

**IN THE COURT OF SH. GAGANDEEP SINGH GARG, P.C.S,
SUB DIVISIONAL JUDICIAL MAGISTRATE, JAITU.**

UID No.PB0295

CASE No. 121 of 01.09.2015

CIS No. CHI/216/2015

CNR No. PBFDA1-000165-2015

Date of Decision:- 31.10.2019.

State Versus Kulwant Singh son of Pritam Singh r/o Mallan.

---Accused.

FIR No. 70 dated 06.07.2015

U/S 304-A,279,427 of IPC

Police Station- Jaitu.

Present :

Sh.Maninderjeet Singh Sidhu, APP for the State.

Accused on bail with Counsel Sh. NK Maheshwari, Advocate.

Sh. SS Brar, Advocate Counsel for complainant.

JUDGMENT

1. The above named accused has been sent up by SHO PS Jaitu to face trial for commission of offence u/s 279,304-A,427 of IPC in FIR No.70 dated 06.07.2015 Police Station Jaitu.

2. Briefly stated the facts of the prosecution case are that on 06.07.2015, ASI Ranjit Singh and other police officials were on routine patrol. They were present in the area of Bus Stand Jaitu. The complainant Sukhdev Singh met the IO and got recorded his statement to the effect that he is an agriculturist by profession. The first cousin of the

complainant namely Jaswinder Singh was employed at Electricity Office Jaitu on daily wages. The complainant had gone to Jaitu for his personal work and he met Jaswinder Singh. He set off to his Village Surghuri on his motor-cycle bearing registration No.PB-04-U-5657. The complainant was following Jaswinder Singh on his own motor-cycle. At about 7:20 PM, when Jaswinder Singh reached near the poultry farm Delianwali on Muktsar Road, a bus appeared from the front side bearing registration No.PB-04-N-8253. The driver of the bus drove the bus at a fast speed in a rash and negligent manner. The same hit the motor-cycle of Jaswinder Singh from wrong side. He fell down on the road along with the motor-cycle and severe injuries were caused to him. When the complainant went near him, he found Jaswinder Singh dead on the spot. The driver of the bus alighted from the bus and came near the complainant. When he asked him about his name, the accused revealed his name as Kulwant Singh son of Pritam Singh. People gathered on the spot. The accused fled away from the spot. An ambulance was arranged and the dead body of the deceased was taken to Civil Hospital Jaitu. He was declared as brought dead. The motor-cycle of the deceased was also badly damaged. The information was given to the police by the complainant in the company of Gurjit Singh. On the receipt of the information, the present case was registered. Ruqa was sent through PHG Nachattar Singh. The postmortem of the deceased was got conducted. On 07.07.2015, the IO went to the spot of occurrence and got the photographs clicked. Site plan was prepared. The accidental bus and the accidental motor-cycle were taken into custody. Statements u/s 161 Cr.P.C were recorded. The case property was deposited with MHC PS Jaitu. The vehicles were subject to chemical examination. The accused was taken into custody on 09.07.2015. The RC of the bus and driving license of the accused were taken into custody. On 22.07.2015, the RC of the motor-cycle and driving license of the deceased were taken into custody. The record was verified from the concerned

offices. After investigation, challan was presented against the accused.

3. On the appearance of the accused, copies of challan and other documents were given to the accused free of cost as required under Section 207 Cr.P.C.

4. Finding a prima facie case against the accused, charge was framed against him under Section 304-A, 279, 427 IPC. The contents of the charge were read over and explained to the accused to which he pleaded not guilty and claimed trial.

