

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 531 of 2024

Ishfakh

....Revisionist

Vs.

State of Uttarakhand

..... Respondent

Mr. Raj Kumar Singh and Ms. Radha Arya, Advocates for the revisionist.
Ms. Manisha Rana Singh, D.A.G. for the State of Uttarakhand.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The instant revision is preferred against the following:-

(A) Judgment and order dated 27.01.2024, passed in Criminal Case No.674 of 2011 (Case Crime No.101 of 2011), State Vs. Ishfakh, by the court of Additional Chief Judicial Magistrate, Vikasnagar, District Dehradun ("the case"). By it, the revisionist has been convicted under Sections 279 and 304-A IPC and sentenced as hereunder:-

- (i) Under Section 279 IPC, 6 months' simple imprisonment and a fine of Rs. 1,000/-. In default of payment of fine, simple imprisonment for a further period of 15 days.

(ii) Under Section 304-A IPC, 2 years' simple imprisonment and a fine of Rs. 5,000/-. In default of payment of fine, simple imprisonment for a further period of one month.

(B) Judgment and order dated 05.07.2024, passed in Criminal Appeal No.06 of 2024, Ishfakh Vs. State, by the court of Additional District and Sessions Judge, Vikasnagar, District Dehradun ("the appeal"), by which, the appeal has been dismissed and the conviction and sentence passed in the case, has been upheld.

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

3. The case is based on the FIR lodged by PW1, Pankaj Kumar, according to which, on 07.05.2011, when the deceased Somindra Kaur was waiting for a bus, at 2:00 PM, in Harbatpur, a bus bearing Registration No. UP 07A 8588 ("the vehicle"), driven by the revisionist, hit her, due to which she sustained injuries. Subsequently, she died. A report was lodged by PW1, Pankaj Kumar, based on which Case Crime No.101

of 2011, under Sections 279 and 304-A IPC was lodged. The investigation was carried out. The Investigating Officer prepared the inquest; the post-mortem of the deceased was done; site plan was prepared. Finally chargesheet was submitted under Sections 279 and 304-A IPC and cognizance was taken.

4. On 10.11.2017, the revisionist was examined under Section 251 of the Code of Criminal Procedure, 1973 ("the Code"). The revisionist admitted that he was driving the vehicle at the relevant time. But according to him, it was the deceased, who was crossing the road, while talking on phone, and she herself hit the bus.

5. The prosecution, in order to prove its case, examined as many as 7 witnesses, namely, PW1 Pankaj Kumar, the informant, PW2 Constable Sunil Sharma, PW3 Sub Inspector Umesh Kumar, PW4 Jaypal, PW5 Sunehri Saini, PW6 Dr. K.S. Chauhan, and PW7 S.I.M.T. Lalit Singh.

6. After the prosecution evidence, the revisionist was examined under Section 313 of the Code. According to him, the witnesses have falsely deposed against him. He was not driving the vehicle in a rash

and negligent manner. It is the deceased, who came in front of his bus while running.

7. After hearing, by the impugned judgment and order passed in the case, the revisionist has been convicted and sentenced, as stated hereinbefore. This judgment was unsuccessfully challenged in the appeal.

8. Learned counsel for the revisionist would submit that the incident took place in a busy street; the bus was not in a speed; the injury report could corroborate it. It is argued that had the bus been in a very high speed, there would have been serious injuries on the deceased. It is argued that it is the first offence of the revisionist; he has 7 children back at home; he is in jail for more than 6 months in the instant case. He would also submit that the period of sentence may now be reduced and the sentence may be restricted to the period of custody, which the revisionist has already undergone in the case.

9. Learned State Counsel would submit that the prosecution has been able to prove its case. She admits that the revisionist is in jail since 05.07.2024.

10. It is a revision. The scope is quite restricted to the extent of examining the correctness, legality and

propriety of the impugned judgment and order. Appreciation of evidence is not done generally in such cases, unless the finding is perverse or admissible evidence is ignored or inadmissible evidence is taken into consideration.

11. There are 7 witnesses. PW1, Pankaj Kumar, has lodged the FIR. According to him, he had witnessed the incident. On 07.05.2011, at about 2:00 PM, the bus hit the deceased while she was waiting for a vehicle. The bus driver managed to escape. He lodged the FIR.

12. PW2, Constable Sunil Sharma, lodged the FIR.

13. PW3, Sub Inspector Umesh Kumar, is the Investigating Officer. He has stated about the steps that had been taken during investigation. According to him, after the incident, the bus owner had approached the police station along with the revisionist, who was the driver. He has arrested him.

14. PW4, Jaypal, is the witness of inquest.

15. PW5, Sunehri Saini, is the neighbour of the deceased. She is not the eye-witness.

16. PW6, Dr. K.S. Chauhan, has conducted post-mortem of the deceased. He has proved his report.

17. PW7, Retired S.I. Lalit Singh, had conducted the technical inspection of the vehicle involved in the incident.

18. The revisionist has admitted that the accident took place while he was driving the vehicle. He has a different version. According to him, the accident took place when the deceased, while talking over telephone and crossing the road, hit his bus. Site plan, Ex. P3, has been proved by PW3, Sub Inspector Umesh Kumar. He has stated that it was prepared with the help of eye-witness Kala Saini. In this site plan, the place of incident is not on the road, instead it is beyond the road, on its left side, while walking from Harbatpur to Vikasnagar (South to North).

19. The trial court has rightly held that even if the deceased was crossing the road while talking over the telephone, it was the duty of the driver, i.e. the revisionist, to take care and let the deceased cross the road. The incident did not take place in any isolated place. It took place in a market. The duty would have been little more heavier on the driver of bus to take care of the persons crossing the road. Therefore, this Court is

of the view that courts below has rightly held that the prosecution is able to prove the charges under Sections 279 and 304-A IPC against the revisionist. There is no error, illegality and impropriety in the impugned judgments and orders, insofar as the conviction is concerned.

20. Arguments have also been raised on the question of sentence. Various factors have to be taken into consideration while awarding a sentence, which includes the nature of offence, the circumstances under which the offence took place, the position of the offender, the victim, etc. It is a case of accident in a market. The revisionist is already in custody for more than 6 months.

21. Having considered the nature of offence, the social status of the parties, including the revisionist and the victim, and other attending factors, this Court is of the view that the interest of justice would be better served, if the revisionist is sentenced to the period of custody, which he has already undergone in the instant case.

22. The conviction of the revisionist under Sections 279 and 304-A IPC, as recorded in the case, and upheld in the appeal is confirmed.

23. The sentence of the revisionist is modified as follows:-

(i) Under Section 279 IPC, simple imprisonment for a period of one month. The fine shall remain unaltered.

(ii) Under Section 304-A IPC, simple imprisonment for a period of custody, which the revisionist has already undergone in the case. The fine shall remain unaltered.

24. The impugned judgment and orders are modified to the extent, as narrated above.

25. The revision is partly allowed, accordingly.

26. The revisionist is in custody. He be released forthwith, if not wanted in any other case.

(Ravindra Maithani, J.)
08.01.2025

Ravi Bisht

**RAVI
BISHT**

Digitally signed by RAVI BISHT
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