
(2013) 06 SHI CK 0150
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 94 of 2007

Naveen Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 397, 401
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2013) 06 SHI CK 0150

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : Sanjay Bhardwaj, Vice and Mr. J.L. Bhardwaj, for the Appellant; V.K. Verma, Addl. General and Mr. Ramesh Thakur, Asstt. Advocates General, for the Respondent

Final Decision : Disposed Off

Judgement

Surinder Singh, J.—The instant revision petition u/s 397 read with Section 401 of the Code of Criminal Procedure has been directed against the judgment dated 10.5.2007, passed by the learned Additional Session Judge in Criminal Appeal No. 37-D/2002, whereby the appeal against the conviction and sentence passed by the learned trial Court filed by the petitioner herein was dismissed, as such, his sentence was upheld for the offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code, sentencing him to undergo imprisonment under the various sections, as under:-

Precisely, the allegations on which the petitioner herein was tried were that he was driving the alleged offending vehicle (Tempo No. HP-40-3713) rashly and negligently while taking pilgrims to "Baba Deotsidh" for darshan. Around 3.30 p.m. at the place known as Dhanotu, the petitioner could not control the vehicle aforesaid which over-turned and roll down on the right side of the road, causing death of four persons, namely, Smt. Kaplo devi, Bago Devi, Meena Devi and Tara Chand, whereas Usha Devi, Joginder Singh, Panchi Ram, Sanjeev Kumar, Rattani

Devi, Dhilllo Devi, Bephari, Biassa Devi, Avshek, Rakesh, Pawan Kumar, Babli, Rita, Kaka, Santosh and Leela sustained simple injuries. However, Amarjit, Bimla Devi, Ramesh, Veena, Chatro Devi, Sumna Devi, Chain Singh, Manohar Lal, Ram Singh and Raksha Devi sustained grievous injuries. The police party headed by HC Madan Lal reached the spot on having received the information. They shifted the injured to the zonal hospital Dharamshala and the statement Ext. PW4/A of PW4 Bihari Lal was recorded u/s 154 of the Code of Criminal Procedure, which culminated into FIR Ext. PW11/B. 3. Police also prepared the site plan of the alleged place of incident, took into possession vehicle in question alongwith its documents and the driving licence of the petitioner-driver vide memo Ext. PW8/A. The said vehicle was got mechanically examined, the site of the alleged incident was photographed and took into possession the postmortem reports of the deceased persons and MLRs of the injured.

3. After completing the investigation, the challan was presented in the Court for the trial of the petitioner. Notice of accusation was put to him, for the offences aforesaid, to which he pleaded not guilty and claimed trial.

4. To prove its case, prosecution examined its witnesses and the petitioner was also examined u/s 313 of the Code of Criminal Procedure. Though, he denied that at the relevant time, he was driver of the vehicle aforesaid, however learned trial Court on the evidence on record held the petitioner guilty and accordingly convicted and sentenced him. His appeal was dismissed by the learned Additional Sessions Judge, hence the present revision petition.

5. Learned counsel for the petitioner vehemently argued that he was not got properly identified during the investigation of this case and his identification for the first time in the Court is doubtful. Therefore, the judgments of the Courts below are liable to be set-aside.

6. I have carefully examined the record to find out whether the learned courts below have misinterpreted the evidence on record thereby committed illegality, which caused the prejudice to the petitioner.

7. In the instant case the statement of PW2 Sh. Kaka is of utmost importance. He stated that there were about 25-26 persons travelling in the said Tempo, which was hired by him for transporting the pilgrims and he has clearly stated that the accident in question had taken place on account of rash and negligent driving by the petitioner. Further PW3 Chain Singh and PW4 Bihari Lal have also stated that it was the petitioner, who at the relevant time was the driver and responsible for the accident in question.

8. PW10 Jai Chand was the owner of the vehicle in question. He also testified this fact that the petitioner was the driver of the said Tempo on the date of accident. The driving licence was also produced by the petitioner, which was taken into possession vide memo Ext. PW8/A.

9. There is overwhelming evidence to show that it was the petitioner-accused,

who was the driver of the alleged offending vehicle at the relevant time. There is no statement of any of the witnesses given in the Court, who had not identified the petitioner, rather they held responsible him for the said accident due to his rash and negligent act, which could not be dislodged by him.

10. In the circumstances aforesaid, there was no necessity to conduct the identification parade of the petitioner nor it is fatal to the prosecution case. The test identification parade is only directed or resorted as a rule of caution and prudence. But in the instant case, I am satisfied that the absence of the test identification parade is of no consequence as the accused-petitioner stood identified and there is no ambiguity of any kind leaving any place to entertain any doubt. Since I do not find any perversity in the judgments passed by the Courts below, as such, the revision petition is dismissed being devoid of any merit.

11. The sentence of the petitioner was suspended vide order dated 23.7.2007, therefore, the petitioner-convict is hereby directed to surrender before the learned trial Court on 15th July, 2013 to serve out the sentence, failing which the learned trial Court shall take coercive steps to commit him to prison to serve out the sentence. The matter stands disposed. Send down the records with an authenticated copy of this judgment forthwith.