

(2023) 02 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Revision No.122 Of 2016

Chokro Mundari

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 27-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A

Citation : (2023) 02 JH CK 0047

Hon'ble Judges : Ambuj Nath, J

Bench : Single Bench

Advocate : Raj Nandan Chatterjee, Rajneesh Vardhan

Final Decision : Allowed

Judgement

Ambuj Nath, J

Heard the parties.

This revision application is being disposed of at the stage of admission itself.

The petitioner namely Chokro Mundari has preferred this revision application against the judgment dated 05.01.2016, passed by Sri Pradeep Kumar Srivastava, learned Sessions Judge, West Singhbhum at Chaibasa (as His Lordship was the then), in Cr. Appeal No.78/2015, whereby and wherein, the learned Sessions Judge, Chaibasa, affirmed the Judgment of conviction and order of sentence dated 05.10.2015 passed by Sri Vishal Srivastava, learned Judicial Magistrate 1st class, West Singhbhum at Chaibasa, in connection with Muffasil (Pandrasali O.P) P.S Case No.19/2011 corresponding to G.R No.59/2011, holding the petitioner guilty of the offence under Sections 304-A and 279 of the Indian Penal Code and thereby sentencing him to undergo simple imprisonment for one year for the offence under Section 304-A of the I.P.C and simple imprisonment for two months for the offence under Section 279 of the I.P.C. Both the sentences were ordered to run concurrently.

The case of the prosecution is that on 31.01.2011 at about 12 Noon, the informant, Shyam Purty was going on his motorcycle bearing registration No. JH-05T-1567 along-with his friend, Pandu Gagrai. When they reached near Sangjata line hotel, a Tata Magic bearing registration No. JH-06D-5865 being rashly and negligently driven, dashed the motorcycle of the informant, causing injuries to both the informant and his friend. His friend, Pandu Gagrai died in the said accident.

Petitioner is said to be the driver of the offending vehicle.

Both the learned Trial Court as well as learned Appellate Court have come to concurrent findings regarding the guilt of the petitioner Chokro Mundari for the offences under Sections 304-A/279 of the Indian Penal Code.

Mr. Raj Nandan Chatterjee, learned counsel for the petitioner has submitted that none of the eyewitnesses have identified the petitioner as the person who was driving the offending vehicle at the time of occurrence. In fact, prosecution witnesses have specifically stated that they are not aware as to who was driving the offending vehicle. In such facts and circumstances, both the learned Trial Court as well as learned Appellate Court have come to an erroneous finding regarding the guilt of the petitioner under Sections 304-A and 279 of the Indian Penal Code. Accordingly, it was prayed that this application be allowed and the judgment of conviction and order of sentence passed by the learned Trial Court below be set aside.

Mr. Rajneesh Vardhan, learned A.P.P has submitted that the owner of the offending vehicle namely Aditya Kumar Pati has been examined as P.W.5. He has stated in the court that petitioner was the driver of the vehicle at the time when the accident took place. Accordingly, it was prayed that this revision application be dismissed.

From perusal of the oral testimony of the prosecution witnesses, it appears that none of the eye witnesses have identified the petitioner as being the driver of Tata Magic bearing registration No. JH06D-5865, who was driving the offending vehicle at the time of accident.

Both the learned court below and the learned Appellate Court have come to the conclusion about the guilt of the petitioner only on the statement of the owner of offending vehicle Aditya Kumar Pati P.W.5 that at the time of occurrence, the petitioner was employed as a driver of the offending vehicle.

The fact that the petitioner himself surrendered before the Court below along with documents of the vehicle including his driving licence was found to be incriminating.

The petitioner may have been employed as a driver of the offending vehicle at the time of accident, but it was incumbent upon the prosecution to prove that at the time of accident, he was actually driving the offending vehicle. The petitioner cannot be held guilty on the probability that he was driving the offending vehicle

at the time of accident. His surrender before the learned Court below as the driver of the offending vehicle cannot be held to be incriminating fact so as to hold him guilty for the alleged accident. The prosecution has to stand on its own legs. It cannot hide behind the fact that just because the petitioner surrendered before the court below as the driver of the offending vehicle, it will be presumed that he was driving the offending vehicle at the time of accident. It cannot be a ground for his conviction, in absence of any other cogent evidence that he was driving the offending vehicle at the time of the accident, otherwise there will be no need to prove the identity of the accused during trial.

Both the learned Trial Court as well as learned Appellate Court have come to an erroneous finding for causing the accidental death of Pandu Gagrai.

This revision application is accordingly, allowed.

The Judgment of conviction and order of sentence passed by the learned Trial Court in connection with Muffasil (Pandrasali O.P) P.S Case No.19/2011, corresponding to G.R No.59/2011, T.R No.58/2015 is hereby, set aside.

Pending I. A, if any, also stands disposed of.