

(2016) 05 SHI CK 0080

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 130 of 2008

Madan Singh & Anr.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 332, 506

Citation : (2016) 2 SimLC 984

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

Bench : Single Bench

Advocate : Ms. Seema Guleria, Advocate, for the Appellant; Mr. V.S. Chauhan, Addl. Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J.—The present revision petition has been filed against judgment passed by learned Additional Sessions Judge, Fast Track Court, Shimla, dated 16.7.2008 in Cr. Appeal No. 14-S/10 of 2007 vide which judgment, the learned Appellate Court has allowed the appeal and set aside judgment dated 5.2.2007 of acquittal passed by learned Judicial Magistrate 1st Class, Court No.II, Shimla and sentenced & fined the petitioners/accused.

2. Briefly the facts of the case are that on the afternoon of 5.4.2002, Ram Krishan-PW1 recorded a statement under Section 154 Cr.P.C. stating therein that he was employed as a Conductor with Himachal Road Transport Corporation (hereinafter to be referred as "HRTC"), Unit No.3, Dhalli, Shimla. On 4.4.2002 he was on duty on HRTC Bus No. HP-07-2467 which was enroute to Swera Khud from Shimla. The bus was being driven by Deep Ram driver. The bus left Shimla on 4.4.2002 at 1:30 p.m for Swera Khud. On the next day i.e., 5.4.2002 they started at 6:15 a.m from Swera Khud to Shimla. When the bus reached Sewan Kayar, about 5-6 passengers boarded the same. He started issuing the tickets to the passengers who had boarded the bus from Sewan Kayar. In this process, when he reached to the accused persons and asked them as to where they

intend to go, both of them got enraged and remarked that they were relatives of retired inspector and the complainant had no authority to enquire from them as to where they intended to go. They further proclaimed that till date no Conductor had dared to issue a ticket to them and they would not buy any tickets. In this process, other passengers also asked the accused as to why they were not purchasing the tickets and inquired from them as to where they have to go and why they are not purchasing the tickets. On this, they remarked that they have to go to Basantpur, but they will not buy the tickets. However, the Complainant issued tickets of Rs. 3/- each and handed over the same to the accused. The accused after taking the tickets threw the same inside the bus and rather than paying the fare of tickets started battering the complainant by giving fisticuffs and kicks. The complainant was saved from the clutches of the accused by other commuters and in this scuffle, the shirt of the complainant was also torn by the assailants. He came to know their names as Madan Singh and Naresh Kumar respectively. As the accused had obstructing the complainant from discharging his official duties and also beaten him up, as a result of which he sustained injuries on his right ear, he got the complaint registered and requested that action be taken against the culprits. He also mentioned that the accused has disembarked from the bus at Basantpur and when they were leaving had stated that though they have let off the complainant today, but in future they would kill him as and when they find an opportunity. On the basis of this statement, FIR No. 89 of 2002 was registered at Police Station, Dhalli. The complainant was got medically examined after the completion of necessary investigation, final report for trial of the accused was presented to the Court. Accused were summoned and after a prima facie case was found to be existing against them, they were charged under Sections 353, 332 and 506 read with Section 34 of the Indian Penal Code. The accused pleaded not guilty and claimed to be tried.

3. In order to substantiate its case, the prosecution in all examined 10 witnesses. The statement of the accused were recorded under Section 313 of the Cr.P.C., in which they denied their involvement and mentioned that they were innocent and stated that they had been implicated in a false case. The learned trial court vide its judgment 5.2.2007 has held that on the basis of evidence on record the case of the prosecution is full of doubts and major contradictions and the Ld. Court accordingly acquitted the accused by giving them benefit of doubt.

4. In the appeal carried by the State against the said judgment of learned trial Court, learned Appellate Court vide its judgment dated 16.7.2008 has upheld the acquittal of the accused under Section 506 read with Section 34 of the IPC but has reversed the findings of the learned trial Court acquitting the accused under Sections 353 and 332 read with Section 34 of the IPC.

5. The learned appellate Court has further sentenced both the accused to undergo rigorous imprisonment for a period of one year and fine of Rs. 5,000/- each and for want of payment of fine, each one of them to further undergo rigorous imprisonment for a period of three months for both the offences and

directed that the sentences shall run concurrently.

6. Feeling aggrieved by the said judgment passed by the learned appellate Court, the present revision petition has been filed by the petitioners/accused.

7. I have heard the learned counsel appearing for the parties and have also gone through the records of the case.

8. Ms. Seema Guleria, learned counsel for the petitioners has vehemently argued that there was no perversity with the judgment passed by the learned trial Court and the learned appellate Court has erred in reversing the findings arrived at by the learned trial Court with regard to the offences alleged against her clients under Sections 353 and 332 read with Section 34 of the IPC. It was urged by the learned counsel that on the basis of the material produced on record by the prosecution, it had failed to drive home the guilt of the accused. She has drawn the attention of this Court to the statements made by PW2, PW4 and PW9. According to her, there were major contradictions in the statements made by the complainant i.e., PW1-Ram Krishan and PW2-Kishori Lal, who were travelling in the same bus and was an eye witness. As per her, Ram Krishan had stated in his cross examination that after the incident he went to the Police Chowki alone, whereas according to PW2 he went to the Police Chowki along with PW1. She has further mentioned that according to PW1, Kishori Lal was in the middle of the bus whereas Kishori Lal has stated that he was in the front of the bus. She has further argued that the learned appellate Court has also not taken into consideration the major contradictions in the statements of complainant-PW1 and Deep Ram-PW9 driver of the bus. She has stressed that PW9 has categorically stated in his cross examination that he has not seen anyone having any scuffle with the Conductor because according to him, the place where the alleged incident took place was not visible from his seat. Accordingly, she submitted that all these aspects of the matter have not been taken into consideration by the learned appellate Court while reversing the well reasoned judgment passed by the learned trial Court. She has further argued that the statement of PW1 was vague which was not corroborated by any independent eye witnesses and that the alleged injury sustained by the complainant could have been sustained due to other reasons also, including viral fever as per the opinion of the doctor concerned. Ms. Guleria has further argued that the complainant had not given any record of deficient amount to the authorities and had not accounted for the deficient cash in his office. Thus according to her, the judgment of conviction passed against the accused by the learned appellate Court was totally unsustainable and was a result of total misreading and mis-appreciation of the material on record. She further argued that a perusal of the judgment will demonstrate that no reasoning have been given as to why the learned appellate Court was upsetting the well reasoned judgment passed by the learned trial Court. Accordingly, she prayed that the judgment passed by the learned appellate Court convicting the accused be set aside. In the alternative, she has argued that even otherwise the sentence which has been imposed upon the

