

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 149 of 2023

Surdeep Revisionist

Vs.

State of Uttarakhand ...Respondent

Present:

Mr. Navnish Negi , Advocate for the revisionist.
Mr.M.A. Khan, Assistant G.A. for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in the instant revision is made to the followings:-

- (I) Judgment and order dated 04.02.2019, passed in Criminal Case No. 60 of 2017, State vs. Surdeep, by the court of Chief Judicial Magistrate, Pauri Garhwal (“the case”). By it, the revisionist has been convicted under Sections 279, 304A, 337, 338 IPC and sentenced as hereunder:-
 - (i) Under Section 279 IPC- to undergo rigorous imprisonment for six year with a fine of Rs.1000/-. In default of payment of fine, to undergo simple imprisonment for further period of one month.
 - (ii) Under Section 304A IPC- to undergo rigorous imprisonment for two years with a

fine of Rs.10,000/- In default of payment of fine, to undergo simple imprisonment for further period of two months.

(iii) Under Section 337 IPC- to undergo rigorous imprisonment for six months with a fine of Rs.500/-. In default of payment of fine, to undergo simple imprisonment for further period of fifteen days.

(iv) Under Section 338 IPC- to undergo rigorous imprisonment for two years with a fine of Rs.1,000/-. In default of payment of fine, to undergo simple imprisonment for further period of one month.

(II) Judgment and order dated 08.02.2023 passed in Criminal Appeal No. 19 of 2019, Surdeep Vs. State of Uttarakhand, by the Court of Sessions Judge, Pauri Garhwal.

2. Facts necessary to appreciate the controversy, briefly stated are as hereunder:-

On 20.02.2006, the revisionist was driving a vehicle bearing Registration No. UK04-CA-0189 (“the vehicle”). He was taking the school children back to their homes. It met with an accident. A report was lodged by PW5

Rakesh Kumar Baurai. In the accident, a child Priyanshu Baurai died and other children sustained injuries. Based on the FIR, given by PW5 Rakesh Baurai, Criminal Case No. 3 of 2016, under Sections 304A, 279, 337, 338 IPC was registered at Revenue Police Circle, Sawli, Tehsil Thalain, District Pauri Garhwal. The vehicle was technically examined by PW6 Chandra Kant Bhatt. He prepared his report Ex. A3. The injured were examined. The inquest of the deceased Priyanshu Baurai was prepared. After investigation, charge sheet was submitted against the revisionist for the offences 304A, 279, 337, 338 IPC and Section 181, 185, 192, 196 of the Motor Vehicles Act, 1988, which is basis of the case. On 10.08.2023, the revisionist was read over the accusations, to which he denied and claimed trial.

3. In order to prove its case, the prosecution examined eight witnesses, namely, PW1 Vipin Jakhmola, PW2 Satendra Singh, PW3 Sunil Kumar, PW4 Km. Dipti Thapliyal, PW5 Rakesh Baurai, PW6 Chandra Kant Bhatt, PW7 Subhash Chandra Lingwal and PW8 Mohd. Aurangzeb.

4. After the prosecution evidence, the revisionist was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short "the Code"). According to him,

the witnesses have falsely deposed against him. He did not adduce any evidence in his defence.

5. After hearing the parties, by the impugned judgment and order dated 04.02.2019, the revisionist has been convicted and sentenced as stated hereinbefore, which was unsuccessfully challenged by the revisionist in appeal. Aggrieved by it, the revisionist preferred the instant revision.

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

7. Learned counsel for the revisionist would submit that the prosecution has not been able to prove its case beyond reasonable doubt. He would raise the following points in his submissions:-

- (i) The judgment in the appeal, reveals that conviction is based on the principle of *res ipsa loquitur*. It is argued that it may not be basis of conviction in a criminal case.
- (ii) The burden of proof has wrongly been shifted on the revisionist as recorded in para 23 and 24 of the judgment in the appeal.

- (i) PW6 Chandra Kant Bhatt has categorically stated that he did not examine the gear, brake, steering and other parts of the vehicle. Therefore, it cannot be ruled out that the vehicle might have met with the accident due to the technical snag.

