

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.102 of 2024 (O&M)
Date of decision : 07.02.2024

Raja

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.N. Lohan, Advocate for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition is directed against judgment of conviction passed by Additional Sessions Judge, Jind, dated 20th of December, 2023 affirming the judgment of conviction and order of sentence passed by Judicial Magistrate 1st Class, Narwana, dated 15th of May, 2019/16th of May, 2019 whereby the petitioner stands convicted for offences punishable under Sections 279, 337, 304A IPC and Sections 192(1), 196, 190(2) of MV Act in case FIR No.139 dated 28.05.2024, at Police Station Uchana.

2. The matter relates to a motor-vehicular accident that occurred on 28.05.2014. The FIR was registered on the statement made by Sona Devi who was injured eye-witness to the alleged accident. She alleged that on the fateful day at around 11.30 AM she along with her brother-in-law Baljit was going to village Palwan from Uchana on motorcycle. When they reached near bypass Uchana, the offending vehicle which was being driven

in rash and negligent manner by one Raja came from the side of Uchana Bus Stand and hit their motorcycle. Resultantly, both motorcycles fell down. Her brother in-law Baljit and Raja received multiple injuries. She also suffered injuries. They were taken to the CHC Uchana where her brother in-law namely Baljit was declared dead. Resultantly, FIR No.139 dated 28.05.2024 *ibid* came into being.

3. After analyzing the evidence threadbare Trial Court found the petitioner guilty and accordingly sentenced him as under :

Under Section	Sentence (R.I.)	Fine	Imprisonment in default of payment of fine
279 IPC	6 months	-	-
337 IPC	6 months	-	-
304A IPC	2 years	-	-
192(1) MV Act	-	Rs.2,000/-	1 month S.I.
196 MV Act	-	Rs.200/-	1 month S.I.
190(2) MV Act	-	Rs.1000/-	1 month S.I.

4. In appeal preferred by the petitioner the conviction as well as sentence stand maintained.

5. Counsel for the petitioner while assailing the impugned judgments submits that both the Courts below erred in not considering the material contradiction in the statements of prosecution witnesses. Complainant-Sona Devi who appeared as PW-2 and is stated to be the sole eye-witness/injured to the alleged accident, made improvements in her version. Initially in complaint she stated that she came to know the name of accused later-on and thereafter in her cross-examination she admitted that

number of motor-cycle was told by her husband. Prosecution even failed to prove the ownership of the offending vehicle and identification of the accused as no test identification parade was conducted. He further submits that the conviction of the accused is solely based upon the testimony of PW-2 who admittedly is sister-in-law of the deceased. Thus she being an interested witness, her testimony cannot be relied upon. He thus contends that the story put-forth by the prosecution, based upon the statement made by complainant Sona Devi (PW-2) which itself suffers from material discrepancy, lacks credible proof and is doubtful. The prosecution having failed to prove its case beyond shadow of reasonable doubt, 'benefit of doubt' should be given to the petitioner.

6. Having heard counsel for the petitioner and after going through records of the case, this Court finds that the argument raised by counsel for the petitioner sans merit and is thus rejected.

7. Statement of PW-2 Sona Devi reads as under :

“About 4 years ago on the day of Wednesday it was Amawas of half Jeth. I had stayed at Uchana Mandi with my brother. I had called my brother-in-law at 11:30 O'clock by making a phone call. At about 4:30 O'clock again said 11:30 O'clock I alongwith my brother-in-law were coming to our village Palwan on motorcycle. We were going on our side. Raja accused present in the court came driving negligently towards our side and hit us. I was taken to the hospital by neighbors and our family member. Police recorded my statement Ex.PW-2/A there and my thumb impression is present at point-A. Accused present in the court struck against our motorcycle by taking liquor. Had driving the motorcycle negligently. Accused be

punished.

XXX by Sh. Deva Singh Advocate for accused.

I am illiterate. I do not know either Hindi or English. I do not know the registration of the motorcycle upon which we were travelling. I also do not know the registration No. of the motorcycle involved in the accident. My statement is Ex. PW2/A. I did not tell the number of the motorcycle involved in the accident to the police. Colour of the motorcycle which had hit was black. I do not know my number. I had told my husband. My husband had told to my brother-in-law to come soon. I cannot tell the direction. I have no knowledge about direction. I was going on the left side. I cannot tell the speed limit and going slowly. I have no idea about the speed of the motorcycle which had hit. We had stopped our motorcycle. My husband had come at the spot. Jasveer S/o my brother-in-law had also come at the spot. I cannot tell as to whether the statement of Jasveer were recorded by police or not. My statement might have been recorded in the presence of my husband. My statement was recorded by the police in the hospital at about 12 O' Clock. Baljeet expired in the hospital. One day policeman came to our house after recording my statement and was asking about the incident. He had came after about 15 days because there was some deficiency. I do not become unconscious at the spot. I and Baljeet were taken to the hospital by some vehicle coming there. Motorcycle had hit on the side of our motorcycle. I was lying on the road. I had come within 5/10 minutes in the hospital. Shopkeepers and peoples of saw mill had come at the spot. We fell down towards the road side from the motorcycle and motorcycle fell down towards katcha path. Perhaps my brother-in-law was wearing helmet. I do not remember exactly. I do not know whether accused had wear helmet or not. Motorcycle belongs to Baljeet. I cannot tell the name of the owner. Today statement has been made understand to me. My statement were recorded in the claim case at Jind. My brother Bagveer was not at the spot. He had came in the hospital. On that day my brother

had gone to Narnaund outside Uchana. It is incorrect that I have made a frivolous story regarding going on the motorcycle with Baljeet and hitting our motorcycle by the accused with his motorcycle. It is wrong that the accused was not driving the motor cycle. **Accused himself had revealed his name to me that I Raja S/o Dalpat.** Police had not read over the statement to me. I had stated true facts. Police got my thumb impression and recorded by statement. Police did not take into possession clothes and motorcycle in my presence. It is wrong that I am making false statement. It is wrong that I have not seen the accident.”

8. The contradiction as is being projected indeed is not there.

Complainant Shona Devi (PW-2) is explicit to submit that the accused himself revealed his name as Raja S/o Dalpat.

9. Law w.r.t. exercise of revisional jurisdiction of this Court in the matters pertaining to offence punishable under Section 304-A IPC already stands settled by the Apex Court in **Raj Kumar vs. State of H.P., (2008) 11 SCC 76**, holding as under :

“In **Duli Chand v. Delhi Administration, (AIR 1975 Supreme Court 1960)**, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows :

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent

driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere."

8. **In State of Orissa v. Nakula Sahu and Ors., (AIR 1979 Supreme Court 663)** it was held that the High Court should not have interfered with the 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 Jathavedan Namboodiri, 1999(1) RCR (Criminal) 808 : (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.

9. We find that the trial Court and the Revisional Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction."

10. In view of above, this Court is of the opinion that counsel for the petitioner has not been able to point out any glaring error of law that can

persuade this Court to exercise revisional jurisdiction to upset the findings recorded by the Courts below. The Courts have rightly appreciated the entire evidence and found the petitioner guilty. Consequently, the present revision is dismissed.

February 07, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No