

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRR-598-2015
Date of decision:12.05.2015**

Parmod Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Ashok Tyagi, Advocate for the petitioner.**RAMESHWAR SINGH MALIK, J. (Oral)**

Instant criminal revision petition is directed against the impugned judgment dated 5.2.2015 passed by the learned Sessions Judge, Kaithal, whereby appeal of the petitioner against the impugned judgment of conviction dated 20.11.2013 and order of sentence dated 22.11.2013 passed by the learned Judicial Magistrate Ist Class, Kaithal, was dismissed, upholding the conviction and sentence of the petitioner.

Brief facts of the case, as recorded by the learned trial Court in paras 2 and 3 of its judgment, are that as per report submitted under Section 173 Cr.P.C. and other accompanying documents, a telephonic message was received on 20.4.2010 regarding an accident on Keorak Kaithal Road, near Radha Swami Satsang Bhawan (Dinod), whereupon ESI Shiv Kumar along with ESI Raj Kumar, EHC Mahipal, EHC Satsih Kumar and HC Ram Niwas reached at the spot, where Viney Kumar son of Kharak Singh, resident of Keorak and Sukhbir son of Aflatoon, resident of Keorak were found present. They told them that they were the eye-witnesses of the accident and Viney Kumar got recorded his statement to the effect that he along with Sukhbir son of Aflatoon was coming towards his

village Keorak on his motorcycle make Model Pulsar. Near the Engineering College, he saw that his cousin brother Mohan aged 25 years and one Sandeep son of Rajbir was moving ahead of him, on a motor-cycle make Model Hero Honda Splendor. Sandeep son of Rajbir was the pillion rider and they were moving towards village Keorak. At about 8.15 pm, when Mohan and Sandeep reached near Radha Swami Satsang Bhawan on their motorcycle, then a roadways bus of Uttarakhand Depot bearing registration No.UA07K 0532 coming from Pehowa side hit the motorcycle of Sandeep. The roadways bus was being driven in a rash and negligent manner. After the said collision, both Mohan and Sandeep fell down on a road and sustained serious injuries, as a result of which they both died at the spot. The unknown driver of the offending bus fled away from the spot, after leaving the bus there.

On the basis of the above statement, the present FIR was registered. Investigation was set into motion. Site plan was prepared. Statements of witnesses were recorded under Section 161 Cr.P.C. Proceedings under Section 174 Cr.P.C. were conducted. Accused was arrested.

After completion of investigation, the report under Section 173 Cr.P.C. having been presented to the court, copy thereof along with documents attached therewith, was supplied to the accused, as required under Section 207 Cr.P.C. A prima facie case was found to be made out against the petitioner. Accordingly, petitioner was charge-sheeted for the offences under Sections 279 and 304-A IPC. The accused pleaded not guilty and claimed trial.

With a view to prove its case, the prosecution examined EHC Mahipal as PW1, Viney Kumar, complainant as PW-2, Sukhbir as PW-3, ASI Ram Niwas as PW-4, Dr.D.C.Thakural as PW-5, HC Baljeet Singh as PW-6, retired SI Purshotam Dass as PW-7, retired Inspector Ram Kumar as PW-8, Ashok Kumar as PW-9, HC Reghbir as PW-10 and ASI Shiv Kumar-Investigating Officer as PW-11.

After closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C.. All the incriminating material was put to him. The accused denied his involvement and pleaded false implication. However, despite having been granted opportunity, accused did not lead any evidence in defence.

After hearing the learned counsel for the parties and going through the record of the case, the learned Judicial Magistrate First Class, Kaithal, held the petitioner guilty. He was convicted for the offences punishable under Sections 279 and 304-A IPC vide impugned judgment of conviction dated 20.11.2013. Thereafter, vide order of sentence dated 22.11.2013, the learned trial Court awarded the sentence to the petitioner to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days, for the offence under Section 279 IPC. Convict was also awarded the sentence to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.250/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month, for the offence under Section 304- A IPC. Both the sentences were ordered to run concurrently. Amount of fine was deposited by the convict before the learned trial Court.

Feeling aggrieved against the above-said impugned judgment of conviction and order of sentence, petitioner filed his appeal before the learned Sessions Court, which came to be dismissed by the learned Sessions Judge, Kaithal, vide her impugned judgment dated 5.2.2015. Hence this criminal revision petition.

Lower court record was requisitioned and the same has been

received.

