

(2016) 05 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 04 of 2007

Kulwant Rai

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2016) 2 SimLC 965

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Ms. Sunita Sharma, Advocate, for the Appellant; Mr. V.S. Chauhan, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J.—This Revision Petition has been filed against judgment, dated 29.11.2006, passed by learned Additional Sessions Judge, Fast Track, Kullu in Cr. Appeal No. 5 of 2004, vide which learned appellate Court has dismissed the appeal filed by the petitioner and up-held the judgment, dated 06.05.2004, passed by learned Chief Judicial Magistrate, Kullu in Criminal Case No. 354-I of 1999/207-II of 1999, vide which the accused has been convicted for offences under Sections 279, 337, 338 and 304-A I.P.C.

2. The case of prosecution, in brief, was that complainant Satish Kumar Sharma was posted as Statistical Assistant Officer at Employment Exchange Office, Kullu and was living in the house of one Shri Ram Lal at Village Badah, Tehsil and District Kullu as tenant along with his family. On 05.08.1999, at 9:30 a.m. in the morning, he came to attend his office from his residence along with his friend Vijay Ram and wife Meenu. Vijay Ram was posted as Food & Civil Supplies Inspector at Rekong Peo. When all of them reached near the gate of the house of Anil Sood, Smt. Veerta Sood, wife of Sh. Anil Sood was standing there. In the meantime, a Tata Tempo 409 bearing registration No. HP 05-GA-0235 came from Kullu side, which was being driven rashly and it was on the wrong side of the

road. This tempo hit the railing of the house in issue and then hit Vijay Ram, Meenu and Veerta Sood also. Shri Vijay Ram died on the spot after being hit by the tempo. Driver of the tempo fled away from the spot along with the tempo and the injured were brought to District Hospital, Kullu. Tempo involved in the accident had also hit a private bus near the building of Wine Contractor while fleeing from the spot. The accident had taken place due to the rash and negligent driving of the accused. The accident was accordingly reported to the police. An FIR was registered at Police Station, Kullu. Medical examination of injured was conducted and body of Vijay Ram was subjected to post mortem examination. During the course of investigation, accused was found driving the tempo involved in accident at the time of accident and the tempo along with documents was taken into possession by the police. This tempo was subjected to mechanical examination, but no mechanical defect was found in the said vehicle. After the completion of investigation, accused was charged for the commission of offences under Sections 279, 337, 338, 304-A and 201 I.P.C. As a prima facie case was made out against the accused, notice of accusation was put to the accused, who pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution in all examined 15 witnesses. PW-1 Satish Kumar is the complainant. PW-2 Amar Dev is witness to the truck being driven by accused which hit bus bearing registration No. HP31-3837. PW-3 is Anil Sood, whose wife Veerta Sood was hit by Tempo in question. PW-4 Shri Keshava Nand is the driver of bus No. HP 31-3837. PW-5 Mohan Lal is witness to the recovery of Registration Certificate, National Permit and Route Permit of tempo in issue as well as the driving licence of the accused. PW-6 Mayank Kumar is the owner of truck No. HR-05-GA-0235. PW-7 Ashwani Kumar is the Mechanic of HRTC, who had examined the tempo involved in the accident. PW-8 Thewa Ram is witness of taking into possession the bus involved in the accident in question. PW-9 Veerta Sood is one of the victims of the accident. PW-10 Vikas Awasthi is owner of Karyana shop near the house of Shri Anil Sood where the accident took place. PW-11 Dr. K.B.L. Srivastava is the Medical Officer who examined Satish Sharma. PW-12 Dr. Neena Lal is Medical Officer who examined Smt. Veerta Sood. PW-13 Dr. Baldev Kumar is also the Medical Officer who had examined injured Smt. Meena Sharma. PW-14 Dr. Malay Sarkar conducted the post mortem examination of deceased Vijay Ram. PW-15 Purshotam Dutt was posted as Investigating Officer in Police Station, Kullu.