5. In order to prove the guilt of the accused, the prosecution got examined PW1 Ashok Kumar Clerk, PW2 Sukhdev Singh, PW3 Gurpreet Singh, PW4 Baljit Kaur, PW5 Lakhwinder Singh Ex Panch, PW6 Parminder Singh MTC office of SDM, PW7 ASI Ranjit Singh, PW8 HC Subash Kumar, PW9 Babli Sharma, PW10 HC Kahan Singh, PW11 Dr. Ashwani Kumar Assistant Professor and PW12 Surinder Kumar Maheshwari Notary Public. The prosecution tendered in evidence documents RC Ex.P1, license Ex.P2, RC of vehicle bearing No.PB-04-N-8253 Ex.PW3/A, statement of Sukhdev Singh Ex.PW2/A, statement of Lakhwinder Singh Ex.PW5/A, license No.7369/D Ex.PW6/A, endorsement Ex.PW7/A, FIR Ex.PW7/B, inquest report Ex.PW7/C, statements u/s 175 Cr.P.C Ex.PW7/D, application Ex.PW7/E, memo Ex.PW7/F, rough site plan Ex.PW7/G, recovery memo of bus and motorcycle Ex.PW7/H and Ex.PW7/I, arrest memo Ex.PW7/J, personal search memo Ex.PW7/K, recovery memo of RC of bus and DL Ex.PW7/L and Ex.PW7/M, recovery memo of DL and RC of motor-cycle Ex.PW7/N, recovery memo of photographs Ex.PW7/O, photographs Ex.P3 to Ex.PW8, case property MO1 to MO3, test reports Ex.PW8/A and Ex.PW8/B, carbon copy of PMR Ex.PW11/A, pictorial diagram Ex.PW11/B, bus permit Ex.PX and insurance certificate Ex.PY. The Ld. APP for the State gave up PW's ASI Jarnail Singh, SHO Jasvir Singh and Sampuran Singh Manager being not necessary and closed the prosecution

evidence.

6. The statement of the accused under Section 313 Cr.P.C was recorded and all the incriminating evidence emanating from the story of the prosecution was put to the accused. It was claimed by the accused that he is innocent. False case has been registered against him. It is claimed that one side investigation was conducted by police authorities in connivance with the complainant. It is claimed that no accident was caused by him. The accused did not lead any evidence in defence.

7. It is argued by the Learned APP for the State that the prosecution has proved the guilt of the accused beyond reasonable doubt. The accused was driving the bus in a rash and negligent manner. He was driving the bus at a fast speed on the wrong side of the road. He caused an accident with the vehicle of the deceased Jaswinder Singh. Due to his rash and negligent act, the accused caused the death of Jaswinder Singh and he damaged the motor-cycle of the deceased. The prosecution witnesses have deposed outlining the guilt of the accused beyond reasonable doubt. Therefore, it is prayed that the accused be convicted of the charge framed against the accused. On the other hand, it is argued by the Learned Counsel for the accused that the accused has been falsely implicated. The accused has not been identified as per law. There is no evidence linking the accused with the vehicle in question. There is no evidence that the accused was driving the bus in a rash and negligent manner at a fast speed. There are material discrepancies in the testimony of the prosecution witnesses. No such incident took place. No independent witness has been examined. The witness PW2 is a made up witness. The alleged site plan is not proved on record as per law of evidence. No passenger of the bus was joined in investigation. No test identification parade of the accused was got conducted. The alleged route permit and duty roster of the bus are not proved on record. The site plan and the photographs do not match. The police did not visit the spot on the date of

the alleged occurrence. Therefore, it was prayed that the accused be acquitted of the charge framed against the accused.

8. I have heard Ld. Counsel for the accused and Learned APP for the State and I have gone through the case file minutely. The following points of determination arise in order to adjudicate upon the culpability of the accused:

1. Whether on 06.07.2015 at about 07:30 PM, in the area of Police Station Jaitu the accused was driving the Bus bearing registration No. PB-04-N-8253 in a rash and negligent manner?OPP
2. Whether the accused caused the death of Jaswinder Singh son of Surjit Singh due to his rash and negligent act?OPP
3. Whether the accused caused damage to the motorcycle make Platina bearing registration No.PB-04-U-5657 for a value of more than Rs.50/-?OPP
4. Whether the prosecution has proved the guilt of the accused beyond reasonable doubt?OPP

9. In order to prove the guilt of the accused, the prosecution got examined PW1 Ashok Kumar, Clerk, DTO Office Faridkot. He proved RC of vehicle bearing registration No.PB-04-U-5657 Ex.P1 in the name of Surjit Singh. He proved the driving license Ex.P2. He also proved the RC of the bus Ex.PW3/A. He is a formal witness and he withstood the test of cross examination. Even if he did not produce the record in original, still there is no evidence disputing the legality of the documents proved on record in his testimony.

