

Sita Ram vs State Of Himachal Pradesh on 16 August, 2016

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Criminal Revision No.130 of 2010

Date of Decision : 16.08.2016

Sita Ram

Versus

....Petitioner.

State of Himachal Pradesh

...Respondent.

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

of

Whether approved for reporting?1 Yes.

For the Petitioner : Mr. Rahul Mahajan, Advocate.

For the Respondent :

rt

Mr. Rupinder Singh Thakur,
Additional Advocate General.

Sandeep Sharma, Judge (Oral)

Instant Criminal Revision Petition filed under Section 397/401 of the Code of Criminal Procedure, is directed against the judgment dated 1.6.2010, passed by learned Additional Sessions Judge, Shimla, H.P. in Criminal Appeal No. 36-S/10 of 2006, affirming the judgment dated 8.6.2006, passed by learned Judicial Magistrate Ist Class, Theog, District Shimla in Criminal Case No.90-1 of 2001, whereby the petitioner (in short "accused") was convicted under Sections 279, 337, 338, 304-A of IPC and sentenced as under:-

279 IPC S.I. for three months and to pay fine of Rs. 500/-. In default of payment of fine to undergo S.I. for one month.

Whether reporters of the local papers may be allowed to see the judgment?

...2...

337 IPC S.I. for three months and to pay fine of Rs.

250/- . In default of payment of fine to
undergo S.I. for one month.

338 IPC S.I. for six months and to pay fine of

Rs.500/- . In default of payment of fine to undergo S.I. for two months.

304-A IPC S.I. for one year and to pay fine of Rs.1000/- . In default of payment of fine to of undergo S.I.for three months.

2. Briefly stated facts, as emerge from the pleadings rt are that on 4.11.2000, a private bus bearing registration No. HP-16-1020 was going from Shimla to Khaneti, which was being driven by accused Sita Ram. As per story of the prosecution, bus was having about 40 passengers at the relevant time. A private bus bearing registration No.HP-51-3405 was going ahead of aforesaid bus and when aforesaid bus, which was being driven by the accused, reached near place Gajeri, it fell down in a gorge about 200 feet down side of the road as the accused failed to control the same while negotiating the curve.

Unfortunately, 7 passengers died at the spot and about 26 passengers received simple as well as grievous injuries in the ill-fated accident. As per prosecution, bus was being driven rashly and negligently at a very high speed by the accused. As per the version put forth on behalf of the prosecution, accused was driving said bus in a very high speed and was trying to ...3...

compete with the bus bearing No.HP-51-3405 belonging to Vinay Nanda, which was also going from Shimla to Kyari in .

order to pick up the passengers. Accordingly, the police registered the case against the accused for having committed the offence punishable under Sections 279, 337, 338, 304-A of IPC and under Section 181 of the Motor Vehicles Act. During investigation, it transpired that the alleged accident occurred of due to rash and negligent driving of the accused, who admittedly with a view to compete private bus bearing rt registration No.HP-51-3405 was driving the bus at a very high speed and in that process, he lost control over the bus while negotiating the curve. During the investigation, accused also failed to produce his driving licence and as such, he was booked under the offence punishable under Section 181 of the Motor Vehicles Act. Police after completion of the investigation, presented the challan in the competent Court of law.

3. Learned trial Court after satisfying itself that a prima-facie case exists against the accused, framed charges under Sections 279, 337, 338 and 304-A of IPC against the accused, to which accused pleaded not guilty and claimed trial.

4. In the present case, prosecution with a view to prove its case beyond reasonable doubt examined as many as 16 witnesses. The statement of accused under Section 313 ...4...

Cr.P.C was also recorded, wherein he stated that the accident took place due to failure of brakes of the bus. However, he did .

not lead any evidence in his defence.

5. Thereafter, learned trial Court on the basis of the evidence made available on record by the prosecution found accused guilty of having committed the offence punishable under Sections 279, 337, 338 and 304-A of IPC and accordingly of convicted and sentenced the accused, as per the description given hereinabove.