4. The statement of accused was recorded under Section 313 Cr. P.C. and he did not produce any evidence in defence. Learned trial Court vide judgment, dated 06.05.2004, convicted the accused under Sections 279, 337, 338 and 304-A of Indian Penal Code. Against this judgment, the petitioner-accused filed an appeal which was also dismissed by learned Appellate Court vide judgment, dated 29.11.2006. The present revision petition has been filed by the petitioner against the above-mentioned decisions.

5. I have heard the learned Counsels for the parties and gone through the

records of the case minutely.

6. Ms. Sunita Sharma, learned counsel for the petitioner has vehemently argued that the judgment passed by both the learned Courts below were not sustainable in the eyes of law and perverse and the conclusions drawn by both the Courts below were not borne out from the records. She also argued that no witness had stated that it was actually the accused who was driving the vehicle. She has further argued that there are major contradictions in the testimonies of the prosecution witnesses which have been conveniently ignored by the learned Courts below. She has further argued that her client has been falsely implicated in the case. Because he happens to be resident of Haryana, therefore, it was very convenient for the prosecution to frame him in the matter.

7. According to Ms. Sharma, learned Courts below have failed to appreciate that the prosecution was not able to establish that the accused was driving the truck at the time when the alleged accident took place. According to her, the statements of PW-1 Satish Kumar, PW-3 Anil Sood and PW-9 Veerta Sood were self serving statements and the same were not trustworthy because these witnesses were interested that the case should be decided in their favour. According to her, the credibility of the said witnesses as well as other witnesses produced by the prosecution stood impinged by the defence and in these circumstances, the trustworthiness of the statements of the witnesses of the prosecution, was highly suspicious. Further, according to her, even otherwise the prosecution had failed to prove its case beyond reasonable doubt and, therefore, benefit of doubt should have been given to the accused.

8. On the other hand, Mr. V.S. Chauhan, learned Additional Advocate General has submitted that there is neither any infirmity nor any perversity in the judgments which have been passed by the learned Courts below. According to him, it is a fit case where Notice should be issued to the petitioner accused as to why the punishment which has been imposed by the learned Courts below should not be enhanced. According to Mr. Chauhan, the prosecution had successfully proved its case as is evident from the judgments passed by the learned Courts below. The judgment of the learned trial Court is a well reasoned and speaking judgment in which all aspects of the matter had been minutely taken into consideration by the learned Courts below before returning their findings.

9. According to Mr. Chauhan, the petitioner has miserably failed to point out as to what were those alleged major contradictions in the statements of the witnesses of the prosecution, on the basis of which, the accused deserved acquittal. According to Mr. Chauhan, a perusal of the record of the case including the statements made under Section 154 Cr. P.C., contents of FIR and statements of witnesses recorded under Section 161 Cr. P.C. as well as those recorded in the Court clearly demonstrate that case of the prosecution stood proved beyond any reasonable doubt and the prosecution was successful in bringing home the guilt of the accused.

10. After hearing learned counsels for the parties, in my considered view, there is no merit in the contentions raised by the learned counsel for the petitioner that the judgments passed by the learned Courts below are perverse and are not sustainable in law. A perusal of the judgments passed by the learned Courts below will demonstrate that the conclusions arrived at by both the Courts below are substantiated from the material placed on record. Learned Courts below have in detail taken into consideration the statements made by the prosecution witnesses as well as the material produced on record by way of evidence.

11. Incidentally, in the present case, whereas it has been argued by the learned counsel for the petitioner that there is no material on record to suggest that it was the accused who was driving the fateful truck, the records speak to the contrary. A perusal of the cross-examination of PW-3 Anil Sood demonstrate that it has been suggested on behalf of the accused that the truck was being driven by the accused in a slow speed. Similarly, PW-4 Keshava Nand has also been suggested in cross-examination by the accused that the vehicle was not being driven rashly or negligently by the accused. PW-9 Veerta Sood has also been put same suggestion in her cross-examination to the effect that the accident had not taken place on account of the negligence of the accused and that he was not driving the vehicle rashly. Incidentally, these suggestions have been answered in the negative by the witnesses. In my considered view, the contentions of the learned counsel for the petitioner that the accused was not at all involved in the case, is per se demolished by the said suggestions given on behalf of the accused during the cross-examination of the witnesses of the prosecution.

