HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 215 of 2010

Trilok Chand ...Revisionist

Versus

State of Uttarakhand ...Respondent

Present:-

None is present for the revisionist.
Mr. Ranjan Ghildiyal, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Challenge in this revision is made to the following:-

(i) Judgment and order dated 30.11.2009, passed in the Criminal Case No. 26 of 2008, State Vs. Trilok Chand, by the court of Judicial Magistrate, Tanakpur ("the case"). By the impugned judgment and order, the revisionist has been sentenced under Section 279, 427 and 304A IPC and sentenced as hereunder:-

(i) Under Section 279 IPC- rigorous imprisonment for a period of two years.

(ii) Under Section 427 IPC- rigorous imprisonment for six months

(iii) Under Section 304A IPC-rigorous imprisonment for a period of one year and six months and,

(ii) Judgement and order 21.10.2010 passed in Criminal Appeal No. 30 of 2009, Trilok Chand Vs. State of Uttarakhand by the court of Sessions Judge, Champawat. By it, the judgment and order passed in the case has been upheld.

2. None is present for the revisionist. In fact, non bailable warrants were issued against the revisionist, but on 07.06.2022, the Court observed that an admitted revision has to be decided on merits irrespective of the facts as to whether the revisionist appears or not. The Court has taken note of the judgment in the case of Praban Kumar Mitra Vs. State of West Bengal and another, AIR 1959 SC 144. In which the Hon'ble Supreme Court has observed that **"whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a rule, that rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner."** Thereafter, this Court has also noted the principles of law, as laid down in the case of K.S. Panduranga Vs. State of Karnataka, (2013) 3 SCC 721, in which it was observed that even in the non appearance of the appellant, the appeal may be decided

or the court may adjourn the matter. In paras 18 and 19, the Hon'ble Supreme Court observed as hereunder:-

> **18.** In *Bani Singh* v. *State of U.P.* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , a three-Judge Bench was called upon to decide whether the High Court was justified in dismissing the appeal filed by the accused-appellants therein against the order of conviction and sentence issued by the trial court for non-prosecution. The High Court had referred to the pronouncement in *Ram Naresh Yadav* [AIR 1987 SC 1500 : 1987 Cri LJ 1856] and passed the order. The three-Judge Bench referred to the scheme of the Code, especially, the relevant provisions, namely, Section 384 and opined that since the High Court had already admitted the appeal following the procedure laid down in Section 385 of the Code, Section 384 which enables the High Court to summarily dismiss the appeal was not applicable. The view expressed in *Shyam Deo case* [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] was approved with slight clarification but the judgment in *Ram Naresh Yadav case* [AIR 1987 SC 1500 : 1987 Cri LJ 1856] was overruled. The three-Judge Bench proceeded to lay down as follows : (*Bani Singh case* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , SCC pp. 726-27, paras 15-16)
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> > "*15.* ... It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. *The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.* We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided *Ram Naresh Yadav case* [AIR 1987 SC 1500 : 1987 Cri LJ 1856] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

> *16.* Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. *Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.*"
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> 19. From the aforesaid decision in Bani Singh [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , the principles that can be culled out are:
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> 19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;
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> 19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;
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> 19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;
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> 19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;
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> 19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and
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> 19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

3. On 07.06.2022, this ourt requested Mr. V.P. Bahuguna, Advocate to assist the Court. He was appointed *Amicus Curiae.* But, as stated, today he is also not present.

4. Heard learned State counsel and perused the record.

5. The case is based on an FIR lodged by Nari Chand on 22.07.2006. According to it, on that date, his grand-son Virendra Chand was moving in a motorcycle registration no. UP 32AA 5153 towards Banbasa to drop his son Shambhu Chand. Nari Chand was also following them on another motorcycle alongwith witness Ganesh Chand. As soon as, they reached near Petrol Pump Banbasa, in front of the house of a Durgapal, at 4:35 AM, a bus Registration No. UP81N-9983 ("the bus"), which was driven by the revisionist hit the son and grand-son of the informant. The bus driver stopped the bus for a while, looked back, but did not stop. Both the injured were taken to the Hospital, but they succumbed to the injuries. Based on this report, which is Ex. A3 chik FIR was lodged at Police Station Banbasa on the same date at 9:30 in the morning under Section 279, 338, 427,304A IPC and investigation proceeded.

