
(2001) 07 DEL CK 0153

In the Delhi High Court

Case No : Criminal R. 107 of 2001 and Criminal M. 209 of 2001

Bhim Sain

APPELLANT

Vs

The State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2001) 60 DRJ 489

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Deepak Tyagi, for the Appellant; Baldev Malik, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chopra, J.—The revisional before this Court stands convicted by the Courts below under Sections 279 and 304-A IPC. He has been sentenced to undergo RI for 3 months u/s 279 IPC and RI for 1 year u/s 304-A IPC. Both the sentences have been ordered to run concurrently.

2. I have heard learned counsel for the petitioner and learned counsel for the State and also gone through the records.

3. Learned counsel for the petitioner has challenged the impugned convicted and sentence of the petitioner, mainly on the ground that the Investigating Officer was not examined before the trial Court, site plan was not proved and even mechanical inspection report was not proved. It is also submitted the P.W. 4, who was produced an eyewitness in the case, is a falsely introduced witness, but still both the Courts below gravely erred in accepting his testimony. According to learned counsel for the petitioner, the aforesaid infirmities and lacunas in the prosecution case call for interference by this Court. Learned counsel for the State, on the other hand, has contended that the findings of fact recorded by the Courts below need not be interfered with in the exercise of revisional jurisdiction

and as such, the petition is liable to be dismissed.

4. It is true that while exercising revisional powers u/s 397 of the Code of Criminal Procedure, this Court should not ordinarily interfere with the findings of fact arrived by the trial Court and confirmed by the Appellate Court, but in those cases where the findings are found to be perverse or incorrect on the face of record, a revisional Court is under a duty to interfere with the same to prevent failure of justice.

5. In the case in hand, the prosecution has failed to examine the Investigating Officer before the trial Court and consequently, the site plan has not been proved on record. The prosecution was given several opportunities to produce the Investigating Officer, but still he was not examined. He was certainly a material witness in the case and his non-production has caused serious prejudice to the defense of the accused for the reason that the accused petitioner was not in a position to question the steps taken by the Investigating Officer in the course of investigation nor he could show to the Court with the help of the site plan that the allegations against him were false. The non-examination of the officer, who had conducted the mechanical examination of the vehicle involved in the accident also calls for an adverse inference against the prosecution case and it can be said that of the said witness had been produced, he would have not supported the case of the prosecution. These infirmities coupled with the fact that there is a serious contradiction in the statement of the only eye witness PW 4 in regard to the direction from which the offending three-wheeler scooter was coming, creates a serious doubt in the prosecution case. According to P.W. 4, the offending three-wheeler came towards Adarsh Nagar, but according to F.I.R., it was coming from the side of Adarsh Nagar. It offending three-wheeler scooter was going towards Adarsh Nagar, it could not at all hit a person standing on the side of the road towards Panchwati. Not only this it is also not explained on record as to where the eye-witness PW4 was when the Investigating Officer reached the spot. According to P.W. 4 after sending the injured to the hospital he had remained at the spot and the Investigating Officer had recorded his statement, Exhibit P.W. 4/A, but the prosecution case is that when Investigating Officer reached the spot, the injured had already been removed to the hospital and P.W. 4 was not present at the spot and his statement could be recorded by the Investigating Officer only after returning from the hospital. According to Rukha, Exhibit P.W. 4/A when the Investigating Officer reached the spot, the injured had been taken to hospital. He went to the hospital where no eye-witness was found. When he came back to the spot, only then he found P.W. 4 present there and recorded his statement. In view of this situation and the fact that the deceased was also a police official, possibility cannot be ruled out that P.W. 4 was a falsely introduced witness in the case and for that reason only, a serious contradiction in regard to the direction in which the offending three-wheeler scooter was going, has cropped up. This Court is, Therefore, of the considered view that the Courts below gravely erred in accepting the statement of P.W. 4 for holding that the prosecution had succeeded in proving its case against the

petitioner beyond reasonable doubt.

6. In a judgment in State of Karnataka Vs. Satish, , the Apex Court had considered the question of non-examination of the Motor Vehicle Inspector by the prosecution and had held that it was a serious infirmity in the prosecution case. The importance of the report of mechanical inspection lies in the fact that only a Mechanical Inspector can say as to whether at the time of the accident, the brakes of the offending vehicle were properly working or not. If the brakes of a vehicle suddenly fail, the driver can never be blamed.

7. This Court is, Therefore, of the considered view that the Courts below had fallen in grave error in ignoring the principles governing the appreciation of evidence and had accepted the statement of P.W. 4, who was not at all a reliable and trust-worthy witness. The impugned conviction and sentence of the petitioner, Therefore, cannot be sustained.

8. In the result, the petition is allowed, the impugned order of conviction and sentence of the petitioner is set aside and he is acquitted. The bail bonds furnished by the petitioner stand discharged. The trial Court record be sent back immediately.