12. Besides this, another important aspect of the matter which links the accused and the vehicle with the accident is that the owner of the vehicle and the employer of the accused Shri Mayank Kumar has deposed as PW-6 that truck bearing registration No. HR-05-GA-0235 was with the accused, who had been sent by the owner to Manali for transporting peas and while returning, the accused had informed him that the vehicle had met with an accident and the police had told him that the accused's truck had been impounded. There is no cross-examination of the said witness on behalf of the accused. Incidentally, it is not the case of the accused that the truck on which he was employed by Shri Mayank Kumar was never involved in any accident whatsoever. In these circumstances, the testimony of the owner to the effect that it is the accused who informed him that the truck was involved in an accident, further demolishes the case of the accused that he was not involved in the alleged accident at all.

13. As far as the statements of PW-1, Satish Kumar, PW-3, Sh. Anil Sood and PW-9, Smt. Veerta Sood are concerned, learned counsel for the petitioner has not been able to point out as to what are the major contradictions in the same which could impinge the veracity of the said witnesses. Simply because PW-1, Satish Kumar and PW-3, Sh. Anil Sood happened to be related to the persons who have been injured in the accident, this does not mean that they will not speak the truth. This Court understands that the onus to prove its case is on the

prosecution and in the present case, in my considered view, the prosecution has been able to discharge this onus. Similarly, even with regard to the statements of injured and other witnesses, who were present at the spot, learned counsel for the petitioner has not been able to point out any discrepancy or any major contradiction in the deposition of the same.

14. There is no infirmity with the judgments passed by the learned Courts below. It cannot be said that any material particular has been overlooked either by the learned trial Court or by the learned Appellate Court. There is no perversity in the findings arrived at by the learned Courts below. It is well settled law that the jurisdiction of High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. The High Court in revision cannot abscond or error on a point of law, re-appreciate evidence and reverse a finding of law.

15. It has been further held by the Hon'ble Supreme Court in *Janta Dal v. H.S. Chowdhury & others*, 1992 (4) SCC 305 that the object of the revisional jurisdiction was to confer power 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 precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals.

16. The Hon'ble Supreme Court in *Ram Briksh Singh and others v. Ambika Yadav and another*, (2004) 7 Supreme Court Cases 665, has again held that Revisional Court can interfere with the findings of lower court where Courts below have overlooked material evidence.

17. Though the power of this Court is as wide as the power of the Appellate Court, yet it will not hear the revision as an appeal and reappraise the evidence and will interfere only in exceptional cases to prevent flagrant miscarriage of justice. Revisional jurisdiction cannot be exercised by this Court to substitute its own view with that of the learned lower Court on a question of fact. Unless the finding of the Court below is shown to be perverse or untenable in law or is based on irrelevant evidence or ignoring relevant evidence, it is impermissible to interfere with the order of the learned Court below in revisional jurisdiction. This Court has held in *Jaswant Rai v. State of H.P.*, 2000 Cr. L.J. 1970 (1971) (HP) that though the revisional powers of the High Court are very wide, but are purely discretionary and should be exercised only in rare cases to prevent miscarriage of justice.

18. Thus it can be safely inferred that this Court has to exercise its revisional powers sparingly. Though, this court is not required to act as a Court of appeal, however, at the same time, it is the duty of the Court to correct manifest illegality resulting in gross miscarriage of justice. However, I do not find any manifest illegality with the judgments passed by the learned Courts below in the present case.

19. As already held above, there is no perversity in the judgments passed by the

learned Courts below. These judgments have been passed by appreciating all the material on record and the judgments are neither cryptic nor it can be said that the conclusion arrived at are not borne out from the material placed on record by the prosecution. Thus, the revision sans merit and the same is dismissed.