8. Learned counsel for the revisionist would submit that in the absence of a categorical report of the expert that the vehicle was fit, in all aspects, the conviction in such matters may not be upheld. He would rely on the principles of law, as laid down by the Hon'ble Supreme Court in the case of Nanjundappa and another vs. the State of Karnataka, 2022 SCC OnLine SC 628.

9. In the case of Nanjundappa (*supra*), the Hon'ble Supreme Court in paras 10 and 12 observed as follows:-

“**10.** In case of circumstantial evidence, there is a risk of jumping to conclusions in haste. While evaluating such evidence the jury should bear in mind that inference of guilt should be the only reasonable inference from the facts. In the present case however, the conviction of the accused persons seems wholly unjustified against the weight of the evidence adduced. As far as the onus of proving the ingredients of an offence is concerned, in the judgment titled as “S.L. Goswami v. State of M.P., 1972 Cri LJ 511(SC)” this Court held:—

“5 In our view, the onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the

accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is palpably false that burden does not become any less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case, which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution.....”

12. For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the accused and the death of the victim. Perusal of the record reveals that out of various witnesses arrayed by the prosecution, there are no eye witnesses. Any evidence brought on record is merely circumstantial in nature. We are constrained to repeat our observation that it sounds completely preposterous that a telephone wire carried 11KV current without melting on contact and when such current passed through the Television set, it did not blast and melt the wiring of the entire house. It is even more unbelievable that Appellant no. 2 came in contact with the same voltage and managed to get away with a few abrasions. The Appellants therefore are entitled to be given the benefit of doubt; more so, when there is no report of a technical expert to corroborate the prosecution story.”

10. At the very outset, it may be noted that the facts in the case of Nanjundappa (*supra*) were quite different. That was not a case of motor accident. In that case, there were no eye witnesses. In the instant case, there are two injured eye witnesses, who were travelling in the vehicle when it met with the accident.

11. Learned counsel for the State would submit that the prosecution has proved the case beyond reasonable doubt.

12. PW1 Vipin Jakhmola, is the passenger, who was in the vehicle on that fateful day. According to him, the revisionist was his neighbour. On the date of incident, it was the revisionist, who invited him into the vehicle. As soon as, they started from Baijro, the vehicle met with an accident. He would submit that the revisionist was not driving the vehicle safely. He was negligent. He had directed the revisionist on more than one accession to be careful, but subsequently, the vehicle met with the accident. According to this witness, it appeared that as if the revisionist was drunk.

13. PW2 Satendra Singh, is the witness of inquest. He has stated about it.

14. PW3 Sunil Kumar, is the Revenue Sub-Inspector, who reached at the spot and prepared the inquest of the deceased Priyanshu Baurai. He has stated that the family members of the deceased were not willing to get the post mortem of the deceased done. Therefore, without post mortem, the dead body of the deceased Priyanshu Baurai was given to his family members.

15. PW4 Km. Dipti Thapliyal, was a student, who was in the vehicle. She would state that on the date of incident, when the revisionist drove the vehicle, he was little fast and negligent in comparison to other days. The vehicle was swinging on multiple directions and subsequently, it met with the accident, due to which, she got injured.

16. PW5 Rakesh Baurai lodged the FIR, which he has proved.

17. PW6 Chandra Kant Bhatt inspected the vehicle on 21.03.2016. He has proved his report. In his examination in chief, he has stated that he did not find any technical snag in the vehicle. He has also stated that one of the reasons for the accident may be that the driver of the vehicle could not control the vehicle.

18. PW7 Subhash Chandra Lingwal has conducted the investigation. He has stated about it and proved various documents.

19. PW8 Mohd. Aurangzeb is the doctor, who conducted the medical examination of the injured. He has proved all those examination reports. This witness has also stated that he could smell liquor from the mouth of the revisionist.

20. Learned counsel for the revisionist has referred to various parts of the judgment in appeal to argue that the burden of proof has been wrongly placed on the revisionist; the principle of *res ipsa loquitur* may not be a basis for conviction. It is also argued that PW6 Chandra Kant Bhatt has not established that the vehicle was defect free.

21. It is a revision. The scope of revision is quite restricted. Evidence may not be appreciated in the revision as a rule. To the extent of examining legality, propriety and correctness of the judgment, the revision is entertained. In case, the finding is perverse i.e. against the weight of evidence or irrelevant material is considered or relevant material is not taken into consideration, only under those

circumstances, evidence is examined. In the instant case, the trial court has considered the evidence quite in detail.