10. Thereafter, the prosecution got examined the complainant Sukhdev Singh as PW2. It is deposed by him that on 06.07.2015 at about 7:30 PM, he was following the deceased Jaswinder Singh. Both of them were moving on their individual motor-cycles. It is deposed that deceased Jaswinder Singh was riding the motor-cycle bearing registration No.PB-04-U-5657. It is deposed by him that the accident took place near the

poultry farm Delianwali Road. It is also specifically alleged by him that he had seen the accident being caused by a bus of Hargobind Company bearing registration No.PB-04-N-8253 and at the said time, the driver of the bus was driving the bus at a fast speed in a rash and negligent manner. The same hit the motor-cycle of the deceased from the wrong side. It is deposed that Jaswinder Singh died on the spot. It is also alleged by him that the driver of the bus met him on the spot and he revealed his name as Kulwant Singh. He specifically identified the accused to be the driver of the bus who caused the accident due to his rash and negligent act. He recorded his statement Ex.PW2/A with the police. He identified his signatures on the same. He also identified the dead body before the IO. During cross examination, it is deposed by him that the deceased is the son of the uncle of the complainant. It is admitted by him that it was raining on the date of the incident and the lights of the vehicles were glowing. It is claimed that in the month of July, it is not dark at the time of the incident. It is admitted by him that the road on which the incident took place is wide enough for two cars to cross. The road is straight and the approaching vehicle can be sighted from a distance. The deceased does not wear a turban and he was not wearing a helmet at the time of the incident. He did not inform any person about the incident from the spot on his mobile phone. No test identification of the accused was got conducted from the complainant by the police. He did not accompany the police to the place of the incident. The place of incident is a common thoroughfare. Even if he did not state in his examination in chief about the purpose of his visit to Jaitu, still the testimony of the complainant is not rendered as doubtful due to the said fact. The accused was earlier not known to the complainant. He had not seen the accidental vehicles at the time of his testimony. The family members of the deceased had filed a motor vehicle accident claim case. He is not aware about the name of the person in whose name the motor-cycle was registered. It is admitted by him that no

independent witness has been joined in investigation by the police. It is denied that he was not present on the spot at the time of the incident. It is denied that Jaswinder Singh fell down due to his own fault and he died due to the said accident.

11. PW3 Gurpreet Singh deposed that Sukhdev Singh told him about the alleged incident. He deposed about the postmortem of the deceased. It is admitted by him that he was told about the accused by Sukhdev Singh. He denied the suggestions put to him.

12. PW4 Baljit Kaur is the wife of the deceased. It is deposed by her that the deceased went to Jaitu for his work on his motorcycle bearing RC No.PB-04U-5657 make Platina of blank colour. She deposed about the accident and the death of the deceased in the accident. It is claimed by her that Sukhdev Singh saw the said incident and he told her that her husband has died in the said accident. When she got the said information, she reached civil hospital, Jaitu and the dead-body of her husband was lying in the Hospital. She found Sukhdev Singh and Gurpreet Singh near the dead body of her husband. Her statement was recorded by the police. She was present in her Village at the time of death of her husband. It is claimed that when she was going to the Hospital, she saw the accidental bus and motor-cycle on the way. She is not an eye witness to the incident. It is denied that a false case has been registered against the accused by them in order to receive the claim in an accident.

13. Thereafter, the prosecution got examined PW5 Lakhwinder Singh Ex Panch. He deposed that he alongwith Sukhdev Singh identified the dead-body of deceased Jaswinder Singh and he was present at the time of postmortem proceedings. His statement U/s 175 Cr.P.C. Ex.PW5/A was recorded. He is a formal witness and he withstood the test of cross examination.

14. PW6 Parminder Singh, MTC, office of SDM, Jaitu deposed that on 07.08.2015, he was posted in the office of SDM, Jaitu as MTC. He

produced the original record of the driving license of Jaswinder Singh son of Surjit Singh, R/o Surghuri, District Faridkot bearing No.7369/D dated 27.01.2010, which was valid upto 29.10.2020 and he proved the copy of the same as Ex.PW6/A on which he identified the signature of the then SDM, Jaitu. His statement was recorded by the police. During cross examination, it is stated by him that he does not know Jaswinder Singh personally. The record was not prepared in his presence.