Learned counsel for the petitioner submits that petitioner was falsely implicated in the present case. It was not a case of rash and negligent driving. It was not so alleged by the author of the FIR. Statements of PW-2 and PW-3 were contradictory with each other. Both the learned courts below have misdirected themselves, while not appreciating the evidence in the correct perspective, which has resulted in serious miscarriage of justice. To support his contentions, learned counsel for the petitioner places reliance on the following judgments of this Court in **Ajaib Singh v. State of Punjab, 2000 (2) RCR (Crl.) 737, Pradeep Kumar v. State of Haryana, 2000 (2) Rcr (Crl.) 820, Tarsem Singh v. State of Haryana, 2007(4) RCR (Crl.) 605 and Madan v. State of Haryana, 2014 (1) RCR (Crl.) 639**. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of both the impugned judgments rendered by the learned courts below would show that the learned trial Court as well as the learned appellate court, have considered each and every relevant aspect of the matter in minute detail, before recording their cogent and well convincing findings. Some material facts which have gone undisputed on

record are that petitioner was driving the offending vehicle, which was found involved in the road accident in question. Two persons namely Mohan and Sandeep died on the spot, as a result of serious injuries suffered by them in this road accident, caused by the bus which was being driven by the petitioner. After the accident, petitioner fled away from the spot. Despite having been granted opportunity, petitioner did not lead any evidence in his defence. It has also been found from close perusal of the impugned judgments and also the lower court record that the prosecution has led cogent evidence which was rightly appreciated by both the learned courts below.

The evidence brought on record by the prosecution was found sufficient to record conviction of the petitioner. Minor discrepancies in the prosecution evidence would be natural in the very nature of things. Prosecution was ultimately found to have duly proved its case by bringing on record plausible and trustworthy evidence. Having said that, this Court feels no hesitation to conclude that the learned trial Court was fully justified to arrive at a judicious conclusion, before recording the conviction of the petitioner and the impugned judgment of conviction as well as the impugned order of sentence passed by the learned trial Court, deserve to be upheld.

Again, the learned Sessions Judge has very meticulously referred and dealt with the evidence of every prosecution witness, who were 11 in number, which is clear from para 19 of the impugned judgment dated 5.2.2015. After re-appreciation of the evidence brought on record by the prosecution, the learned Sessions Judge has rightly concurred with the positive findings recorded by the learned trial Court. Each and every

argument raised on behalf of the petitioner was duly considered. Under these circumstances, it can be safely concluded that the learned Sessions Judge, Kaithal, did not commit any error of law, while passing the impugned judgment and the same deserves to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Sessions Judge, after re-appreciation of the entire evidence, recorded her own cogent findings in support of her judicious conclusion. These positive findings recorded by the learned Sessions Judge in paras 22 to 25 of the impugned judgment, which deserve to be noticed here, read as under:-

“Coming to the facts of the present case. In (Ex.PA) the complaint, the complainant Vinay (PW2) got recorded that the bus driver drove the offending bus in a rash and negligent manner and within their view, dashed the bus into motorcycle of deceased and run over the motorcycle. On oath he testified that the bus driver drove the bus at a high speed and hit into motorcycle. PW3 another eye witness simply stated that the bus came from Pehowa side and hit into motorcycle of deceased. The statements of aforesaid PWs would show that they did not specifically depose that offending bus was being driven 'negligently or rashly' but PW2 only used the term “high speed”. What is negligence or rashness. Negligence means want of taking due care, which is expected to be done at a particular time in particular given facts/situation from an ordinary prudent man. It is carelessness to adopt due care and circumspection by doer, herein driver, while plying the vehicle. What should be the standard of care is a factual question, that

needs to be determined in the given facts and situation. What is rashness. It relates to the speed and also includes wanton attitude to a given act (including driving) by the doer. Driving a vehicle at a particular place-situation, may be rash and at the same time, in other place and situation, it may not be rash. Like wise driving a vehicle i.e a big vehicle like bus in crowded area at high speed would amount to rash and negligent driving and same may not be on the high way. In other words, in determining whether a person is negligent or rash the standard of reasonable care is that which is reasonably to be demanded in the circumstances. The test of criminal negligence is whether the person charged took such precautions as a prudent and reasonable man would consider to be sufficient to guard against danger or injury to other persons, under all the circumstances of the case. Certainly, there is no absolute and inflexible standard in determining the same. It depends upon the factual position prevailing at the spot. Criminal rashness is wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge. The criminality lies in running the risk of doing so act with recklessness or indifference as to the consequences. Again reverting to the facts of this case. The accused was driving the bus evidently, a heavy and big vehicle. It was night time. The place of occurrence was near Radha Swami Satsang Bhawan Dinod, Kaithal-Ambala road, a State highway. According to PWs there was darkness. Per specific version of

