

(2023) 09 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 229, 230 Of 2012

Jai Ram And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 201, 279, 304A, 336
Code Of Criminal Procedure, 1973 — Section 154, 397, 401
Motor Vehicles Act, 1988 — Section 187

Citation : (2023) 09 SHI CK 0006

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : N.K. Thakur, Divya Raj Singh, Raj Kumar Negi, Ayushi Negi

Final Decision : Dismissed

Judgement

Sushil Kukreja, J

1. Since both these petitions are offshoot of FIR No. 56 of 2004, dated 24.01.2004, under Sections 279, 304A and 201 of the Indian Penal Code, registered at Police Station Una, District Una, H.P., they are taken up together for consideration and adjudication.

2. The instant revision petitions are maintained by the petitioners/accused/convict (hereinafter referred to as "the accused") under Sections 397 and 401 Cr. P.C., against the judgment, dated 27.09.2012, passed by learned Sessions Judge, Una, in criminal Appeals No. 33 and 34 of 2010, whereby the conviction and sentence recorded by learned Judicial Magistrate 1st Class, Court No. IV, Una, in Criminal Case No. 109-I-2004, dated 16.06.2010, under Section 336 IPC, against accused/convict Jai Ram, and under Sections 279 and 304A IPC and Section 187 of the Motor Vehicles Act, had been affirmed, with a prayer to quash and set-aside the impugned judgments of conviction and sentence and to acquit the accused/convicts from the charges.

2. The brief facts, giving rise to the present revision petitions, can succinctly be summarized as under:

2(a). On 24.01.2004, around 11:15 a.m., accused Balbir Chand, was driving bus No. HP-20-5611 and stopped it at Upper Basal for passengers to alight. As per the prosecution story, when deceased Sushma, who was holding her child Ankita, was alighting from the bus, accused Jai Ram (conductor of the bus) blew whistle and accused Balbir Chand drove the bus. Due to the negligence of the accused persons, deceased, alongwith her child, came underneath the bus and died on the spot. It has further come in the prosecution story that accused Balbir Chand did not stop the bus and on the day of occurrence, he was driving the bus in a rash and negligent manner, endangering human life and personal safety of others. As per the prosecution, due to rashness on the part of accused Balbir Chand and negligence on the part of both accused persons, the accident took place, resulting in death of Sushma and Ankita. On the basis of the statement of one Shri Prithi Chand, alleged eye-witness of the accident, under Section 154 Cr.P.C., an FIR against the accused persons was registered and on completion of investigation chargesheet was presented in the learned Trial Court. The learned Trial Court on conclusion of the trial, convicted accused Balbir Chand and sentenced him to undergo rigorous imprisonment for a period of one month and to pay fine of Rs. 200/- for the offence punishable under Section 279 IPC and in default of payment of fine to under simple imprisonment for a period of fifteen days, accused Balbir Chand was also sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.1000/- for the offence punishable under Section 304-A IPC and in default of payment of fine to undergo simple imprisonment for a period of one month and he was sentenced to undergo simple imprisonment for a period of one month and to pay fine of Rs. 100/- for the offence punishable under Section 187 of the Motor Vehicles Act and in default of payment of fine to further undergo simple imprisonment for a period of seven days. Accused Jai Ram was sentenced to undergo rigorous imprisonment for a period of two months and to pay fine of Rs.200/- for an offence punishable under Section 336 IPC and in default of payment of fine to further undergo simple imprisonment for a period of fifteen days. Feeling aggrieved, the accused persons/convicts preferred appeals before the learned Sessions Judge, Una, which were dismissed, hence the instant revisions petitions.

3. I have heard the learned Senior Counsel for the accused persons, learned Additional Advocate General for the respondent/State and examined the entire records.

4. The learned counsel for the petitioners submitted that both the Courts below have gravely erred in law and facts in passing the impugned judgment, which is not legally sustainable. He further submitted that though PW-4 had turned hostile, but both the learned Courts below had erred in law in placing reliance upon his statement.

5. On the other hand, learned Additional Advocate General submitted that the

impugned judgment passed by the learned trial Court and affirmed by learned lower Appellate Court do not suffer from any perversity and the same has been passed after correctly appreciating the evidence on record.

6. It is a settled principle of law that in its revisional jurisdiction, the High Court is not to re- appreciate and re-appraise the evidence until and unless it comes to the conclusion that the findings recorded by the courts below are perverse, illegal and erroneous on account of misreading of evidence. The petitioners preferred these criminal revisions against the conviction and sentence passed by the trial Court and affirmed by the appellate Court on the wrong appreciation of evidence. Before entering into the matter, it is pertinent to note here that to what extent this Court can interfere in the appreciation of evidence while exercising the revisional jurisdiction. In the case of *Amit Kapoor vs Ramesh Chander & Anr*, 2012 (9) SCC 460, Hon'ble Apex Court held in para 12 as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

7. In the case of *Kishan Rao vs. Shankargouda*, (2018) 8 SCC 165, while reiterating the ambit and scope of re-appreciation of evidence under Section 397 read with 401 of Cr.P.C. when conviction and sentence affirmed by the learned Additional Sessions Judge in appeal, Hon'ble Apex Court has held in para 12 as under:-

"12. This Court has time and again examined the scope of Section 397/401 Cr.P.C. and the ground for exercising the revisional jurisdiction by the High Court. In *State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*, 1999 (2) SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following:

"5.....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 reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence.....”

8. Applying the legal principles enunciated in the aforesaid decisions to the instant case, the perusal of the record reveals that in order to bring home the guilt of the accused persons, the prosecution has examined as many as 10 witnesses and out of them, PW-1, PW-3 and PW-4 are the eye witnesses to the occurrence whereas PW-8 is the Investigating Officer of the case, while other witnesses are formal in nature.