accused was very harsh keeping in view the nature and gravity of the offences alleged against the accused.

9. Mr. V.S. Chauhan, learned Additional Advocate General on the other hand has argued that the learned appellate Court has rightly reversed the findings of the learned trial Court with regard to the offences alleged against the accused under Sections 353 and 332 read with Section 34 IPC. As per him, the learned trial Court had erred in coming to the conclusion that the prosecution had failed to prove beyond reasonable doubt that the accused were guilty of the offences alleged against them. Mr. Chauhan has strenuously argued that there was no contradiction in the statements of prosecution witnesses and a harmonious reading of the same demonstrates that there was no break in the chain linking the accused with the offences alleged against them. He argued that the accused have not disputed their presence at the site and it stood corroborated by independent witness that the accused had entered into a scuffle with the complainant when the complainant asked them to purchase tickets while the accused were traveling in the HRTC bus. Therefore, according to Mr. Chauhan the learned appellate Court has rightly reversed the findings of the learned trial Court and sentenced the accused for offences under Sections 353, 332 read with section 34 of the IPC. Mr. Chauhan has further argued that it will be a travesty of justice in case the well reasoned judgment passed by the learned appellate Court is set aside and the accused are allowed to go scot-free.

10. After hearing the learned counsel for the parties and perusing the record of the case I am of the considered view that there is no infirmity or perversity with the judgment passed by the learned appellate Court whereby it has reversed the findings recorded by the learned trial Court and convicted the accused for offences under Sections 353, 332 read with Section 34 IPC.

11. PW1 in no uncertain terms stated that on 5.4.2002 he was on duty as a Conductor in Bus No. HP-07-2467 of HRTC which was on its way from Swera Khud to Shimla. The bus was being driven by PW9-Deep Ram. The accused along with other passengers boarded the bus at Sewan Kayar when the complainant asked the said accused to purchase the tickets, they refused to do so and manhandled the complainant and voluntarily caused hurt to the complainant who was a public servant, in the discharge of his duties with the intent to prevent the complainant from discharging his duty. The complainant was physically assaulted by the accused in the course of discharge of his public duties and the intent with which the accused had assaulted the complainant was to deter him from performing his public duties. The learned counsel for the petitioners/accused has not been able to put-forth any cogent reason as to why this Court should disbelieve the credibility of the statement of the complainant. She has not been able to point out any discrepancy in the same which can be termed to be so grave so as to create doubt on the story of the prosecution. It is not the case of the accused that there was some personal animosity between the complainant and the accused. PW2 in my considered view has corroborated and supported the

case of the prosecution. There is no such contradiction in the statement from which it can be gathered that this witness was not trustworthy or that element of truthfulness was missing from his statement. Again it is relevant to point out that the accused have not been able to impinge the credibility of this witness. Similarly, PW9- Deep Ram has also in his statement put-forth the version from his perspective. In his statement PW9 has categorically stated that the accused are sons of an inspector who has retired from HRTC. This has not been disputed by the accused. All this taken together gives credibility to the story of the prosecution and belies the contentions of the accused that they have been falsely implicated in the case and they are not guilty of the offences for which they have been convicted by the learned appellate Court. Therefore, in my considered view there is no infirmity with the judgment passed by the learned appellate Court. It cannot be said that any material particular has been overlooked by the learned appellate Court so as to make the judgment passed by it perverse.

12. 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 in absence of error on a point of law, re-appreciate evidence and reverse a finding of law.

13. 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.

14. 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 the Courts below have overlooked material evidence.

15. 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 judgment passed by the learned appellate court in the present case.

16. Now coming to the last argument made by the learned counsel for the petitioners/accused in the alternative that the sentences which has been imposed upon the petitioners/accused are harsh. The learned counsel for the petitioners/accused has argued that this Court may take a lenient view in the matter keeping in view the fact that there is no previous history of any criminal background as far as the petitioners/accused are concerned and further petitioners/accused are facing the ordeal of the trial for the last more than 14

years. Keeping in view the facts and circumstances of the case and the nature and gravity of the offences, in my considered view, interest of justice will be served in case the sentences imposed by the learned appellate Court are modified and accordingly the same are modified as under:-

"Under Sections 353/34 IPC

Rigorous imprisonment for a period of six months and fine of Rs. 15,000/- each. For want of payment of fine, each one of them will further undergo rigorous imprisonment for a period of three months.

Under Sections 332/34 IPC

-do-

Both the sentences shall run concurrently."

17. The revision petition stands disposed of in the above terms. No order as to costs.