15. PW7 ASI Ranjit Singh deposed that on 06.07.2015, he met Sukhdev Singh alongwith Gurpreet Singh. The complainant got recorded his statement Ex.PW2/A before him. He deposed about the endorsement Ex.PW7/A and sent ruqa through PHG Nachhatar Singh for the registration of the case, on which formal FIR Ex.PW7/B was registered. Thereafter, they reached at civil hospital, Jaitu where he prepared inquest report of deceased Jaswinder Singh as Ex.PW7/C. The dead-body of Jaswinder Singh was identified by Sukhdev Singh and by Lakhwinder Singh. He recorded their statements U/s 175 Cr.P.C. as Ex.PW7/D and Ex.PW5/A respectively. It is deposed by him that on 07.07.2015, he alongwith police party reached at civil hospital, Jaitu where he moved application Ex.PW7/E. After postmortem of the deceased, HC Kahan Singh produced clothes of deceased and he prepared parcel of the same and sealed the same with his seal bearing impression RS and took the parcel in police possession vide memo Ex.PW7/F. Thereafter, they reached the place of occurrence and he prepared rough site plan Ex.PW7/G. He took into police possession accidental bus bearing RC No.PB-04N-8253 vide memo Ex.PW7/H and accidental motor-cycle bearing RC No.PB-04U-5657 vide memo Ex.PW7/I. On return to police station, case property was deposited with MHC. On 08.07.2015, HC Subhash Kumar mechanic checked the accidental vehicles and prepared test reports and his statement was recorded by the IO. On 09.07.2015, accused Kulwant Singh was arrested by him vide memo Ex.PW7/J.

Personal search memo Ex.PW7/K was prepared. Accused produced the attested copy of RC of bus and driving license and he took the same into police possession vide memo Ex.PW7/L and Ex.PW7/M respectively. On 22.07.2015, Jasvir Singh produced the driving license of the deceased and original RC of motor-cycle and he took the same in possession vide memo Ex.PW7/N. On 29.07.2015, Babli Sharma produced six photographs before him and he took the same in possession vide memo Ex.PW7/O. He recorded statements of witnesses. He proved the attested photocopy of RC of bus as Ex.PW3/A, original RC of motor-cycle as Ex.P1, DL as Ex.P2 and photographs as Ex.P3 to Ex.PW8. He proved the case property i.e. bus MO1, motor-cycle MO2 and parcel MO3. During cross examination, it is stated by him that he did not conduct any test identification parade of the accused. It is admitted by him that he did not involve any passenger of the bus in investigation. It is claimed that the poultry farm shown in Ex. PW7/G was operational at the time of the accident but no person from poultry farm was joined in the investigation. He recorded the statements regarding the route and permit of alleged bus. The site plan was prepared on the next date of the incident by him but he did not mention in his investigation as to on whose direction the site plan was prepared. It is claimed by him that the site plan was prepared by him on the identification of Sukhdev Singh. It is admitted by him that in photograph Ex. P3 to Ex. P8, the motorcycle was shown on the side of the kacha road. It is admitted by him that in the site plan Ex. PW7/G, point A was on the metalled road but in the photographs the bus was shown to be on kacha road. It is admitted by him that at the time when the photographs were got clicked, he was not present at the spot. He did not investigate from the poultry farm and adjoining lands about the accident. He investigated the case only on the basis of statement of Sukhdev Singh

16. PW8 HC Subhash Kumar deposed that on 08.07.2015 he was posted as Mechanic at Police Lines, Faridkot. On that day, he reached PS

Jaitu where he mechanically checked accidental vehicle motor-cycle Bajaj Platina bearing registration No. PB-04-5657 and bus bearing registration No.PB-04M-8253. After checking the vehicles he prepared test reports Ex. PW8/A and Ex. PW8/B respectively. He identified his signatures and handwriting on the same. His statement was recorded by the IO. During cross examination, it is admitted by him that he has no personal knowledge as to how the accident took place. It is denied by him that he had furnished wrong report as per the dictation of the SHO. It is admitted by him that he has no technical experience to check the vehicles.

17. PW9 Babli Sharma, Photographer deposed that on 06.07.2015 he reached the place of occurrence and clicked the photographs at the spot with the help of his digital camera. After developing the same, he produced six photographs Ex. P3 to Ex. P8 before the IO and same were taken into police possession vide memo Ex. PW7/O which was attested by the deponent and by HC Kahan Singh. During cross examination, it is stated by him that he was called by Sahara Welfare Club to the spot. No negatives were developed along with the photographs. It is admitted by him that with the help of digital technology photographs can be edited.

