

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CR.R No.62 of 2002**

**Date of decision : June 30, 2009**

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**Anurag Walia**

**...Petitioner.**

**Versus**

**State of H.P.**

**...Respondent.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the Petitioner : Mr. V.S. Rathore, Advocate.**

**For the Respondent : Mr. Ramesh Thakur, Assistant Advocate General.**

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**Surjit Singh, J** (Oral)

Revision petitioner is aggrieved by his conviction and sentence for offences, under Sections 279, 337, 338 and 304-A of the Indian Penal Code, as awarded by the trial Court, vide judgment, dated 28<sup>th</sup> June, 2000, and affirmed by the appellate Court, vide judgment dated 26<sup>th</sup> March, 2002.

**2.** Prosecution case, which has led to the conviction and sentencing of the petitioner, may be noticed. On 6<sup>th</sup> July, 1995, PW-4 Joginder Singh, PW-3 Dinesh Singh, deceased Prem Singh, deceased Tulsi Ram, Narottam Singh, Pawan Kumar and Udham Singh, had engaged Taxi Jeep No.HP-02-4695, on which the petitioner was employed as Driver by the owner. The vehicle started from Palampur at 8 a.m. and came to Shimla. The same evening, the abovenamed persons started back for Palampur, in the same vehicle. Around 3 a.m. on 7<sup>th</sup> July, 1995, when the vehicle reached a place called Balbhurian in Palampur Tehsil of Kangra District, it rolled down the road, as a result of which

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**Whether reporters of the local papers may be allowed to see the judgment?**

Prem Singh and Tulsi Ram died, on the spot, and the other occupants sustained simple as also grievous injuries.

**3.** Matter was reported to the police. It was stated in the FIR, Ex. PW-9/A, that the cause of accident was over-speeding of the Jeep by the petitioner, due to which he could not control it, while negotiating a curve and it went off the road and rolled down. Prosecution examined PW-3 Dinesh Singh and PW-4 Joginder Singh to prove the cause of accident. Both of them testified that at the time of the accident, vehicle was being driven very fast and because of that the petitioner could not control the vehicle, while negotiating a curve, at the site of the accident and the vehicle went off the road and rolled down.

**4.** Suggestions were thrown to the witnesses that the cause of the accident was not fast driving. However, no specific defence was suggested. In his statement, under Section 313 of the Code of Criminal Procedure, the petitioner stated that there was fog and because of that the vehicle skidded and rolled down the road. Learned trial Court did not accept petitioner's plea, holding that no evidence had been adduced to prove the same. Prosecution version was accepted and the petitioner was held guilty and accordingly convicted and sentenced. Appeal filed by the revision petitioner has been dismissed by the Sessions Court. Appellate Court has observed that there being no evidence, in support of the defence plea, evidence of the prosecution cannot be disbelieved.

**5.** I have heard the learned counsel for the petitioner, as also the learned Assistant Advocate General.

**6.** Petitioner did not put any suggestion to the prosecution witnesses, namely PW-3 Dinesh Singh and PW-4 Joginder Singh, on the lines of his defence plea. No suggestion was thrown to these witnesses that it was foggy and because of fog the vehicle skidded. Also, the petitioner did not lead any evidence, in support of this plea, which he raised, for the first time, in his examination, under Section 313 of the Code of Criminal Procedure.

**7.** Testimony of PW-3 Dinesh Singh and PW-4 Joginder Singh proves beyond reasonable doubt that the cause of accident was over-speeding of the vehicle, due to which the petitioner lost control, while negotiating a turn, and the accident took place.

In view of the aforesaid position, petition is dismissed.

**June 30, 2009**<sub>(sd)</sub>

**( Surjit Singh ), J**