6. rt Feeling aggrieved and dissatisfied with the impugned judgment/ order dated 8.6.2006/9.6.2006, passed by learned trial Court, present petitioner-accused filed an appeal under Section 374 of the Code of Criminal Procedure before the learned Additional Sessions Judge, Shimla, which was also dismissed vide judgment dated 1.6.2010. Hence, the present criminal revision petition, praying therein for quashing and setting-aside the impugned judgment of conviction and order of sentence, passed by learned trial Court and further upheld by learned Additional Sessions Judge, Shimla.

7. Mr. Rahul Mahajan, learned counsel representing the petitioner, vehemently argued that the judgments passed by both the Courts below are not sustainable as the same are not based upon correct appreciation of the evidence available on record. Mr. Mahajan forcibly contended that both the Courts ...5...

below failed to take into consideration the oral as well as documentary evidence placed on record in its right perspective .

and as such, great injustice has been caused to the present petitioner. Mr. Mahajan, further contended that both the Courts below have failed to exercise its jurisdiction so vested in it in just and proper manner, rather they have exercised their jurisdiction with material irregularity and illegality and as such, of impugned judgment of conviction and order of sentence, passed by learned trial Court cannot be allowed to sustain.

8. rt During his arguments, he invited the attention of this Court to the statements of PW-1, Pratap Singh and PW-2, Sanjeev Chauhan, to demonstrate that both the material witnesses, who were also travelling in the same bus at the time of accident have turned hostile but Court below while recording the conviction against the accused ignored the aforesaid material factum. Mr. Mahajan, also made this Court to travel through the statement/cross-examination of PW-4, Gian Chand, who

categorically stated in his cross-examination that the brake as well as steering system of the vehicle were not in a proper working condition. PW-4, further admitted that when defect appeared in the brake system, accident could be caused. He further stated in his cross-examination that as per his report Ex.PW4/A, the brake system of the vehicle was not in working condition. Hence, learned Courts below have fallen in ...6...

error while recording conviction against the present petitioner-

accused. Mr. Mahajan, forcibly contended that both the Courts .

below have failed to appreciate the principle that where two views are possible, one in favour of the petitioner-accused should be taken. In the present case, PW-4 while submitting his report Ex.PW4/A, categorically stated that brake system of the vehicle was not in working condition, meaning thereby that of the defect appeared in the brake and steering system of the vehicle at the time of the accident and as such, the petitioner-

rt accused could not be held responsible for the accident.

9. Mr. Mahajan, also stated that both the Courts below placed undue reliance on the prosecution witnesses that the petitioner-accused was driving the bus in rashly and negligently and was in competition with Vinay Nanda Coach.

PW-9, Jagdish Chauhan, the driver of the Nanda Coach vehicle totally denied the prosecution case and as such, conviction on the basis of the same needs to be set-aside. Mr. Mahajan, further contended that both the Courts below have only appreciated the statement of PW-15 i.e. Investigating Officer, who has not uttered a single word regarding competition, if any, with Nanda Coach and moreover, there is no mention, if any, in the statements recorded under Section 161 Cr.P.C that there was competition with Nanda Coach. In the cross-

examination, PW-15, ASI Om Raj, specifically admitted that he ...7...

does not know the number of Nanda Coach. Similarly, Mr. Mahajan, also invited the attention of the Court to the .

statements of PW-3, PW-4, PW-5, PW-6, PW-7 and PW-9 to demonstrate that undue reliance has been placed by the Courts below in the statements of aforesaid witnesses, which otherwise appears to be untrustworthy, while awarding the sentence and recording the conviction against the petitioner.

of Mr. Mahajan, while concluding his arguments also pleaded that both the Courts below have failed to appreciate the provisions rt of Section 4 of the Probation and Offenders Act and Section 360 of Cr.P.C. In the instant case petitioner being first offender could be granted benefit of probation.

10. Mr. Rupinder Singh Thakur, learned Additional Advocate General, supported the judgments passed by both the Courts below and stated that no interference, whatsoever, of this Court is warranted in the present facts and circumstances of the case. Mr. Thakur, with a view to substantiate aforesaid arguments, invited the attention of this Court to the impugned judgments passed by both the Courts below and stated that Courts below while recording the conviction against the accused have dealt with each and every aspect of the matter meticulously and as such, present petition ...8...

deserve to be dismissed. During his arguments, he made this Court to travel through the statements of PW-3, PW-4, PW-5, .

