

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.565 of 2024

Dharmendra Vishwas

...Revisionist

Versus

State of Uttarakhand

...Respondent

Present:-

Mr. Vikas Kumar Guglani, Advocate for the revisionist.
Ms. Manisha Rana Singh, AGA for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this revision is made to the followings:-

(i) Judgment and order dated 26.03.2022, passed in Criminal Case No. 12257 of 2013, State of Uttarakhand v. Dharmendra Vishwas, by the court of Additional Chief Judicial Magistrate/Third Additional Civil Judge (S.D.), Rudrapur, District Udham Singh Naar ("the case"). By it, the revisionist has been convicted under Sections 279 and 304A IPC and has been sentenced as hereunder:-

(i) Under Section 279 IPC – to undergo six months rigorous imprisonment with a fine of Rs 500/-. In default of payment of fine, to undergo simple imprisonment for a further period of 15 days.

(ii) Under Section 304A IPC – to undergo one year rigorous imprisonment with a

fine of Rs. 1,000/-. In default of payment of fine, to undergo simple imprisonment for a further period of one month; and

(ii) Judgment and order dated 09.08.2024, passed in Criminal Appeal No. 69 of 2022, Dharmendra Viswas v. State of Uttarakhand, by the court of Sessions Judge, Rudrapur, District Udham Singh Nagar ("the appeal"). By it, the appeal has been partly allowed and although the conviction of the revisions has been upheld, however, the sentenced has been modified by the learned appellate court to the extent as stated hereunder:-

(i) Under Section 279 IPC – to undergo 3 months rigorous imprisonment.

(ii) Under Section 304A IPC – to undergo 6 months rigorous imprisonment with a fine of Rs. 10,000/-. In default of payment of fine, to undergo simple imprisonment for a further period of one month.

2. Heard learned counsel for the parties and perused the record.

3. According to the FIR, on 0.04.2011, at about 08:30 in the evening, when the deceased Pramod Mishra was returning to his home after his work, he was hit from behind by the revisionist, who was

driving his motorcycle bearing No. UK 06 Q 6694 (“the motorcycle”). The motorcycle was being driven in speed and in a negligent manner. Report was lodged by the father of the deceased on 02.05.2011 at Police Station Pantnagar, District Udham Singh Nagar, based on which, FIR No. 63 of 2011, under Sections 279 and 304A IPC was lodged. The matter was investigated and after investigation, the charge sheet was submitted against the revisionist. The accusation was read over to him. The revisionist denied the charges and claimed trial.

4. In order to prove its case, the prosecution examined as many as six witnesses, namely, PW 1 Janardan Singh, PW 2 Nandan Goswami, PW 3 R.D. Bhatt, PW 4 Kailash Mishra, PW 5 HCP Chaniram and PW 6 SI Narayan Ram.

5. After examination of the prosecution witnesses, the revisionist was examined under Section 313 of the Code of Criminal Procedure, 1973. According to him, the witnesses have wrongly stated against him.

6. After hearing the parties, by the judgment and order dated 26.03.2022 passed in the case, the revisionist has been convicted and sentenced, as stated hereinbefore.

7. The judgment and order dated 26.03.2022 passed in the case was challenged in the appeal. In appeal, the conviction was upheld by the sentence was reduced.

8. Learned counsel for the revisionist would submit that the revisionist is in custody since 09.08.2024; his sentence may be reduced to the period, he has already undergone.

9. Learned State Counsel would submit that the revisionist was taken into custody on 09.08.2024 and he is in custody since then.

10. There are six witnesses in the instant case. PW 1 Janardan Singh is an eyewitness. According to him, on the date of incident, he was behind the motorcycle driven by the revisionist; the revisionist hit the deceased, when he was repairing his motorcycle; both sustained injuries; they were taken to hospital, but subsequently the deceased died.

11. PW 2 Nandan Goswami is another eyewitness. PW 3 R.D. Bhatt conducted technical inspection of the motorcycle involved in the matter. PW 4 Kailash Mishra is the informant. He proved the FIR. PW 5 HCP Chaniram is the FIR writer. He proved the documents. PW 6 SI Narayan Ram has conducted the investigation. He proved all the documents prepared by him.

12. PW 1 Janardan Singh and PW 2 Nandan Goswami were found truthful. In fact, no arguments have been raised to challenge the conviction as recorded by the trial court and confirmed in the appeal on behalf of the revisionist.

13. In fact, the prosecution has been able to prove the case before the trial court beyond any reasonable doubt under Section 279 and 304A IPC for the charges levelled against the revisionist. Now the question of sentence has to be determined.

14. In so far as the question of sentence is concerned, it always falls for consideration once the conviction is recorded. Various factors are weighed in the mind of the court. It depends on the circumstances

of the case, the position of the accused as well as the injured/victim and other attending factors.

15. It is the prosecution case that on 09.04.2011, at 08:30 p.m., the revisionist was driving the motorcycle and he hit the deceased, when he was driving the motorcycle.

16. Having considered, the facts and circumstances of the case, this Court is of the view that the interest of justice would be better served if in the case the sentenced is modified and the period of sentence be reduced to the extent as indicated below:-

- (i) Under Section 279 IPC – to undergo rigorous imprisonment for a period, which the revisionist has already undergone in custody.
- (ii) Under Section 304A IPC – to undergo rigorous imprisonment for a period, which the revisionist has already undergone in custody.

17. The conviction of the revisionist under Sections 279 and 304A IPC is upheld. The imposition of fine as imposed by the appellate court shall remain unaltered.

18. The sentence of imprisonment is modified as follows:-

- (i) Under Section 279 IPC – to undergo rigorous imprisonment for a period, which the revisionist has already undergone in custody.

- (ii) Under Section 304A IPC – to undergo rigorous imprisonment for a period, which the revisionist has already undergone in custody.

19. The revision is partly allowed accordingly.

20. The judgments and orders passed in the case as well as in the appeal stands modified to the extent as indicated above.

21. The revisionist is in jail. Let him be set free forthwith, unless wanted in any other case.

22. Let a copy of this judgment and order along with lower court record be forwarded to the court concerned.

(Ravindra Maithani, J.)

26.12.2024

Ravi