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RAJ KUMAR

v.

STATE OF H.P.

(Criminal Appeal No. 1135 of 2001)

JULY 14, 2008

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**[DR. ARIJIT PASAYAT, P. SATHASIVAM AND DR.
MUKUNDAKAM SHARMA, JJ]**

Code of Criminal Procedure, 1973:

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ss. 397 and 401 – Revision – Power of High Court – Explained – Trial court and High Court analysed the evidence in detail and rightly held the accused guilty – High Court was justified in not exercising revisional jurisdiction – Penal Code, 1860 – ss. 279 and 304 A.

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The appellant was prosecuted for commission of offences u/ss 279 and 304A IPC. The case of the prosecution was that due to rash and negligent driving of the appellant the bus driven by him and another bus coming from opposite direction collided, as a result of which two children of PW 7 travelling in the latter bus received fatal injuries. The trial court convicted the appellant of the offences charged and sentenced him to one year's rigorous imprisonment. His appeal was dismissed by the Sessions Judges. The accused having failed in the revision petition before the High Court, filed the instant appeal.

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Dismissing the appeal, the Court

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HELD: 1.1 Revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount

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to gross miscarriage of justice. [para 8] [904-E,F]

State of Orissa v. Nakula Sahu and Ors. AIR 1979 SC 663; and *State of Kerala v. Puttamana Illath Jathavedan Namboodiri* 1999(1) SCR 575=1999 (2) SCC 452 – relied on.

Duli Chand v. Delhi Administration AIR 1975 SC 1960 – referred to.

1.2. In the instant case, the trial Court and the appellate Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction. [para 9] [904-F,G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1135 of 2001

From the final Judgment and Order dated 18.7.2000 of the High Court of Himachal Pradesh at Shimla in Crl. Revision No. 8 of 1999

Aftab Ali Khan, Anjum Ahmed and Goodwill Indeevar for the Appellant.

Naresh K. Sharma for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Himachal Pradesh High Court dismissing the criminal revision filed by the appellant. Learned Sub Divisional Judicial Magistrate, Dalhousie, District Chamba, H.P. had convicted the appellant for offences punishable under Sections 279 and 304A of the Indian Penal Code, 1860 (in short 'IPC'). He was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 1,000/- with default stipulation for the offence relating to Section 304A and simple imprisonment for three months for the other offence. The appeal filed by the appellant before the learned Sessions Judge, Chamba, was dismissed.

A 2. A revision petition was filed before the High Court questioning conviction as well as sentence, which as noted above was dismissed.

B 3. The prosecution version as unfolded during trial is as follows:

C On 16.6.1990, one Shri Mast Ram (PW-7) was travelling in bus bearing registration No.HTC 34 belonging to Himachal Road Transport Corporation (in short 'HRTC') alongwith his wife and four children from Surgani to Pathankot. On the way, at Tunu Hatti, bus No.PJC-4075 belonging to Punjab Roadways was coming from the opposite direction being driven by the appellant. It was alleged that due to the rash and negligent driving of the vehicle by the appellant, the vehicle struck against the HRTC Bus due to which Master Manoj Kumar and Kumari Rajeswari, son and daughter of Shri Mast Ram respectively sustained fatal head injuries. The accident took place around 12.45 p.m. The accident was reported to the police by Mast Ram whose statement was recorded by the police under Section 154 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') marked Ext.PW-7/A. On the basis of the statement of the complainant, formal first information report came to be registered at Police Station, Dalhousie on the same day at about 3.15 P.M. Head Constable Kishore Kumar (PW-8) visited the spot immediately and prepared spot map Exbt.PW-8/A and summoned Sarwan Singh (PW-3) photographer who clicked the photographs of both the vehicles and the bodies of the deceased Manoj Kumar and Kumari Rajeswari lying on the seat inside the HRTC Bus. Photographs Negatives Exbts.PW-3/H to PW-3/C were placed on record. During recording of the statements of the material witnesses by PW Kishore Kumar, it was found that the accident had taken place due to the rash and negligent driving of the vehicle by the appellant in which heads of both the victims were crushed. After completion of the investigation charge sheet was laid against the appellant for offence punishable under Sections 279 and 304-A IPC before the trial Magistrate.

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The Trial Magistrate found the evidence to be cogent. Relying on the evidence of father (PW7) and considering the other material on record, the Trial Court recorded the conviction as noted above. But the appellant was extended the benefit of the Probation of Offenders Act, 1958 (in short 'Probation Act'). The State of Himachal Pradesh filed an appeal before the Sessions Judge questioning grant of benefit under the Probation Act. Learned Sessions Judge set aside the order of the Trial Court and remitted the matter for passing appropriate sentence. Thereafter, as noted above, the learned Trial Magistrate sentenced the appellant by imposing custodial sentence and fine.

4. The basic stand taken before the High Court in support of the revision petition was that no evidence was led by the prosecution that the accident was as result of rash and negligent driving of the appellant. It was submitted that the driver of HRTC Bus was negligent in driving which resulted in the accident. The High Court considered the limited scope for interference in exercise of the revisional jurisdiction and the revision. The High Court analysed the factual position to conclude that the findings recorded by the Trial Court and the First Appellate Court were not erroneous.

5. In support of the appeal, leaned counsel for the appellant submitted that the basic requirements to attract Sections 279 and 304A has not been established. Alternatively, it was submitted that the sentence is harsh. The accident took place about two decades back and the appellant has already suffered custody of some period and even if the conviction is maintained the sentence should be reduced to the period already undergone.

6. Learned counsel for the respondent-State on the other hand supported the judgment of the courts below.

7. In *Duli Chand v. Delhi Administration* (AIR 1975 SC 1960), the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows:

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends

A for its determination on appreciation of the evidence. While
the Magistrate, and the Additional Sessions Judge arrived
on assessment of the evidence at a concurrent finding of
fact that the death of the deceased was caused by negligent
driving of bus by the accused and the High Court even
B though justified in refusing to re-appreciate the evidence
reviewed the same in order to justify itself that there was
evidence in support of the finding and that the finding was
not perverse, came to the conclusion that the evidence
C established the death of the deceased was caused by the
negligent driving of the bus by the accused, the Supreme
Court on an appeal under Article 136 refused to interfere.”

8. In *State of Orissa v. Nakula Sahu and Ors.* (AIR 1979
SC 663) it was held that the High Court should not have inter-
fered with the concurrent findings recorded by the Trial Court
D and the Sessions Judge in exercise of revisional jurisdiction
when there was no error of fact or law arrived at by the Trial
Court or the Sessions Judge. In *State of Kerala v. Puttamana
Illath Jathavedan Namboodiri* (1999 (2) SCC 452) it was held
E that the revisional jurisdiction is one of supervisory jurisdiction
exercised by the High Court for correcting miscarriage of jus-
tice. But the said revisional power cannot be equated with the
power of an appellate Court nor can it be treated even as a
second appellate jurisdiction. Ordinarily, therefore, it would not
be appropriate for the High Court to re-appreciate the evidence
F and come to its own conclusion on the same unless any glaring
feature is brought to the notice of the High Court which would
otherwise tantamount to gross miscarriage of justice.

9. We find that the trial Court and the Revisional Court have
analysed the evidence in detail to come to the conclusion about
G the guilt of the accused. There is no manifest error in the conclu-
sions or in analyzing the evidence. That being so, the High Court
was justified in law in not exercising revisional jurisdiction.

10. The appeal is dismissed.

H R.P.

Appeal dismissed.