PW-6, PW-7, PW-9 and PW-15 to demonstrate that these witnesses have been very candid, specific and straight forward in narrating sequence of events happened at the time of accident. He also stated that defence has not been able to shatter their testimonies and as such, both the Courts below of have rightly held accused guilty of having committed offence punishable under Sections 279,337,338 and 304-A of IPC.

11. rt Mr. Thakur, strenuously argued that aforesaid PWs being occupants of the bus, PW-3, PW-4, PW-8 specifically stated that the bus was being driven rashly and negligently by the accused and as such, no specific evidence with regard to speed was required to be placed on record by the prosecution and as such, contention put forth on behalf of the petitioner deserve to be rejected outrightly. While opposing the prayer made on behalf of the petitioner for grant of benefit of Section 4 of the Probation and Offenders Act, Mr. Thakur, further submitted that no leniency can be shown to a person, who was admittedly driving the vehicle rashly and negligently fully knowing that more than 40 passengers are travelling in the ill-

fated bus. Mr. Thakur, stated that it is proved on record that the bus was being driven rashly and negligently by the accused at the time of the accident solely with a view to compete ...9...

another bus bearing registration No.HP-51-3405. He also invited the attention of this Court to the judgment passed by .

the Hon'ble Apex Court in State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182; wherein Hon'ble Apex Court has held that courts below while dealing with the accident cases should exercise great constraint while taking lenient view against reckless drivers, who drives rashly and negligently. Mr. Thakur, of also submitted that while exercising revisional jurisdiction, Court has very limited powers to re-appreciate the evidence rt available on record. Learned Additional Advocate General, has placed reliance upon the judgment passed by Hon'ble Apex Court in case State of Kerala versus Puttumana Illath Jathavedan Namboodiri (1999)2 Supreme Court Cases 452, wherein it has been held as under:-

" In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of

supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to ...10...

the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

12. In the aforesaid background, he prayed that the present petition deserves to be dismissed being devoid of any merit.

13. I have heard learned counsel representing the parties and have carefully gone through the record made of available.

14. True, it is that while exercising the power under rt Section 397 of Criminal Procedure Code, this Court has very limited power to re-appreciate the evidence available on record. But in the present case, where accused has been convicted and sentenced under Sections 279, 337, 338 and 304-A of the Indian Penal Code, this Court solely with a view to ascertain that the judgments passed by both the Courts below are not perverse and same are based upon correct appreciation of evidence available on record, undertook an exercise to critically examine the evidence available on record to reach fair and just decision in the case.

15. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon' ble Apex Court in Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case241; has held that in case Court notices that there is a ...11...

failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High .

Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality or sentence or order. The relevant para of the judgment is reproduced as under:-

of "8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous rt supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly

and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

16. It is undisputed that on 4.11.2000, present petitioner-accused was driving the bus bearing registration No.HP-16-1020, which was bound to Khaneti from Shimla. It is also undisputed that aforesaid bus, which was being driven by ...12...

the accused fell down in a gorge about 200 feet down side of the road, as a result of which, 7 passengers died at the spot .

and 26 passengers received simple as well as grievous injuries.

In the present case, prosecution with a view to prove its case though examined 16 witnesses but careful perusal of the statements recorded by the prosecution suggest that PW-1, PW-2, PW-3, PW-5 and PW-7 to PW-10 are the eye witnesses to of the alleged incident, whereas PW-4 is mechanic, who conducted the mechanical examination of the vehicle after the rt accident and submitted his report vide Ex.PW4/A, wherein he stated that no mechanical defect was found in the vehicle in question. PW-6, is the Doctor, who medically examined the injured in CHC, Theog. PW-11, is the police official, who proved the copy of reports Ex.PW11/A and Ex.PW11/B. PW-12, is the MHC, who recorded the FIR in question. PW-13, is the driver of the bus No.HP-51-3405. PW-14, is the owner of the bus being driven by the accused. PW-15 and PW-16, both are the Investigating Officers. Record further reveals that after the statements of the prosecution witnesses, accused was examined under Section 313 Cr.P.C, wherein he stated that the accident took place due to failure of brakes of the bus, meaning thereby, he admitted that at the time of the accident the bus was being driven by him.

...13...

