

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Revision No. 31 of 2006.

Judgment reserved on : 22.09.2011.

Date of decision: 31.10.2011

Tilak Raj.

.....Petitioner.

Versus

State of H.P.

.....Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting ?¹ Yes

For the Petitioner : Mr. Virender Singh Rathore, Advocate.

For the Respondent : Ms. Ruma Kaushik, Additional Advocate General.

Kuldip Singh, Judge.

This revision has been filed against the judgment dated 10.01.2006 passed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, in Criminal Appeal No. 45-P/2005/2002, affirming judgment dated 12/13.02.2002 passed by learned Judicial Magistrate Ist Class, Court No.2, Palampur, in Criminal Case RBT No. 163-II/2000/1999, convicting and sentencing the petitioner under Sections 279, 304-A IPC.

2. The prosecution case against the petitioner is that on 04.02.1999 at about 8.30 p.m., he was driving bus No. HP-39-4398 in rash and negligent manner so as to endanger human life and public property and caused accident at place Daroh while reversing the said bus and dashed the rear side of the bus against Ravinder Kumar, who

¹ Whether reporters of Local Papers may be allowed to see the Judgment ? Yes

succumbed to the injuries later on. On the basis of statement Ex. PW1/A of PW-1 Ramesh Singh, FIR Ex. PW11/A was registered at Police Station, Palampur. The mechanical report Ex. PW6/A of the bus and post mortem report Ex. PW3/A of deceased Ravinder Kumar were obtained. On completion of investigation, challan was presented against the petitioner for offences punishable under Sections 279, 304-A IPC. The notice of accusation was put to the petitioner accordingly. He pleaded not guilty. The prosecution has examined 11 witnesses and produced some documents. The statement of petitioner was recorded under Section 313 Cr.P.C. He denied the prosecution case and pleaded his innocence and led no evidence in defence.

3. On conclusion of trial, the learned Magistrate on 12/13.02.2002 for offences punishable under Sections 279 and 304-A IPC convicted the petitioner and sentenced him to undergo simple imprisonment for three months under Section 279 IPC, simple imprisonment for six months and fine of ₹1500/- and in default of payment of fine, further simple imprisonment for two months under Section 304-A IPC. The learned Additional Sessions Judge on 10.01.2006 upheld the conviction and sentence of the petitioner, hence revision.

4. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State. It has been submitted by learned counsel for the petitioner that two Courts below have misconstrued and mis-interpreted the evidence in recording the conviction of the petitioner. He has submitted that the prosecution has failed to prove the guilt of the petitioner beyond reasonable doubt. He has prayed

for acquittal of the petitioner. The learned Additional Advocate General has submitted that the two Courts below have recorded concurrent findings of facts. She has supported the impugned judgment.

5. PW-1 Ramesh Singh did not support the prosecution case fully. He was declared hostile and was cross-examined by Public Prosecutor. He ,however, stated that when driver reversed the bus, Ravinder was crushed under the rear tyre. He denied the suggestion of the defence that Ravinder slipped in the mud and came under the bus which was in the process of reversing. PW-2 Harbans Singh has stated that driver of the bus reversed the bus and in that process one person of the marriage party came under the bus, who later on died. This witness was declared hostile and was cross-examined by the Public Prosecutor. In the cross-examination conducted by the Public Prosecutor, he has stated that petitioner was driving the bus. Conductor had not blown the whistle, rather there was no conductor in the bus.

6. PW-3 Dr. D.P.Swami conducted the post-mortem on the body of the deceased Ravinder and prepared post-mortem report Ex. PW3/A. According to him, the person died of asphyxia and hemorrhagic shock due to anti-mortem injuries to right side lung and pleurae. These injuries could be possible in motor vehicle accident. PW-4 Harbans has stated that Ravinder got down from the bus at Daroh. A truck came from the front side of the bus. The driver of the bus, all of a sudden, reversed the bus. There was hue and cry that a man has come under the bus. The accident was caused due to negligence of the bus driver. In cross-examination, he has admitted that there was darkness at the place of accident.

7. PW-7 Pritam Singh has stated that at Daroh, Ravinder and 4-5 other persons of the marriage party got down from the bus. A truck came from the front side. The driver of the bus reversed the bus, he did not sound the horn nor switched on the light, as a result of which, the deceased came under the bus. The driver ran away from the spot. The petitioner was driving the bus. The accident took place due to negligence of bus driver. In cross-examination, he has stated that it was darkness at the place of accident. PW-6 Kuldeep Singh Head constable has proved the mechanical report Ex. PW6/A and has stated that there was no defect in the bus.

8. PW-8 Ravinder has stated that deceased Ravinder came under the bus when driver reversed the bus. The accident took place due to the negligence of the bus driver. PW-9 Shiv Chand has stated that petitioner reversed the bus in high speed, as a result of which, his brother was crushed under the bus. PW-11 Prithvi Singh has stated that he recorded the statement Ex. PW1/A of Ramesh Singh and thereafter FIR Ex. PW11/A was registered. The petitioner in his statement under Section 313 Cr.P.C. denied the prosecution case. He has stated that deceased slipped.

9. The petitioner has not denied the accident. The defence which emerges from the cross-examination of prosecution witnesses and statement of petitioner under Section 313 Cr.P.C. is that deceased slipped and came under the rear side of the bus and was crushed. The learned counsel for the petitioner has relied **State of Karnataka Versus Satish (1998) 8 SCC 493** on the point that merely because the vehicle was being driven at a high speed does not establish either negligence or

rashness. He has further relied **Braham Dass Versus State of Himachal Pradesh (2009) 7 SCC 353** on the point that it must be established that accused was driving the vehicle on public way in a manner which endangered human life or was likely to cause hurt or injury to any other person.

10. The facts in **Braham Dass (supra)** were that one passenger after alighting from the bus went to its roof top for the purpose of unloading his luggage. The accused without waiting for a signal from the conductor and without verifying if all the passengers who were to board, had boarded and who were to alight, had alighted, all of a sudden, started the bus, as a result of which, the said passenger fell down and sustained injuries. He was carried to the hospital where he succumbed. There was no evidence to show that the driver had knowledge that any passenger was on the roof top of the bus. The conductor was not examined as a witness in that case. The Supreme Court held that there was no evidence led to show that any negligence was involved.

11. The learned counsel for the petitioner has relied **State of Himachal Pradesh Versus Desh Raj Latest HLJ 2010 (HP) 112**. In that case, the accused was acquitted. There were 47 passengers in the bus, two witnesses examined contradicted each other, no witness from the bus and adjoining shop was examined. On facts, it was held that rash and negligent act has not been established.

12. In the present case, it has not been denied that the petitioner was driving the bus at the relevant time. Almost all witnesses have stated that deceased Ravinder Kumar came under the rear side of the bus and was crushed, who later on died. The witnesses who were declared hostile

in substance have supported the prosecution case. It has come in evidence that at the place of accident, it was darkness. There was no sufficient space for crossing another vehicle. The deceased and some other passengers alighted from the bus. The petitioner on noticing truck coming from the front side, all of a sudden, without any warning, sounding of horn, light reversed the bus. According to the petitioner, the deceased slipped and came under the bus. However, PW-4, PW-7 and PW-8 have specifically stated that accident took place due to the negligence of bus driver. PW-9 has stated that the petitioner reversed the bus in high speed. There was no conductor in the bus and at a dark place when some passengers of the bus had alighted from the bus in absence of conductor, driver was negligent in reversing the bus without giving any signal, sounding horn before reversing the bus. The petitioner after the accident fled away from the scene, this also indicates the guilt of the petitioner.

13. The two Courts below on the basis of material on record have recorded the concurrent finding of fact that petitioner was rash and negligent in reversing the bus and causing the death of Ravinder Kumar in the accident. On facts, two Courts below have not accepted the defence of the petitioner that deceased slipped and , all of a sudden, came under the rear side of the bus and was crushed. The case law relied by the petitioner and noticed above on facts is not applicable in the facts and circumstances of the present case. In revision re-appreciation of the evidence is not permissible. The petitioner has not shown that the impugned judgment is perverse nor it has been shown that material evidence has been ignored by the two Courts below. There is no merit in

the revision.

14. The result of the above discussion, revision fails and is accordingly dismissed. The bail bonds of the petitioner are cancelled. The petitioner is directed to surrender to serve out the sentence imposed.

(Kuldip Singh),
Judge.

October 31, 2011
(Krt)