

(2014) 07 CHH CK 0005
In the Chhattisgarh High Court
Case No : Criminal Revision No. 68 of 2004

Roop Lal Halba

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 397, 401, 437A
Penal Code, 1860 (IPC) — Section 304A

Citation : (2014) CriLJ 4683 : (2015) 2 RCR(Criminal) 340

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Praveen Dhurandhar, Advocate for the Appellant; Arvind Shukla, Panel Lawyer, Advocate for the Respondent

Judgement

Sanjay K. Agrawal, J.

1. Invoking revisional jurisdiction of this Court under Section 397/ 401 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") sole accused/ applicant Roop Lal Halba has preferred this revision questioning the impugned judgment whereby his conviction for offence under Section 304-A of the Indian Penal Code (henceforth "IPC") stands affirmed by appellate court as awarded by trial Magistrate. The core facts leading to the prosecution and conviction of the applicant as unfolded by the prosecution are as under:-

1.1 On 23.11.1994 at 4.30 p.m. at main road Chadenibhatha Rajhara, applicant Rooplal while driving the Truck bearing registration No. A.E.K.-8012 rashly and negligently dashed the Scooter bearing registration No. C.E.R.-7494 driven by Gulshan Kumar, as a result of which, Gulshan Kumar was thrown away and later on he was hospitalized. It is further case of the prosecution that Mr. R.K. Sharma (PW-11), Station House Officer of the police Station Rajhara was present at the place of incident as he was on duty and noticed the incident and reduced the same into writing in shape of Dehati Nalishi (Ex. P-7) and First Information Report was also registered by him vide Ex. P-8. Later on, upon death of Gulshan

Kumar, his post-mortem was conducted; and the seizure memo as well as spot Map (Ex. P-12) was prepared by Mr. R.K. Sharma (PW-11), Station House Officer, he also recorded statement of the witnesses under Section 161 of the Cr.P.C. and filed charge-sheet against the applicant/accused for the offence under Section 304-A of the Indian Penal Code.

1.2 In order to establish the charge under Section 304-A of the IPC against the present applicant, prosecution has examined 11 witnesses and exhibited 12 documents whereas the applicant pleaded not guilty to the charge and decided to enter into the trial.

2. The trial Magistrate, upon oral and documentary evidence available on record, found that the applicant guilty for offence under Section 304-A, IPC and sentenced him to imprisonment for a period of six months and fine of Rs. 1,000/-, in default of payment of fine to further undergo imprisonment for three months.

3. The applicant went into appeal. The appellate court did not interfere with the conviction of the applicant as well as quantum of sentence and dismissed the appeal. Against which, this present revision, as indicated above, has been filed.

4. Mr. Praveen Dhurandhar, learned counsel appearing for the applicant would submit that the conviction recorded and sentence awarded to the applicant is absolutely illegal. Elaborating his submissions, Mr. Dhurandhar would further submit that Mr. R.K. Sharma (PW-11)-Station House Officer, who registered the crime, has investigated the entire matter causing serious prejudice to the trial, and as such, the trial stands vitiated on the said serious infirmity in the investigation, and therefore, the conviction followed by sentence awarded to the applicant deserves to be set aside.

5. Opposing the submissions made by-learned counsel appearing for the applicant, Shri Arvind Shukla, learned counsel appearing for the State/non-applicant would submit that investigation by Mr. R.K. Sharma (PW-11)-Station House Officer would not vitiate the trial as no prejudice has been caused to the applicant on account of investigation made by Mr. Sharma, as such, the revision deserves to be dismissed.

6. I have heard learned counsel appearing for the parties and perused the records of both the courts below with utmost circumspection.

7. The short question which falls for consideration of this Court is: whether PW-11, who registered the crime could have investigated the case and its effect on the conviction?

8. From the perusal of the record, it would appear that R.K. Sharma (PW-11), who recorded Dehati Nalishi (Ex. P-7) as he has noticed the incident, present at the time of accident, while on duty and, thereafter, he also recorded First Information Report on 23.11.1994 at 6.35 p.m. and then he prepared Nakash Panchnama (Ex. P-10) and also prepared spot map (Ex. P-12) and recorded

statement of witnesses under Section 161 of the Cr.P.C. and also made seizure vide Ex. P-1 to Ex. P-3. He himself filed challan in the jurisdictional criminal court. In his statement before the court, he clearly deposed that entire investigation right from recording Dehati Nalishi up to filing of the challan including all investigation was made by him and there is no dispute about it.

9. Their Lordship of Supreme Court has occasion to consider the question as to whether the person, who registered the crime or offence or who has made seizure, is entitled to proceed to make investigation of the case and it has been held that such practice should not be resorted to have the fair and impartial investigation. In a decision reported in *Megha Singh Vs. State of Haryana*, , it has been observed as under:-

"4..... We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that they may not be any occasion to suspect fair and impartial investigation."

10. The Supreme Court further reiterated the view taken in *Megha Singh Vs. State of Haryana*, in case of *State by Inspector of Police, NIB, Madurai, Tamil Nadu Vs. Rajangam* , and held that the person, who has registered the crime, should not investigate the case. Para 11 of the report states as under:--

"In this view of the legal position, as crystallized in *Megha Singh* case (supra), the High Court was justified in acquitting the accused. We see no infirmity in the view which has been taken by the High Court in the impugned judgment."

11. Applying the ratio of law laid down by the Supreme Court in the above referred cases in the present case, it is held that investigation by Mr. R.K. Sharma, SHO, Rajhara (PW-11), who has registered the crime, should not have proceeded with the investigation of the entire case and it ought to have been done by other officer as investigation made cannot be said to be the fair and impartial causing serious prejudice to applicant and thereby entire proceeding including conviction followed by sentence stands vitiated, consequently, it is liable to be set aside. As a fall out and upshot of the aforesaid discussion, the revision is allowed. Conviction recorded for the offence under Section 304-A, IPC followed by sentence awarded deserves to be and is hereby set aside. Applicant is acquitted of the charges under Section 304-A, IPC. The bail bonds executed by the applicant shall remain in operation for a period of six months in view of Section 437-A the Criminal Procedure Code.