17. Since, this Court had an occasion to peruse the entire evidence available on record, during arguments having .

been made by the learned counsel for the parties, this Court is of the view that prosecution has been able to prove its case beyond reasonable doubt that the vehicle in question was being driven by the accused rashly and negligently at the time of accident, which ultimately caused death of seven of passengers. However, with a view to examine the correctness and genuineness of the submissions having been made by rt learned counsel for the petitioner, this Court undertook an exercise to critically examine the material witnesses, who were allegedly eye witnesses of the accident.

18. In the present case, PW-1, PW-2, PW-3, PW-7 and PW-9 were passengers of the ill-fated bus at the time of accident, meaning thereby they were eye witnesses to the accident occurred on ill-fated

day. Though, PW-1 and PW-2 in their examination-in-chief admitted that they were sitting in the said vehicle at the relevant time, but feigned their ignorance with regard to the mode and manner of the accident, otherwise aforesaid prosecution witnesses admitted that there were 35- 40 passengers were travelling in the bus at the time of the accident, which took place at Gajeri. In their cross-examination by the prosecution, aforesaid witnesses showed their ignorance about the fact that accused was driving the vehicle in a very ...14...

high speed at the relevant time. But other witnesses PW-3, PW-7 and PW-9, who were sitting in the bus, categorically .

stated that at the time of the accident, accused was driving the vehicle rashly and negligently in high speed and reckless manner. They unequivocally stated that at that time bus was going downhill. At place Gajeri, due to over speed and the fact that accused was changing the cassette of stereo fitted in the of bus failed to control the bus, which ultimately went off the road. Aforesaid prosecution witnesses, categorically stated that rt many persons received injuries and about eight passengers died in the accident. Aforesaid witnesses have been very specific, candid and straight forward in stating that said accident took place due to high speed and negligent act of the accused. Similarly cross-examination of the PWs conducted by defence, nowhere suggest that the defence was able to extract anything contrary to what they stated in examination-in-chief, rather careful perusal of the statements of prosecution witnesses suggest that aforesaid witnesses stuck to their statements, which they got recorded in the examination-in-

chief and as such, it can be safely concluded that the defence was unable to shatter their testimonies. In cross-examination, these aforesaid witnesses categorically denied the suggestion put to them that the accident took place due to failure of the ...15...

brake system. They also denied that the speed of the bus was very slow.

.

19. Conjoint reading of the statements of aforesaid witnesses, leaves no doubt in the mind of the Court that at the relevant time bus was being driven by the accused rashly and negligently and in high speed, as a result of which, accident occurred and seven people died. After perusing the statements of of PW-1 and PW-2, this Court is unable to accept the contention put forth on behalf of the petitioner that both the Courts below rt have fallen in grave error while ignoring the statements of PW-

1 and PW-2, who are admittedly hostile witnesses. PW-1 and PW-2 in their statements have categorically stated that at the relevant time they were sitting in the vehicle and they also admitted that the accident took place at Gajeri and 30-40 passengers were travelling in the bus. No doubt, aforesaid prosecution witnesses feigned their ignorance with regard to mode and manner of the accident in their cross-examination.

But close scrutiny of their statements, nowhere suggest that they denied the case of the prosecution that the bus was not being driven rashly and negligently at the time of the alleged accident, rather both prosecution witnesses admitted that the accident occurred due to rash and negligent driving of the accused. If statements of these aforesaid witnesses PW-1 and PW-2 are read in conjunction with the statements of PW-3, ...16...

PW-7 and PW-9, it can be safely concluded that the bus was being driven at a very high speed rashly and negligently by the .

accused, who at the relevant time was changing the cassette of stereo fitted in the bus. Aforesaid prosecution witnesses categorically stated that at place Gajeri bus fell into a gorge due to over speed. Hence, no fault, if any, can be found in the findings recorded by both the Courts below that the bus in of question was being plied rashly and negligently by the accused at the relevant time.

