

(1990) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Criminal R. No. 74 of 1979

Sham Lal		APPELLANT
	Vs	
The State and Others		RESPONDENT

Date of Decision : 08-02-1990

Acts Referred:

Ranbir Penal Code, 1989 — Section 304A, 403A

Citation : (1990) CriLJ 1359

Hon'ble Judges : R.P. Sethi, J

Bench : Single Bench

Advocate : J. Singh, for the Appellant; A.V. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Sethi, J.—Guran Ditta died on account of the rash; and negligent driving of the petitioner on 20-4-1974 as a consequence of which a

case u/s 403-A RPC was registered at Police Station Bishnah and after its trial the petitioner was convicted u/s 304-A RPC and sentenced to

rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-which on realisation was directed to be paid to the legal heirs of the deceased.

2. According to the prosecution the petitioner was the driver of bus No. JKN 9486 and was proceeding from Bishnah to Jammu when he caused

the accident near Chuha Chak by his rash and negligent driving resulting in the death of the deceased. The prosecution produced Dooni Chand,

Mansa Ram, Nika Ram, Sansar Chand, Nanak Chand, Chaman Lal, Youg Raj Sharma and Bishan Dutt in support of their case. No evidence was

led in defence.

3. After his conviction the petitioner herein filed an appeal before the learned Sessions Judge, who vide the order impugned in this revision petition

dismissed the same holding him guilty for the commission of the offence and finding the sentence adequate and in accordance with law. The present revision petition has been filed mainly on the ground of non-appreciation of evidence according to law particularly when there were allegedly contradictions in the depositions of the prosecution witnesses.

4. I have heard the learned counsel for the parties and perused the record.

5. The petitioner cannot be permitted to raise questions of fact in a revision petition and allowed to refer to the evidence which has been properly considered and appreciated by both the courts below. There are no material contradictions in the statements of the prosecution witnesses nor is there any reason to disbelieve any one of them. Minor discrepancies in the statements of the prosecution witnesses strengthens the belief of the

Court that they were truthful and natural witnesses and were not parrot like tutored witnesses. The learned counsel for the petitioner has also not been in a position to refer to any material contradiction in the statements of the prosecution witnesses referred to hereinabove.

6. Mr. J. Singh has however argued that as in the instant case no postmortem was conducted and the prosecution had failed to prove the cause of the death of the deceased, the petitioner was entitled to be acquitted. It is unfortunate that the prosecution has not produced the medical evidence

proving the cause of death of the deceased. The prosecution is under an obligation to prove the proximate cause of the death of the deceased. In

the instant case however there is sufficient evidence on the record to show that the proximate cause of the death of the deceased was the accident

caused by the petitioner herein and the failure on the part of the prosecution to produce medical evidence has not in any way prejudiced the case.

The failure to produce medical evidence even though highly objectionable, loses its significance in view of the statements of the eye witnesses

namely Dooni Chand and Mansa Ram, who have categorically stated that the petitioner caused the accident in which the deceased was crushed

and died then and there on the spot. The proximate cause of the death of the deceased, therefore, has come in the prosecution evidence

connecting the accused-petitioner with the commission of the crime. The reliance of the learned counsel for the petitioner on Ambalal D. Bhatt Vs.

The State of Gujarat, is misplaced. In that case also the Supreme Court held that

the act causing the death must be proximate and efficient, it ""must be causa causans"" and it is not enough that it has been the causa sine qua non."" The Supreme Court was dealing with a case in which the deceased was alleged to have died on account of the consumption of Gollocese rashly and negligently manufactured by the accused persons therein in contravention of the provisions of Drug Act. The court found that the mere fact that certain rules and regulations were contravened by the accused persons resulting in the death of another person, did not establish that the death was the result of the rash and negligent act or any such act allegedly attributed to the accused. There was no other evidence available before the Court connecting the accused with the commission of the crime in that case. Similarly the reference to another judgment reported in a Journal holding that where postmortem report giving cause of death was not consistent with the probability that the deceased died as a road accident, conviction was liable to be set aside, is also misplaced. In the instant case it has been proved beyond doubt that the proximate cause of the death of the deceased was the accident caused by the petitioner by rash and negligent driving of the vehicle. There was no intervening time left by which it could be even conceived that the deceased would have died by any other cause. Medical evidence is not a substitute of the substantive evidence and has a persuasive value being the evidence of the expert. Otherwise also I have found that the post-mortem of the deceased was dispensed with on the orders of the District Magistrate, Jammu dated 20-10-1974 who in his direction held that there was no suspension regarding the cause of the death which had accrued as a result of a road accident. The accused therefore has rightly been convicted and sentenced by the Courts below. There is no merit in this petition which is hereby dismissed. The petitioner shall undergo the remaining sentence awarded. Let a warrant be issued against the petitioner-accused for undergoing the rest of the sentence if not already undergone. Cr.M.P. No. 78 of 1979 is also disposed of.