ 291, (2012) ACJ 563, (2012) 76 ALLCRIC 629, (2012) 2 CAL LJ 171, 2012 (76) ACC (SOC) 30 (RAJ)

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Bench: J. Chelameswar, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 47-48 OF 2012

(Arising out of S.L.P. (Crl.) No. 7872-7873 of 2010)

State of Punjab

.... Appellant(s)

Versus

Balwinder Singh and Ors.

.... Respondent(s)

J U D G M E N T

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 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, Ist Class, Amritsar as upheld by the Additional Sessions Judge, Amritsar under Sections 304A, 337 and 279 of Indian Penal Code, 1860 (in short 'IPC').

3) Brief facts:

(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 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, 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.

(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, Ist Class, Amritsar. The Judicial 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 undergo rigorous imprisonment for a period of six months each for the offence punishable under Sections 337 and 279 IPC.

(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, Ist Class, Amritsar.

(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.

(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.

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 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 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 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 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 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 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;
- 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 road accidents in India and its devastating consequences, this Court in Dalbir Singh vs. State of Haryana, (2000) 5 SCC 82 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 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 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 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 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 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 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 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 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.

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 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 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 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 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.

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.

.....J. (P. SATHASIVAM)J. (J. CHELAMESWAR)
NEW DELHI;

JANUARY 6, 2012.