20. rt Now coming to other contention put forth on behalf of the petitioner that both the Courts below have fallen in grave error while not appreciating the mechanical report Ex.PW4/A proved on record by PW-4, wherein PW-4 admitted that brake as well as o steering system were not found in proper condition. This Court solely with a view to test the correctness and genuineness of aforesaid contention put forth on behalf o the petitioner, perused statement of PW-4, HC Gian Chand as well as mechanical report Ex.PW4/A. Careful perusal of statement given by PW-4, nowhere suggest that the accident occurred due to failing of brakes and steering system of the vehicle, rather in cross-examination, he admitted that when he inspected the vehicle, braking system and steering system of the vehicle were not found in proper condition and he categorically stated that said systems were broken due to the ...17...

accident. Though, in cross-examination, PW-4 admitted that braking system and steering system of the vehicle were not .

found in proper condition but he has stated that said systems broken due to the accident. But interestingly, no suggestion, worth the name, was put to him by the defence that aforesaid defects were not occurred after the accident, rather had developed prior to the accident. Similarly, perusal of the report of Ex.PW4/A, nowhere suggest that the accident occurred due to failing of braking system as well as steering system, rather rt PW-4/A clearly reveals that at the time of mechanical examination/inspection of the bus, brakes as well as steering systems were not found in proper condition. Hence, it cannot be inferred in any manner that accident occurred due to mechanical defect as pointed out above. PW-4 while giving its report Ex.PW4/A specifically concluded in his opinion that the accident has not occurred due to mechanical defect.

21. PW-6, Dr. Dalip Tekta, who medically examined the injured, rendered his opinion vide MLC Ex.PW6/A to Ex.PW6/Z, Ex.PW6/Z1 and Ex.PW6/Z2, which clearly establish that in the aforesaid accident, number of people/passengers travelling in the bus suffered injuries and they all were subjected to medical examination. Similarly, 7 people who lost their lives were subjected to postmortem examination.

...18...

22. Conjoint reading of the statement of aforesaid witness coupled with the medical evidence led on record, .

clearly establish that the accident took place due to rash and negligent driving on the part of the accused, as a result of which, number of people died and 26 people suffered injuries.

The occupants of the vehicle, who were the eye witnesses to the accident very categorically, stated that the accused was of driving the vehicle in very high speed and due to his negligence accident took place. Similarly, PW-10 stated that rt accused was driving the vehicle in competition with another vehicle and as such, was in over speed, which ultimately resulted in the present accident. Similarly, aforesaid act and conduct of the driver of the bus stands clearly proved with the site plan Ex.PW16/B, which clearly suggest that the road at the particular spot was wide enough and there was no scope whatsoever, for accident. Similarly, photographs of the spot Ex.

PW15/D1 to Ex.PW15/D6 also corroborate the aforesaid fact.

23. At the cost of repetition, it may be observed that bare perusal of the statements of the occupants of the vehicle i.e. PW-3, PW-7 and PW-9, who were admittedly travelling in the bus at the time of the accident clearly demonstrate that at that time accused was driving the bus rashly and negligently with a view to over take another bus of Vinay Coach, which was going Shimla to Kyari at the relevant time and in that process, ...19...

he lost control over the bus and bus fell into a gorge. No doubt, that high speed in itself cannot be circumstance to .

presume rash and negligent act on the part of the accused/driver and there is no specific method to determine the specific speed of the vehicle at the relevant time.

24. Hence, in the absence of specific mode of ascertaining the speed of the vehicle at the relevant time, best of option available with the Courts to determine the fact with regard to speed of the vehicle is definitely to refer to the rt statements of the eye witnesses, who were admittedly travelling in the bus at the relevant time. Occupant of bus (PW-3) specifically stated that the bus was driven rashly and negligently in high speed by the accused.

25. PW-3, Jagdish Sharma, categorically stated that at the relevant time vehicle was being driven rashly and negligently in over speed and reckless manner by the accused and vehicle was going downhill and at place Gajeri. PW-3 strenuously stated that accused was changing the cassette of stereo fitted in the bus and he failed to control the bus, which ultimately went off the road. Aforesaid statement of PW-3, itself is sufficient to conclude that at the relevant time accused was negligent in driving the vehicle, who fully knowing well that more than 40 passengers were traveling in the bus, was ...20...

changing the cassette of stereo fitted in the bus that too in running bus.

26. Moreover, defence has not been able to prove that aforesaid prosecution witnesses had any motive to falsely implicate the present petitioner-accused because perusal of the cross-examination of these witnesses, nowhere suggest that any suggestion, worth the name, with regard to motive, if any, of to falsely implicate the accused was put to these prosecution witnesses. Hence, it can be safely concluded that these rt prosecution witnesses made truthful disclosure to the Court with regard to the accident.

27. At this stage, Mr.Rahul Mahajan, learned counsel for the petitioner placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in case State of H.P and ors versus Parmjit Singh, latest HLJ 2012(HP) 297 to substantiate his plea that speed is not a criteria to prove the rash and negligent driving. The relevant para Nos.14 and 15 of the judgment is reproduced as under:-

"14. It is a settled law that the speed is not a criterion to prove the rash or negligent act of driving. The prosecution, as already stated above is obliged to prove the necessary ingredients of the offence by direct or circumstantial evidence. To fasten the criminal liability for the offences charged, there should be consistent, convincing and reliable evidence. Even in the exceptional cases, where the rule of res ipsa laquitar applies, it ...21...

cannot be taken for guaranteed that the driver of the vehicle involved in the accident is guilty of offence. In the same situation, there could be civil liability as well, in .

addition to the criminal liability, but so far as the criminal liability, it has to be proved beyond reasonable doubt and civil liability can be proved by preponderance of probabilities.

15. On the strength of the aforesaid evidence, it is very difficult to conclude that the accused was driving the vehicle rashly or negligently, more specifically when it of has also come in the evidence that the deceased came in contact with the offending vehicle while crossing the road. Therefore, in my considered opinion, the offences rtpunishable under Sections 279 and 304-A of the Indian Pental Code against the accused are not made out."

28. True, it is that speed is not a criteria to prove rash and negligent act of driving and in this regard prosecution is bound to prove necessary ingredients of the offence by direct or circumstantial evidence and there should be consistent, convincing and reliable evidence. But in the present case, as has been discussed in detailed, occupants of the bus, who were travelling in the bus unequivocally stated that at the time of the accident, bus was being driven rashly and negligently in high speed and bare perusal of their entire statements clearly establish that they have been very consistent, specific and straight forward while stating that the vehicle in question was being driven rashly and

negligently at the time of the accident.

In the present case, as has been observed above, defence has ...22...

not been able to extract anything contrary in the cross-

examination of these prosecution witnesses and as such, .

Courts below have rightly concluded that the accused was driving the vehicle in question in high speed rashly and negligently at the relevant time. As has been discussed above, there is no specific mode available to determine the speed of the vehicle at the time of the accident because admittedly of whenever vehicles collides or falls in gorge, speedometer spring back to zero and it becomes difficult to ascertain the rt correct speed of the vehicle involved in the accident. In that scenario available method with the Courts to determine the issue of speed is only to refer the statements of the persons, who were eye witnesses to the accident. In the present case, PW-3, PW-7 and PW-9, who were travelling in the vehicle at the time of accident unequivocally, stated that the bus in question was being driven rashly and negligently in a high speed and as such, no fault, if any, can be found with the judgments passed by both the Courts below. Hence, aforesaid judgment referred hereinabove, may not be applicable in the present facts and circumstances of the case.

29. Now adverting to another prayer made on behalf of the petitioner that the petitioner-accused may be given the benefit of Probation under Section 4 of the Probation and Offenders Act and Section 360 Cr.P.C. keeping in view his ...23...

being first offender and livelihood of the family of accused is dependent on the petitioner-accused. He also stated that .

mitigating circumstance in this case is that more than 10 years have passed after passing of the judgment dated 8.6.2006, whereby the accused was convicted and he has already suffered mental agony during the pendency of the appeal in the court of learned Additional Sessions Judge, Shimla as well of as in High Court of Himachal Pradesh. In support of the aforesaid arguments, Mr. Mahajan, also invited the attention of rt this Court to the judgment passed by this Hon'ble Court in Yudhbir Singh versus State of Himachal Pradesh 1998(1)S.L.J. 58, wherein it has been held as under:-

"9. The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the

court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs.

...24...

3,000/- each to PWs Baldev Singh and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the .

trial Court on or before 31.8.1997, who will thereafter pay the same to said persons."

30. On the other hand, Mr. Rupinder Singh Thakur, learned Additional Advocate General, invited attention of this Court to the judgment passed in the Hon'ble Apex Court in of Dalbir Singh versus State of Haryana 2000 (5) SCC 82 wherein the Hon'ble Apex Court has held as under :-

rt13. 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 PO 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 ...25...