both the PWs the bus struck into the offending vehicle, coming from opposite side. PWs also stated that road was about 30-32 feet wide and two vehicles could cross each other comfortably. It also came in the statements of material PWs that no vehicle was running ahead of bus or motorcycle and bus also did not over take any vehicle. The such circumstances, as explained above by PWs, that remained undisturbed, sufficient in themselves ,show that bus driver, was driving the bus at a high speed, he failed to control the bus and dash into motorcycle of deceased and also run over their motorcycle. The site plan (Ex.PW11/A) also supported the above findings of mine. The learned trial court thus, rightly attributed rashness and negligence upon the accused in driving the offending bus.

As far as the identity of the accused is concerned. Firstly, the same is not in dispute. Secondly, PW2 identified the accused as driver of Bus No. UA-07K-0532. PW9 Ashok Kumar specifically deposed that on 20.4.2010, Bus No. UA-07K-0532 on route from Haridwar to Kaithal, was driven by the accused. He had issued certificate (Ex.PW9/A) in this regard to the investigating officer, which is correct as per record. His statement was challenged as he did not bring the original record, but his statement and certificate could not be challenged by the accused by bringing any evidence contrary, nor he challenged the same in his statement under Section 313 Cr.P.C. ,disputing his duty on the bus, on the relevant route and the date. The bus in question was taken into police

possession from the spot on the very night of accident on 20.4.2010 vide memo (Ex.PA). The mechanical reports (Ex.PW6/A) and (Ex.PW6/B) of bus and motorcycle also supported oral account of PWs. The post mortem reports (Ex.PW5/A) of Sandeep and (Ex.PW5/B) of Mohan also substantiated the version of PWs that deceased succumbed to injuries having suffered in the accident.

From the prosecution evidence, the commission of offences punishable under Sections 279/304-A IPC stands established beyond shadow of reasonable doubts. Statements of material witnesses (PW3 and PW4) on material allegations remained consistent to the respect that accused facing trial caused the accident and injuries to deceased leading to their death by driving offending Bus No. UA-07K-0532 in rash and negligent manner. The defence side failed to impeach the version of material PWs on any account i.e. deviation or omission in their stand or any enmity with accused. Though, it was urged that PWs were discrepant as to where their statements were recorded by the police. PW2 stated that it was recorded at the spot and PW3 stated that their statements were recorded in the hospital. This is hardly a discrepancy to reject their version as long gap between the incident and deposition, naturally lead to some variation.

Per discussion, it is held that the findings of the learned trial court holding the appellant-accused guilty for the commission of offences punishable under Sections 279 and

304-A IPC are well merited and do not require any interference and accordingly, the same are hereby affirmed.”

Coming to the judgments of this Court relied upon by the learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have been found distinguishable on facts and are of no help to the petitioner. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

In fact, the learned counsel for the petitioner wanted this Court to re-appreciate the entire evidence, in spite of the fact that he could not point out any patent illegality or perversity in either of the impugned judgments. The revisional jurisdiction of this Court being a limited one, re-appreciation of the evidence, at the hands of this Court, would be permissible only when the impugned judgments rendered by the learned courts below, are found to be suffering from glaring illegality or perversity which would tantamount to gross miscarriage of justice. Since both the impugned judgments rendered by the learned courts below have been found based on correct appreciation of evidence, no case for interference has been made out, at the hands of this Court, while exercising its revisional jurisdiction and the impugned judgments deserve to be upheld, for this reason as well.

The above-said view taken by this Court also finds support from

the judgment of Hon'ble Supreme Court in the **State of Kerala v. Puttumana Illath Jathavedan Namboodiri, 1999(2) SCC 452**, judgment of Allahabad High Court in **Devendra Kumar v. State of U.P. 2014 (10) ADJ 79** and judgment of this Court in **Dara Singh v. State of Haryana, 2009(1) RCR (Crl.) 330**. The judgment of the Hon'ble Supreme Court in **Puttumana Illath Jathavedan Namboodiri's** case (supra) has been followed by the Allahabad High Court in **Devendra Kumar's** case (supra) as well as by this Court in **Dara Singh's** case (supra).

