
(2014) 01 P&H CK 0263
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 34 of 2014

Chander Parkash

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2) 307 386 389 390

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 279 337 338

Citation : (2014) 01 P&H CK 0263

Hon'ble Judges : Mahavir S. Chauhan, J

Bench : Single Bench

Advocate : Sandeep Arora, for the Appellant;

Final Decision : Dismissed

Judgement

Mahavir S. Chauhan, J.—On April 29, 2005, PW-Navdeep Kaur, accompanied by a few others, was travelling by a Qualis Car bearing registration No. PB 29 D 2966, from Moga to village Cheema Khuddi in district Gurdaspur. At or around 00.30 a.m. on April 30, 2005, when this car had reached a little ahead of village Pachranga towards Bhogpur, a Tata sumo, bearing registration No. HR 08C 6775, while being driven in a rash and negligent manner, hit the Qualis Car after hitting a truck going ahead of it. Occupants of the Qualis and Tata Sumo received multiple grievous injuries which claimed lives of eight passengers travelling in the said vehicles. PW4-Navdeep Kaur made a statement, Exhibit PA, before the police whereupon First Information Report (FIR) No. 50 dated 30.04.2005 under Sections 279, 337 and 338 of the Indian Penal Code came to be recorded at Police Station Bhogpur.

2. After conclusion of investigation, final report in terms of Section 173(2) of the Code of Criminal Procedure (for short, the Code) was presented before the jurisdictional magistrate and trial ensued, which resulted into conviction of the petitioner and he was awarded various terms of imprisonment and fine by the

Court of learned Judicial Magistrate Class-I, Jalandhar vide judgment of conviction and order of sentence dated March 16, 2011.

3. Criminal Appeal No. 62 of 2013 brought by the petitioner to challenge judgment of conviction and order of sentence dated March 16, 2011, was dismissed by the Court of learned Additional Sessions Judge, Jalandhar, vide judgment dated 11.12.2013.

4. To assail the correctness of the findings recorded by the learned trial Magistrate, as affirmed by the Court of learned Additional Sessions Judge, the convict has invoked the provisions of Section 401 of the Code by way of the instant Criminal Revision Petition.

5. I have heard Shri Sandeep Arora, Advocate, learned counsel representing the convict-petitioner and have also perused the judgments of the Courts below.

6. It is contended by the learned counsel for the convict-petitioner that the prosecution has not been able to prove its case beyond reasonable doubt in so far as no test identification parade was held to fix the identity of the convict-petitioner as driver of the car stated to be involved in the occurrence and three witnesses, namely PWs Amit Joshi, Lovelesh Verma and Sarishta Devi have refused to own the prosecution version. According to the learned counsel, test identification parade was necessary in view of the fact that the driver of the ill-fated Tata Sumo was not known to the witnesses.

7. Before proceeding further it is deemed appropriate to have a glance across the provisions of Section 401 of the Code. It reads as under:

401. High Court's powers of revision: (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390, and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under the Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and

that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

8. Scope of Section 401 of the Code has attracted attention of this Court and the Hon"ble Supreme Court of India in various cases and the view that has consistently held the field is that this provision confers upon this Court a supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals but where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order and the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction. Revision is not an appellate forum wherein scrutiny of evidence is possible. It should suffice to refer only to judgment of the Hon"ble Apex Court rendered in the case of Jagannath Choudhary and Others Vs. Ramayan Singh and Another, (2) Crimes 409(SC) : (2002) 3GLR 2743 : JT 2002 (Suppl) SC 139 : 2003 (1) KLT 400 (SC) : 2002 (4) SCALE 492 : (2002) 5 SCC 659 : [2002] 3 SCR 936 : 2002 (2) UC 404. In this judgment, it was held as under:

9. Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary and Others, The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the application would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction.

10. While it is true and now well-settled in a long catena of cases that exercise of power u/s 401 cannot but be ascribed to be discretionary - this discretion, however, as a popularly informed has to be judicious exercise of discretion and

not an arbitrary one. Judicial discretion cannot but be a discretion which stands "informed by tradition, methodised by analogy and disciplined by system" - resultantly only in the event of a glaring defect in the procedural aspect or there being a manifest error on a point of law and thus a flagrant miscarriage of justice, exercise of revisional jurisdiction under this statute ought not to be called for. It is not to be lightly exercised but only in exceptional situations where the justice delivery system requires interference for correction of a manifest illegality or prevention of a gross miscarriage of justice. In *Logendra Nath Jha and Others Vs. Shri Polailal Biswas,]* as also in *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*, this Court with utmost clarity and in no uncertain terms recorded the same. It is not an appellate forum wherein scrutiny of evidence is possible; neither the revisional jurisdiction is open for being exercised simply by reason of the factum of another view being otherwise possible. It is restrictive in its application though in the event of there being a failure of justice there can said to be no limitation as regards the applicability of the revisional power.

11. The High Court possesses a general power of superintendence over the actions of courts subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications-so also its right to exercise its powers of administrative superintendence. Though however, the jurisdictional sweep of the process of the High Court, however, under the provisions of Section 401 is very much circumscribed, as noticed hereinbefore.

9. In the case in hand PW4, Navdeep Kaur has proved the occurrence and has also identified the convict-petitioner as the person who was responsible for the unfortunate happening; and PW1, Dr. Bhupinderpal Singh Randhawa, and PW2, Dr. D.S. Bimra, have proved reports of post mortem examination in respect of the persons who lost their lives in the occurrence as also MLRs showing injuries on the person of the injured PW4-Navdeep Kaur. PW4-Navdeep Kaur has not only proved the occurrence but has also identified the convict-petitioner as driver of the Tata Sumo at the time of the occurrence. She has been able to pass the acid test of cross-examination successfully. The doctors, who have deposed with regard to the cause of death of the persons who died in the occurrence and injuries on the person of injured PW4-Navdeep Kaur, have not been cross-examined by the defence. In the situation refusal of PWs Amit Joshi, Lovelesh Verma and Sarishta Devi to support the prosecution case and non-holding of test identification report, are rendered inconsequential more so in view of the fact that Section 134 of the Indian Evidence Act, 1872 mandates that no particular number of witnesses is necessary in proof of a particular fact and test identification parade pertains to the stage of investigation and its absence is

immaterial as the injured witness has identified the convict-petitioner before the learned trial Magistrate.

10. Nothing more has been urged.

11. From the above no ground for interference with the findings recorded by the Courts below, is made out. Dismissed.