

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4153-2017 (O&M)
Date of decision : 14.09.2022

Sukhbir

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

Complainant is in revision. Respondent No.2-accused has been acquitted by both the Courts below in FIR No.135 dated 09.03.2014, registered for the offences punishable under Sections 279, 337 & 338 of IPC at Police Station Sadar Palwal.

2. As per the case of the prosecution, on 08.03.2014, complainant was travelling in a Auto bearing Registration No.HR-38R-1252. The auto was being driven in rash and negligent manner and at a very high speed. At around 4.30 P.M., the auto turned upside down. The complainant sustained injuries on his right leg. On the statement made by the complainant, FIR was registered and accused was apprehended. After investigation, report under Section 173 Cr.P.C. was filed and the accused-respondent was put to trial. Trial Court after examining the evidence threadbare held as under:-

“xx xx xx

19. In the present case, the complainant during his

examination before the court and even before the police has nowhere identified the accused driver. He deposed that the driver was not apprehended from the spot. Further, the alleged eye witness Devender i.e. son of the complainant while being examined as PW2 deposed that neither he saw the accident nor he saw the driver. It appears that he is not an eye witness in the present case and his presence on the spot is also doubtful.

Evidence available on record in the present case is not sufficient to connect the present accused person to the alleged offences. Here, prosecution has failed to lead any cogent evidence with regard to the circumstances which can help in drawing adverse inference against the accused. The primary burden of proof was on the prosecution which they have miserably failed to discharge. Under these circumstances, the prosecution by leading ocular as well as documentary evidence has not proved beyond doubt that the accused was the same person who drove the alleged vehicle bearing registration no. HR-38R-1252 in a rash and negligent manner so as to endanger human life and personal safety of others and that on the same date, time and place, the above named accused while driving his above said vehicle in the above said manner caused simple as well as grievous hurt to PW Sukhbir.

20. Though there is sufficient evidence on file to come to the conclusion that the vehicle bearing no. HR-38R-1252 was involved in the accident but the identity of the accused being the same person due to whose rash or negligent driving, the accident in question took place could not be established by the prosecution beyond reasonable doubt. It is also not

proved that there was a link between the accused and the driver of the offending vehicle at the time of the accident, as it could not be established that the accused was driving the vehicle at the relevant time and committed accident. Moreover, as per the mechanical inspection report the alleged accident occurred due to failure of breaks.

21. Keeping in view the statement of aforesaid material witnesses, it is clear that none of these witnesses examined by the prosecution has stated anything substantial against the accused person so as to connect him with the present offences. Therefore, on the basis of the aforesaid discussion, this court is of the considered and confirmed view that prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt. There is sufficient element of doubt in the prosecution case and according to the fundamental criminal jurisprudence, its benefit must go to the accused and accordingly, the accused namely Saypal is hereby acquitted of the charges against him. However, his bail bonds and surety bonds shall stand intact for further period of six months. The accused is set at liberty and file be consigned to the record room after due compliance.”

3. The appeal preferred by the petitioner also stands dismissed by holding that:

“xx xx xx

10. Appreciating the matter on record it is the appellant/complainant who has come in the appeal against the order of acquittal and this court needs to consider whether the prosecution had succeeded to establish before learned lower court the rash and negligent driving by the accused leading to injured

Sukhbir suffering simple and grievous hurt. In this context, if the evidence of prosecution is considered, there is statement of injured/complainant Sukhbir as PW3 and he deposed of the accident as per his version in the police complaint. However, when he was examined by the learned Assistant Public Prosecutor his police complaint was not exhibited to corroborate his version and this police complaint has been exhibited in the evidence of PW4 HC Rajesh Kumar who happens to be the investigating officer. It can be further appreciated that complainant has mentioned of the accident in the manner that he was travelling in the three-wheeler and the driver of the three-wheeler was repeatedly asked to drive it slowly but still the driver continued to drive fast ultimately leading to the accident. He deposed that he was not aware of the name or other particulars of the driver. This fact is also mentioned in police complaint Ex.PW4/A.

11. Thus, it was essential for the prosecution to establish the identity of the accused as driver of the said offending vehicle. Very surprisingly, when complainant was examined as PW3 in his examination-in-chief he did not depose about the identity of the accused particularly that accused facing trial was driver of the said three wheeler. The other witnesses cited by the prosecution of the incident was PW2 Devender Singh who is son of complainant and he admittedly was not an eye witness and he clarifies the same in his cross-examination that he has not seen the accident nor had he seen the driver. The investigating officer clarifies in his cross-examination as PW4 that he had not got conducted the test identification parade of the driver/accused.

12. Now material witness of the prosecution with

regard to identity of driver was PW7 Pardeep who was the owner of the three wheeler and he in his examination-in-chief merely deposes of the fact that he had taken the vehicle on superdari. Learned Assistant Public Prosecutor did not examine him with regard to the fact as to on the alleged day of accident who was driver of the three-wheeler or who had possession of the three wheeler. In this context, reference can be made to the statement of investigating officer PW4 HC Rajesh Kumar who deposes that he has served notice u/s 133 Cr.P.C. to the owner of the vehicle and the same is Ex.PW4/D. However, when prosecution examined the owner Pardeep Kumar as PW7, this notice Ex.PW4/D was not put to him with regard to facts he had allegedly endorsed on the notice that vehicle was being driven by present accused Sayapal son of Tara Singh.

13. In the aforesaid circumstances, there is no doubt in the mind of this Court and as rightly held by learned trial court that prosecution miserably failed to lead evidence to connect the accused as the driver of the offending vehicle. That being so, the question that he was driving the vehicle in a rash and negligent manner is of no consequence to give any finding.”

4. Counsel for the petitioner has not been able to point out any evidence which has been misread or has been ignored by the Courts below while reaching at the findings as recorded in the judgment.

5. Law w.r.t. the revisional jurisdiction is well settled by the Apex Court in ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907*** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See

AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh).”

6. As a sequel of the discussion held hereinabove, there is no ground to interfere in the order passed by the Appellate Court which is well reasoned.

7. Consequently, the present revision petition is dismissed being without any merit.

(PANKAJ JAIN)
JUDGE

14.09.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No