18. PW10 HC Kahan Singh deposed that he is the attesting witness of memo Ex.PW7/F, memo Ex.PW7/H, memo Ex.PW7/I. He was present along with the IO at the time of the investigation. It is deposed by him that on 09.07.2015, accused Kulwant Singh was arrested by IO vide memo Ex.PW7/J. He deposed about personal search memo Ex.PW7/K, memo Ex.PW7/L and Ex.PW7/M and he is the attesting witness of the documents. He deposed that on 22.07.2015, Jasvir Singh produced the driving license of deceased and original RC of motor-cycle and IO took the same in possession vide memo Ex.PW7/N, which was attested by him and by Jasvir Singh. On 29.07.2015, Babli Sharma produced six photographs before IO and IO took the same in possession vide memo

Ex.PW7/O, which was attested by him and by Babli Sharma. His statement was recorded by the IO. During cross examination, it is admitted by him that no person was joined in the investigation from the poultry farm situated along side the spot of occurrence. It is claimed by him that the police party did not visit the spot of occurrence on 06.07.2015 as it was dark at the relevant time.

19. PW11 Dr. Ashwani Kumar deposed that on 07.07.2015, he was posted as Assistant Professor in the Department of Forensic Medicine, GGS Medical College, Faridkot. He identified the original record pertaining to postmortem report of Jaswinder Singh son of Surjit Singh r/o Surghuri. He proved the copy of PMR as Ex.PW11/A and pictorial diagram as Ex.PW11/B. He is a formal witness and he withstood the test of cross examination.

20. Finally the prosecution got examined PW12 Surinder Kumar Maheshwari, Notary, Jaitu who proved the attested photocopy of RC bearing No.PB-04N-8253 as Ex. PW3/A. He is a formal witness and he withstood the test of cross examination. The prosecution did not lead any other evidence. The accused did not lead any evidence in defence.

21. It is the allegation leveled by the prosecution against the accused that the deceased Jaswinder Singh was riding the motor-cycle bearing registration No.PB-04-U-5657. The complainant was following Jaswinder Singh on his own motor-cycle. When they reached near Delianwali poultry farm, then the accused was driving the bus of Hargobind Company bearing registration No.PB-04-N-8253 in a rash and negligent manner at a fast speed. It is alleged that the accused hit the motor-cycle of deceased Jaswinder Singh from the wrong side resulting into the death of Jaswinder Singh. The prosecution has examined the complainant as PW2 and he is also the eye witness to the incident. The witnesses PW3 and PW4 are not proved to be the eye witnesses to the incident. There is no other independent witness examined by the

prosecution. Therefore, the entire claim of the prosecution wrests on the testimony of the complainant. It is argued by the Learned Counsel for the accused that the complainant has been planted as an eye witness by the police. There is no independent witness examined by the prosecution. The complainant is related to the deceased. No passenger from the bus was joined in investigation. Therefore, it is argued that the testimony of the complainant is not sufficient to prove the guilt of the accused. I am of the considered opinion that the non involvement and non examination of an independent witness by the police/prosecution is not fatal to the present case of the prosecution. As per case law cited as **Rotash Vs. State of Rajasthan 2007 (1) CCC 1002 Supreme Court** in which it has been held that *the prosecution case cannot be rejected totally even in the case of defective investigation*. The testimony of the complainant cannot be rejected merely because he is related to the deceased. I take support from case law cited as **Harbans Kaur Vs. State of Haryana 2005 Cr LJ 2199 (SC)** in which it has been held that *there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is to be raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused*. The presence of the complainant on the spot is duly proved on record. The deceased was taken to the Hospital by the complainant immediately after the incident. There is nothing on record to believe the fact that the complainant has been planted as a witness by the police. It is categorically claimed by the complainant that he is an eye witness to the incident. The accused has merely denied the said fact. He has failed to point out any material fact which renders the claim of the prosecution to be doubtful that Sukhdev Singh is an eye witness to the incident. Therefore, the testimony of the witness PW2 is believable. The prosecution has proved the fact that an accident was caused with the bus bearing registration No.PB-04-N-8253 and motor-cycle bearing