22. PW1 Vipin Jakhmola is a passenger in the vehicle. He was neighbour of the revisionist also. He has categorically stated that the revisionist was not driving the vehicle properly. He has directed the revisionist while driving the vehicle to be careful. It appeared that the revisionist had consumed liquor. He has stated quite in detail to establish as to how the vehicle was driven by the revisionist in a rash and negligent manner. In his cross examination, he was asked about the time, when they left from Baijro. According to him, they left at about 3:15 to 3:20 PM and met with an accident at a distance of one and a half to two kilometers. It is after seven minutes travel that they met with an accident.

23. PW4 Km. Dipti Thapliyal is a small girl of 13 years, who was a student and was in the vehicle on the fateful day. She has also stated that the revisionist was rash and negligent in driving the vehicle. In her cross examination, she corroborates the statement of PW1 Vipin Jakhmola that they left Baijro after 3:00 PM and after 5 to 10 minutes, they met with the accident.

24. The statements of PW1 Vipin Jakhmola and PW4 Km. Dipti Thapliyal prove beyond reasonable doubt that at the relevant time, the revisionist was driving the vehicle in the rash and negligent manner, which resulted into the accident.

25. It is argued that PW6 Chandra Kant Bhatt who inspected the vehicle has stated that accident could have occurred due to technical fault. It is true that prosecution may be required to prove that the vehicle was technically fit. But then there is another principle of appreciation of evidence, which is that a fact within the special knowledge of the person may be proved by that person.

26. The revisionist was driving the vehicle. If there was any technical fault in the vehicle, he could have told it in his examination at the initial stage, when the accusation was read over to him. The revisionist has not stated so. Not only at that stage, but at the stage of examination under Section 313 of the Code also, the revisionist could have told that there was some technical reasons for the accident, but the revisionist has not stated so also. Therefore, based on the statement of PW6 Chandra Kant Bhatt, it cannot be said that the prosecution has not been able to prove its case beyond reasonable doubt. As stated, PW1 Vipin Jakhmola and PW4 Km. Dipti Thapliyal's statements are

wholly reliable and their statements prove the prosecution case beyond reasonable doubt. The trial court has discussed the evidence quite in detail and rightly concluded that the prosecution has been able to prove the charges under Sections 279, 304A, 337, 338 IPC against the revisionist. Insofar as, the conviction of the revisionist is concerned, there is no reason to make any interference.

27. Learned counsel for the revisionist would also submit that the revisionist has on daily basis been taking the students to school. For first offence of his, the maximum punishment ought not to have been awarded. He would also submit that it is an unfortunate incident in which two children of the revisionist, namely, Adarsh and Km. Anshika also sustained injuries. Therefore, it is argued that the punishment may be restricted to the period, which the revisionist has already undergone.

28. The revisionist is in custody since 27.02.2023. It is not disputed that Adarsh and Km. Anshika, the children of the revisionist were also in the vehicle, when it met with an accident. They both sustained injuries. Their injury reports are Ex. A13 and Ex. A20 respectively.

29. Having considered, under the facts and circumstances of the case, this Court is of the view that the interest of justice would be better served, if the revisionist is sentenced with the sentence for the period which he had already undergone in the instant case.

30. The conviction of the revisionist under Section 279, 304A, 337, 338 IPC is upheld. The sentence is modified as follows:

- (i) Under Section 279 IPC, three months simple imprisonment with the fine remaining unaltered.
- (ii) Under Section 304A IPC to the period of sentence, which the revisionist has already undergone in the instant case with the fine remaining unaltered.
- (iii) Under Section 337 IPC three months simple imprisonment with the fine remaining unaltered.
- (iv) Under Section 338 IPC to the period of sentence, which the revisionist has already undergone in the instant case with the fine remaining unaltered.

31. The revision is partly allowed accordingly.

32. If the fine is paid and the revisionist is not wanted in any other case, he may be released forthwith.

33. Let a copy of this judgment be forwarded to the court below immediately for compliance. A copy of this judgment be also sent to the revisionist through Superintendent of the jail concerned.

(Ravindra Maithani, J.)
20.10.2023

Jitendra