The scope of revisional jurisdiction of the High Court was considered by the Allahabad High Court in detail, referring to many judgments of the Hon'ble Supreme Court. In this regard, the law laid down by the Allahabad High Court in paras 7 to 13 of its judgment in **Devendra Kumar's** case (supra), is as under:-

“As far as the scope of revision is concerned, It is settled principle of law that the revisional jurisdiction is not as wide as the appellate jurisdiction and under the revisional jurisdiction, the High Court is required to exercise its powers where there is material irregularity or manifest error of law or procedure, or there is misconception or misreading of evidence or where the court below has failed to exercise jurisdiction vested in it or has exercised the jurisdiction wrongly and perversely or where the facts admitted or proved do not discloses any offence.

As a broad proposition, the interference of revisional court may be justified in cases (i) where the decision is grossly erroneous (ii) where there is no compliance with the provision

of law (iii) where the finding of fact affecting the decision is not based on evidence on record (iv) where the material evidence of parties has not been considered (v) where the court below has misread or mis-appreciated the evidence on record (vi) where the judicial discretion has been exercised arbitrarily or perversely.

In exercise of revisional jurisdiction the court may not exercise jurisdiction to reassess the evidence and reappraisal of evidence is not permissible within the revisional jurisdiction. Hon'ble the Apex Court in A.I.R. 1999 Supreme Court 981 in the case of State of Kerela Vs. Putthumana Illath Jathavedan Namboodiri has held that "the High Court while hearing revision does not work as an appellate court and will not re-appreciate the evidence, unless some glaring mistake is pointed out to show that injustice has been done.

In A.I.R. 2002 Supreme Court 2229 in the case of Jagannath Chaudhary Vs. Ramayan Singh, Hon'ble Apex Court has held that "revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or 4 there is a manifest error on point of law resulting in miscarriage of justice". Similarly In A.I.R. 2002 Supreme Court 107 in the case of Munni Devi Vs. State of Rajasthan and others it was held by Hon'ble Apex Court that "while exercising the revisional power the High Court has no authority to re-appreciate the evidence in the manner as the trial court and appellate courts are required to do".

11. In another case A.I.R. 1993 Supreme Court 1126 in the case of State of Karnataka Vs. Appa Balu Ingale and others it has been held by the Hon'ble Apex Court that "generally speaking, concurrent findings of fact arrived at by two courts below are not to be interfered with by the High Court in absence of any special circumstances or unless there is any perversity."

Considering the limited scope of revisional jurisdiction it is apparent that the evidence recorded by trial court and reappreciated by the appellate court is not required to be reappreciated again on the point raised by the learned counsel for the revisionist. The appellate court has given findings after detailed discussions and has found no substance in the arguments of accused-appellant. The findings of facts recorded by two courts below may not be interfered with in this revision.

However, in State of Orissa v. Nakula Sahu and Ors. (AIR 1979 SC 663) it was held that the High Court should not have interfered with the 5 concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In State of Kerala v. Puttamana Illath Jathayedan Namboodiri (1999 (2) SCC 452) it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be

treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

Further, these kind of offences are on the rise. The Hon’ble Supreme Court in its recent judgment in the case of **State of Punjab v.Saurabh Bakshi, 2015(2) RCR (CrI.) 495** has laid down the law on sentencing policy as well as quantum of sentence for the offence under Section 304-A IPC. The relevant observations made by the Hon’ble Supreme Court in paras 17 and 18 of its judgment in Saurabh Bakshi's case (supra), which aptly apply to the present case as well, read as under:-

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“The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse then death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the

rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign mistress” and “queen of virtue” as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to

observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. We say so with immense anguish.”

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case so as to convince this Court to take a different view than the one taken by the learned courts below.

Further, the revisional jurisdiction of this Court is a supervisory jurisdiction of a restricted nature. Any interference at the hands of this Court, by re-appreciating the evidence, for the purposes of determining whether the concurrent findings of fact arrived at by the learned courts below were justified or not, would run counter to the law laid down by the Hon’ble Supreme Court, in the cases referred to hereinabove. Further, the revisional jurisdiction of this Court cannot be equated with its appellate jurisdiction. Thus, the impugned judgments deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present criminal revision petition is wholly misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant criminal revision petition stands dismissed, however, with no order as to costs.

12.5.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE

