

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. A. No. 363 of 2009

Date of decision: 30.04.2019

State of H.P.

.....Appellant.

Versus

Sushil Kumar & Anr.

..... Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?¹ No.

For the Appellant:

**Mr. Vinod Thakur, Addl. A.G. with
Mr. Bhupinder Thakur and Ms.
Svaneel Jaswal, Dy. A.Gs. and Mr.
Ram Lal Thakur, Asstt. A.G.**

For the Respondents:

Mr. Divya Raj Singh, Advocate.

Tarlok Singh Chauhan, Judge (Oral)

Aggrieved by the order of acquittal of the respondents under Sections 279, 337 and 338 of the I.P.C., the State has filed the instant appeal.

2. Briefly stated the facts of the prosecution case are that on 06.08.2006, at about 11:45 a.m., at place Kalruhi respondents Sushil Kumar, who was driving the bus suddenly applied brakes and the other respondent Manoj Kumar, who was driving the Scooter could not control the same and struck into bus from behind and hence sustained injuries.

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

3. The prosecution was initially launched on the basis of the statement of the complainant Rakesh Kumar, who appeared as PW2. In the statement Ext.PW2/A, it was stated by the complainant Rakesh Kumar that accident had occurred due to the fault of both the drivers i.e. the drivers of bus and scooter. Both the drivers Sushil Kumar and Manoj Kumar, who were arraigned as accused and in the trial conducted by the learned Trial Court, they came to be acquitted.

4. Notably, complainant Rakesh Kumar while appearing as PW 2 exonerated Manoj Kumar and stated that the accident occurred due to the fault of Sushil Kumar only. Why he chose to exonerate Manoj Kumar is not difficult to find because it has specifically come in the evidence that Manoj Kumar is his real brother. Surprisingly enough, this witness was not given up by the prosecution or declared hostile, when he completely exonerated Manoj Kumar of any fault and only implicated Sushil Kumar. Therefore, in the given circumstances, the learned Magistrate was absolutely right in discarding the testimony of PW2 whose testimony otherwise was highly unsafe to be relied upon.

5. Subhash Chand, Conductor of the bus, appeared as PW5, and he completely exonerated the bus driver i.e. Sushil Kumar from the allegations and implicated the scootrist i.e.

Manoj Kumar for the accident. Surprisingly, even this witness was not declared hostile, therefore, in the given circumstances the learned Trial Magistrate has discarded the testimony of this witness on the similar line of PW2.

6. As regards the testimony of other two witnesses PW6 Krishan and PW8 Balbir, it would be noticed that they did not at all support the prosecution story.

7. Therefore, in the given circumstances, no fault can be found with the findings recorded by the learned trial Court where he chose to discard and ignore the statements of all the aforesaid witnesses and then adverted to the disposition of the Investigation Officer of this case, who appeared as PW10. In his disposition, the Investigating Officer categorically stated that both the accused were at fault. However, he further admitted that the accused Sushil Kumar had moved an application which was received at Police Station through the office of Deputy Superintendent of Police, but failed to state that how and in what manner both the accused were at fault and how the said fault culminated into a criminal offence.

8. I really find it very surprising as to why in the first place the Investigating Officer has chosen to arraign both the drivers as accused in a single FIR.

9. The case was bound to fail as each of the accused and their respective witnesses would not support the case of the prosecution but would rather support and seek exoneration of the accused in whose acquittal they are interested.

10. It cannot be ignored that even though this Court in exercise of its appellate jurisdiction has wide power of appreciation of evidence, however, the same is subject to the rider that the presumption of innocence attached with the accused persons start in the trial Court and continue even up to the appellate stage in a case of the acquittal and for the reason the appellate Court should attach due weight to the opinion of the trial Court, in case, there has been an order of acquittal from the said Court.

11. Bearing in mind the aforesaid principles, I really find no reason to interfere with the order of acquittal passed by the learned trial Magistrate. On the basis of the oral and documentary evidence that has come on record, no infirmity much less illegality can be found in the order of acquittal passed by the learned Trial Magistrate.

12. Consequently, there is no merit in this appeal and the same is accordingly dismissed, so also the pending applications, if any. Bail bonds, if any, furnished by the accused persons are ordered to be discharged.

30th April, 2019
(sanjeev)

(Tarlok Singh Chauhan)
Judge