registration No.PB-04-U-5657. It is proved on record that Jaswinder Singh died due to the accident and the motor-cycle of the deceased was badly damaged in the accident. On one hand, it is claimed by the accused that the accused was not driving the bus and on the other hand, it is claimed by the accused that the accident was not caused due to the rash and negligent act of the driver of the bus. Both the said defence raised by the accused are mutually destructive. If the accused was not present at the spot of the occurrence and if the accused was not driving the bus, then it is not shown as to how it is claimed by the accused that the accident was not caused due to the rash and negligent act of the driver of the bus. No plea of alibi is set up by the accused. It is not the case of the accused that the accused could not have been present at the spot on the date and time of the accident. Even if the prosecution did not tender in evidence any document to show that the accused was employed as a driver of the bus, still the said fact in itself is not sufficient to render the claim of the prosecution to be doubtful. It is argued by the Learned Counsel for the accused that the police did not conduct any test identification parade of the accused and the complainant did not identify the accused during investigation. I am of the considered opinion that it is categorically claimed by the complainant that when he was attending to the deceased on the spot, then the accused alighted from the bus and came near the complainant and the deceased. When the complainant inquired from him about his particulars, he revealed his name and parentage to the complainant. The witness PW2 has categorically deposed having identified the accused to be the driver of the bus. Therefore, even if no test identification parade of the accused was got conducted by the police, still the accused has been identified as per law by the complainant.

22. There is nothing on record to show as to why the complainant party would falsely implicate the accused in the present case. The prosecution has not named PW3 and PW4 to be the eye witnesses to the

incident and they have not been planted as eye witnesses by the police. Therefore, it is not proved by the accused that the police has created evidence to falsely implicate the accused. The accidental vehicles were taken into custody from the spot by the police. The first information was recorded by the police immediately after the incident. The same is proved as Ex.PW2/A. The registration of FIR is proved on record. The deceased was immediately taken to the Hospital. He was declared as brought dead. The postmortem of the deceased is duly proved on record. As per the report of the postmortem Ex.PW11/A, the cause of death of the deceased is hemorrhage and shock as a result of injuries consequent upon blunt force/impact on the body of the deceased. The injuries were declared to be anti mortem in nature. The photographs of the deceased are proved on record. Therefore, the death of the deceased in the accident is proved on record by the prosecution. The place of the accident is proved vide site plan Ex.PW7/G. The photographs of the accidental bus and the motor-cycle are also proved on record. It is argued by the Learned Counsel for the accused that the site plan and the photographs do not correspond with each other. As per the site plan, the accident was caused on the metaled road, whereas as per the photographs, the vehicles are shown on the kacha road. I am of the considered opinion that there is no discrepancy in this regard. It is a possibility that after the accident, the vehicles could have been taken to the side of the road. The photographs were got clicked by PW9 in the absence of the IO. Therefore, the said variation is not material in nature and the same does not render the case of the prosecution to be doubtful. The cloth of the deceased were taken into custody by the police. The arrest of the accused and the recovery of the driving license of the accused are proved on record. The accused did not object to his arrest. It is not explained by the accused that if the accused was not involved as a driver in the accident, then why the accused did not object at the time of his arrest. The registration of the bus with New Hargobind Transport is

proved as per attested copy of the RC Ex.PW3/A.

23. It has come on record that both the accidental vehicles were subject to mechanical examination. The report of the motor-cycle is proved by PW8 as Ex.PW8/A and the report of the bus is proved by him as Ex.PW8/B. The oil tank, head light of the motor-cycle are found to be broken and there is a damage to the other parts of the motor-cycle. There is a dent in the bumper of the bus. There is a dent in the radiator. The glass of the driver side of the bus is also found to be broken. Therefore, the accident between the two vehicles is duly proved on record. The damage to the motor-cycle for an amount of more than Rs.50/- is duly proved on record. The witnesses PW3 and PW4 are not the eye witnesses to the accident. Therefore, there is no material contradiction viz a viz the testimony of the said witnesses in comparison to the testimony of the complainant. The complainant has withstood the test of cross examination. The Learned Counsel for the accused has failed to impeach the testimony of the complainant.