9. PW-1, Dilbag, is the eye witness and witness to the recovery of the documents of the bus in question, whereas, the statement of PW-3, Sat Pal is hear-say statement, as he has stated that he reached the spot after the accident and found the deceased Sushma and Ankita lying down and he had heard about the accident from other persons. This witness had not supported the case of the prosecution and turned hostile.

10. The main case of the prosecution rests upon the statement of PW-4, Prithi Chand, who is the complainant and eye witness to the occurrence. Though, this witness had turned hostile, however, during his cross-examination, he stated that the deceased alongwith her girl child was alighting from the bus, but before she could get down, the driver moved the bus, as a result of which, she alongwith her girl child came underneath the bus and both of them died on the spot. He further stated that the conductor of the bus gave whistle to the driver without waiting for the deceased to get down from the bus. He also stated that the accident took place due to the negligence on the part of the driver as well as the conductor of the bus and after the accident, the accused persons ran away from the spot. This witness was also cross-examined by the learned defence counsel, however, nothing favourable could be elicited from his lengthy cross-examination by the learned defence counsel.

12. Now the question which arises for consideration before this Court is as to whether deceased Sushma and Ankita died on account of the negligence of driver Balbir Chand and conductor Jai Ram. Both the learned Courts below have found the deposition of PW-4 Prithi Chand convincing and reliable, although he turned hostile. It is a settled law that the court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto. The Hon’ble Supreme Court while considering the evidentiary value of the statement of a hostile witness has repeatedly held that the evidence of a hostile witness cannot be rejected merely because he has been declared

hostile. The evidence of such a person does not become effaced from the record & the relevant portion of the evidence of a hostile witness which is consistent with the case of the prosecution or defence may be accepted. In State of U.P. V. Ramesh Prasad Misra, (1996) 10 SCC 360 the Hon'ble Supreme Court has held as under:-

"7.....

It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

....."

13. In C. Muniappan V. State of T.N., (2010) 9 SCC 567 the Hon'ble Supreme Court held that the evidence of a hostile witness cannot be discarded as a whole. The relevant portion of the aforesaid judgment reads as under:-

"81. It is settled legal proposition that:

"6. the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof."

14. In Mrinal Das V. State of Tripura, (2011) 9 SCC 479, the Hon'ble Supreme Court held that the evidence of a person does not become effaced from the record merely because he has turned hostile, it can be relied upon at least up to the extent, he supported the case of the prosecution. The relevant portion of the aforesaid judgment reads as under:

"67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."

15. In *Raja and others V. State of Karnataka*, (2016) 10 SCC 506, the Hon'ble Supreme Court has held that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record. The relevant portion of the aforesaid judgment reads as under:-

"32. The evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny was reiterated by this Court in *Himanshu @ Chintu* (supra) by drawing sustenance of the proposition amongst others from *Khujii vs. State of M.P.* (1991) 3 SCC 627 and *Koli Lakhman Bhai Chanabhai vs. State of Gujarat* (1999) 8 SCC 624. It was enounced that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record"

16. Thus, in view of the aforesaid authoritative pronouncements of Hon'ble Supreme Court, the deposition of PW-4 cannot be brushed aside merely on the ground that he had turned hostile. During his cross-examination, he deposed in a quite natural manner. He categorically stated that the deceased alongwith her girl child was alighting from the bus, but before she could get down, the driver moved the bus, as a result of which, she alongwith her girl child came underneath the bus and both of them died on the spot. He further stated that the conductor of the bus gave whistle to the driver without waiting for the deceased to get down from the bus. He also stated that the accident took place due to the negligence on the part of the driver as well as the conductor of the bus and after the accident, the accused persons ran away from the spot.

17. This part of his statement is duly corroborated by PW-6 Dr. G. Upadhayay, who conducted the postmortem on the dead body of the deceased, and in his reports, Ext. PW-6/A and Ext. PW-6/B, he had opined that deceased Sushma and Ankita died immediately due to the ante mortem multiple fractures of skull and ribs with injury to vital organs leading to hemorrhagic shock and death. PW-7, HC Karnail Singh, clicked the photographs of the deceased and her girl child lying on the road which are Ext. PW-7/A to Ext. PW-7/D, which shows that both, deceased Sushma and Ankita died on the spot. As per the site plan, Ext. PW-10/A, blood was lying on the spot. The mechanical report, Ext. PW-2/A shows that there was no mechanical fault in the bus.

18. Thus, from the close scrutiny of the entire evidence on record, it has become clear that accused Balbir Chand was driving the bus in question and accused Jai Ram was its conductor at the relevant time and without waiting for deceased Sushma and Ankita to get down from the bus, the conductor of the bus gave whistle to the driver and he moved the bus, due to which Sushma and Ankita fell down and came underneath the bus, as a result of which, both of them died on the spot. The accident could have been avoided, if both the accused had exercised due care and diligence which ordinarily a driver who drives a bus and

its conductor in a similar circumstance would have taken. Therefore, the entire evidence on record leads to irresistible conclusion that accused Balbir Chand drove the bus in rash and negligent manner and accused Jai Ram, who was its conductor, was also negligent in blowing the whistle without waiting for deceased Sushma and Ankita to get down.

19. In view of what has been discussed hereinabove, this Court is of the opinion that both the learned Courts below have rightly convicted both the accused persons and the impugned judgment passed by the learned trial Court and affirmed by the learned lower Appellate Court does not suffer from any illegality, arbitrariness or perversity and deserves no interference by this Court in exercise of its powers under Section 397 & 401 Cr. PC.

20. Hence, both the revision petitions are dismissed. Pending application(s), if any, stands disposed of.