6. The inquest of both Shambhu Chand and Virendra Chand was conducted and their post mortem was also conducted on 22.07.2006. The Investigating Officer prepared site plan and got the motorcycle and bus inspected by the technical expert. After investigation, the IO submitted

the charge sheet under Section 338, 427, 304A IPC against the revisionist.

7. The accusation was read over to the revisionist on 05.07.2007, to which he denied. According to him, his vehicle is not involved in the accident.

8. In order to prove its case, prosecution examined five witnesses, namely, PW1 Ganesh Chand, PW2 Durga Pal, PW3 Sub Inspector, Chandra Datt Joshi, PW4 Harish Chandra Joshi and PW5 Anand Raturi.

9. The revisionist also examined one defence witness namely, Rakesh Kumar Gautam. After evidence, the revisionist was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to him, the witnesses have falsely stated against him.

10. After hearing parties, the court below by the impugned judgment and order, convicted and sentenced the revisionist, it was upheld in appeal. Hence, the revision.

11. Some of the grounds which are raised in the revision are that the finding of the court below is based on conjecture and surmises. There is no evidence which may secure conviction; the court below wrongly interpreted the statements of the witnesses; there is no evidence to record

conviction under Sections 279, 304A and 427 IPC; FIR is delayed.

11. It is a revision. This Court is much restricted to extent of examining the legality, correctness and propriety of the impugned judgment and order. The appreciation of evidence is not done in the revision, unless finding is based on no evidence or irrelevant material is considered or relevant material is not considered.

12. According to the FIR, the accident took place on 22.07.2006 at 4:35 AM in front of the house of Durgapal, near Petrol Pump, Banbasa. In fact, according to the FIR, lodged by Nari Chand, on that date, his grandson Virendra Chand, in the motorcycle was taking his son Sambhu Chand to drop him at the bus station, when they were hit by the bus driven by the revisionist. The injured were taken to the hospital. They succumbed to the injuries. The FIR was lodged on the same day at 9:30 AM. In fact, it was much prompt FIR.

13. PW1 Ganesh Chand and PW2 Durga Pal are named eyewitness in the FIR. Both have supported the prosecution case. In fact, according to PW1 Ganesh Chand, he was riding on a motorcycle behind both the deceased and he saw the accident taking place. This witness has proved the inquest report and the FIR. According to him, it was

signed by Nari Chand, the informant. PW2 Durga Pal is the person, in front of whose house, the accident took place. He is much natural witness. According to him, he was feeding his domestic animals, when he saw the accident front of his house.

14. Nothing has been elicited in the statements of the PW1 Ganesh Chand and PW2 Durga Pal, which, in any manner, could reveals that they are not reliable.

15. PW3 Chandra Datt Joshi has inspected the motorcycle on that date involved in the accident. He has stated about the technical inspection report submitted by him.

16. PW4 Harish Chandra Joshi is the Investigating Officer. He has proved the police documents. He prepared the site plan and submitted charge sheet.

17. PW5 Anand Raturi is the Doctor, who conducted post mortems of the deceased. He has stated about it. According to him, the deceased could have died due to injuries sustained in the motor accident.

18. DW1 Rakesh Kumar Gautam is the Conductor in the bus, on the date of incident. According to him, the bus was not involved in any accident, but he says that the revisionist was driving the bus on that date in a slow speed

and he was not rash and negligent. It somehow supports the prosecution case that on the date of accident, the revisionist was driving the bus.

19. PW1 Ganesh Chand and PW2 Durgapal have proved the prosecution case. The trial court in the impugned judgment and order dated 30.11.2009 discussed the evidence in quite detail and taken the relevant materials into consideration and has not left any material evidence. The finding of the court below is based on evidence. There is no illegality, impropriety or error in the impugned judgment dated 30.09.2009. The prosecution has been able to prove its case beyond reasonable doubt and the court below has not committed any error in convicting and sentencing the appellant. Accordingly, the revision deserves to be dismissed.

20. The revision is dismissed.

(Ravindra Maithani, J.)
31.08.2022

Jitendra