24. It is duly proved on record that the deceased was riding the motor-cycle and the accused was driving the bus at the spot, date and time of the accident. It is proved on record that Jaswinder Singh died due to the accident and the motor-cycle of Jaswainder Singh was damaged in the accident for an amount of more than Rs.50/-. The dead body has been duly identified. The postmortem of the deceased is proved on record. The cause of death is proved on record. The investigation is proved on record. It is specifically alleged by the complainant that the accident was caused due to the rash and negligent act of the accused. He was driving the bus at a fast speed in a rash and negligent manner on the wrong side of the road. It is admitted by the Learned Counsel for the accused during cross examination of PW2 that the road is straight and the approaching vehicles can be identified from a distance. Still the accused hit the motor-cycle of the complainant from the wrong side of the road. The said fact proves the

negligence of the accused. It is proved that the accident was caused by the accused due to his rash and negligent act. The prosecution has placed on record certified copy of judgment dated 19.07.2018 in a claim petition filed by Gurmail Kaur, Baljit Kaur, Ashmeet Brar and Avneet Kaur u/s 140, 166 of Motor Vehicle Act, 1988 against the accused Kulwant Singh and against Hargobind Transport Company and Oriental Insurance Company. The certified copy of the judgment is perse admissible in evidence. As per the judgment, the claimants were awarded compensation in the sum of Rs.28,92,400/- to be paid by the insurance company. The issue No.1 was framed in the said case as to whether Jaswinder Singh died in a motor vehicle accident on 06.07.2015. It is alleged by the claimants that the bus was driven by the accused in a rash and negligent manner. As per para No.13 of the judgment, it is proved that Jaswinder Singh died in an accident caused due to the rash and negligent driving of the bus bearing registration No.PB-04-N-8253 by the accused. Although the said judgment is not binding so far as the adjudication of the guilt of the accused is concerned, but the findings of the said judgment are relevant and the same corroborate with the findings in the present trial against the accused. It is duly proved that the accident was caused due to the rash and negligent driving of the accused.

25. Therefore, on the basis of the findings given above, it is proved on record that the accused was driving the bus in a rash and negligent manner so as to endanger human life and personal safety of others. It is proved that the accused caused the death of the deceased Jaswinder Singh due to his rash and negligent act and he caused damage to the motor-cycle bearing registration No.PB-04-U-5657 for an amount of more than Rs.50/-.

26. Accordingly, on the basis of findings given above, I am of the considered opinion that the prosecution has proved the guilt of the accused beyond reasonable doubt. The accused Kulwant Singh is held

guilty and convicted under Section 279,304-A,427 IPC. Let the accused be taken in custody and heard on the question of sentence.

Pronounced in the open Court.

Dated: 31.10.2019

Varinder Kumar

**(Gagandeep Singh Garg)
Sub Divisional Judicial Magistrate
Jaitu.
UID No. PB0295**

QUESTION OF SENTENCE

Present: Convict in custody with Counsel Sh. NK Maheshwari,
Advocate.
Sh.Maninderjeet Singh Sidhu, APP for the State.

It is argued by the Learned APP for the State that the accused has committed a serious offence. It is pleaded that the accused be given maximum sentence. On the other hand, it is argued by the Learned Counsel for the accused that the accused is a first offender. He is poor individual. He may be treated sympathetically. It was prayed that the accused may be released on probation.

I have heard the Learned APP for the State and the Learned Counsel for the accused and I have gone through the facts and circumstances of the case. I am of the considered opinion that there is no ground to release the accused on probation. The accused has committed a serious offence.

Keeping in view the facts and circumstances of the case and the nature of offence committed by the accused, he is sentenced as under:

Name of the convict (s)	Offence/ under Section	Sentence
Kulwant Singh son of Pritam Singh	279 IPC	He is liable to undergo simple imprisonment for a period of 6 months and he is liable to pay fine in the sum of <i>Rs.1000/-</i> . In default of payment of fine, he shall further undergo simple imprisonment for <i>one month</i> .
	304-A IPC	He is liable to undergo simple imprisonment for a period of 2 years and he is liable to pay fine in the sum of <i>Rs.2000/-</i> . In default of payment of fine, he shall further undergo simple imprisonment for <i>three months</i> .
	427 IPC	He is liable to undergo simple imprisonment for a period of 6 months and he is liable to pay fine in the sum of <i>Rs.1000/-</i> . In default of payment of fine, he shall further undergo simple imprisonment for <i>one month</i> .

The period of sentence is concurrent. Period of custody if any already undergone by the accused shall be set off from the substantive sentence imposed upon the accused. The bail/surety bonds of the accused stand discharged. Case property, if any be dealt with as per rules after the expiry of the period of appeal/revision if any. File be consigned to the Record Room.

Pronounced in the open Court.

Dated: 31.10.2019

Varinder Kumar

(Gagandeep Singh Garg)
Sub Divisional Judicial Magistrate
Jaitu.
UID No. PB0295