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.

14. Thus, bestowing our serious consideration on the arguments addressed by the learned counsel for the of appellant we express our inability to lean towards the benevolent provision in Section 4 of the PO Act.

The appeal is accordingly dismissed."

31. rt This Court cannot loose sight of the stern observations made by the Hon'ble Apex Court in State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182. While dealing with the accident case, the Hon'ble Apex Court has taken serious view of reduction of sentences by the courts below.

Their lordships in the aforesaid judgment in paras No. 1, 14, 23, 24 and 25 have held as under;

"1. Long back, an eminent thinker and author, Sophocles, had to say:

"Law can never be enforced unless fear supports them."

Though the aforesaid statement was made centuries back, it has its pertinence, in a way, with the enormous vigour, in today's society. It is the duty of every right thinking citizen to show veneration to law so that an orderly, civilized and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If ...26...

any one defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognizes. It can never be forgotten that the .

purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the of individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the rt constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain crimes assume more accent and gravity depending on the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalized. In this context one may recapitulate the saying of Justice Benjamin N. Cardozo "Justice, though due to the accused, is due to the accuser too". And, therefore, the requisite norm has to be the established principles laid down in precedents. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices.

14. In this context, we may refer with profit to the decision in Balwinder Singh (supra) wherein the High Court had allowed the revision and reduced the quantum of sentence awarded by the Judicial Magistrate, First Class, for the offences punishable under Section 304A, ...27...

337, 279 of IPC by reducing the sentence of imprisonment already undergone that is 15 days. The court referred to the decision in Dalbir Singh v. State .

of Haryana and reproduced two paragraphs which we feel extremely necessary for reproduction:- (Balwinder Singh case, SCC pp. 186-87, para12) "12...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 of the steering of automobiles, particularly

professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the rt 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 ...28...

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 of can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles." (Dalbir Singh case, SCC pp. 84-- rt 85 & 87, paras 1 &13)"

23. In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with means has, in possibility, graduated himself to harbor the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, is worse than death. Such developing of notions is a dangerous phenomenon in a orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is a worth living for as it is to the rich and the luxuriously temperamental.

...29...

24. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative .

necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because of justice is "the crowning glory", "the sovereign mistress"

and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months

25. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the law-makers should scrutinize, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."

...30...

32. After giving my thoughtful consideration to the law cited by Mr. Mahajan, Advocate representing the accused in .

the present case, I am of the view that same cannot be made applicable in the present case for granting the benefit of Section 4 of probation of Offenders Act, 1958. The Hon'ble Apex Court in Saurabh Bakshi case (supra) has deprecated the practice of Courts in settling the matter by awarding of compensation or releasing the accused by giving the benefit of Probation of Offenders Act, 1958. In the facts and circumstances of the present case, where there is overwhelming evidence to suggest that vehicle was driven by the accused in most rash and negligent manner, no leniency can be shown to the accused.

33. Consequently, in view of the aforesaid discussion, this Court sees no reason whatsoever, to interfere with the well reasoned judgments passed by both the Courts below, which appear to be based upon correct appreciation of the evidence adduced on record by the prosecution. This Court is fully convinced after perusing the evidence led on record that the prosecution has been able to prove its case beyond reasonable doubt. It clearly emerge from the record that the accused failed to exercise due and reasonable care while driving the vehicle down hill road specifically knowing that more than 40 passengers were travelling in the bus. Statement of PW-3, ...31...

wherein he categorically stated that at place Gajeri due to high speed and the fact that accused was changing the cassette of .

stereo fitted in the bus, driver lost the control of the bus, is sufficient/ enough to conclude that the bus was being driven rashly and negligently by the accused at the time of the accident. The revision petition is dismissed accordingly. Order dated 6.7.2010, passed by this Court, whereby sentence of imposed by the Court below was suspended, is hereby vacated and the petitioner-accused is directed to surrender himself rt before the learned trial Court forthwith to serve the sentence as awarded by the learned trial Court.

Accordingly, the present petition is disposed of alongwith pending application(s),if any.

August 16, 2016

(Sandeep Sharma)
Judge.

(shankar)