

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 845 of 2012

Budheswar Das, Son of late Nilkant Das, Resident of Village-
Roladih, P.O. P.S. Potka, District-East Singhbhum.

... .. **Petitioner**

-Versus-

The State of Jharkhand **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through: Video Conferencing

06/28.09.2021

1. Heard Mr. Saurav Kumar, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Shailesh Kumar Sinha, learned counsel appearing on behalf of the opposite party-State.
3. The present revision application has been filed against the judgment dated 06.10.2007 passed by the learned 4th Additional Sessions Judge, East Singhbhum at Jamshedpur in Cr. Appeal No. 184/2006, whereby the appeal filed by the petitioner has been dismissed against the judgment of conviction and order of sentence dated 12.06.2006 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in G.R. Case No. 1202/1998, T.R. No. 72/2006.
4. The learned trial court has convicted the petitioner for offence under Sections 279 and 304-A of the Indian penal Code and sentenced to undergo simple imprisonment for two months and to pay a fine of Rs. 500/- and in default of payment of fine, he will have to undergo simple imprisonment for 10 days for offence under Section under Section 279 of IPC and further imprisonment of one year with a fine of Rs. 500/- and in default of payment of fine, he will have to undergo simple imprisonment for 10 days for offence under Section 304-A of IPC. Both the sentences were directed to run concurrently.

Submissions on behalf of the petitioner

5. Learned counsel for the petitioner submits that the petitioner has been convicted for offence under Sections 279 and 304-A of Indian Penal Code alleged to be driver of the offending vehicle, but neither there is any evidence on record nor there is any finding by the learned court below that it was the petitioner who was driving the offending vehicle. He further submits that a specific plea was raised before the learned appellate court that no witness has identified the petitioner as a driver of the offending vehicle at the time of alleged accident and there was no definite finding of the learned court below that the petitioner was driving the said truck at the time of accident in a negligent manner. He submits that the learned appellate court has recorded at para-8 of the impugned judgment that though P.W.-1 Arun Kumar says the number of said truck as BR 16B 9890, whereas the informant-P.W.-2 Bhupendra Singh Bhatiya says the number of said truck as BR 16B 9809. The learned appellate court held that it is simply a numerical error. The truck was left by the driver at the spot and the investigating officer-P.W.-3, who investigated the place of occurrence, says that the accident took place in front of Tata Pigment, where the deceased was lying dead and the said truck bearing Registration No. BR 16B 9809 was also standing and therefore it was very much clear that the truck bearing Registration No. BR 16B 9809 was involved in the said accident. It is submitted that P.W.-3, the investigating officer, has stated that after investigation, he submitted charge-sheet against the accused driver of the said truck, as the accident took place by the said truck.

6. The learned counsel submits that there is no material on record to show, as to how and in what manner, the petitioner is involved with the alleged offence and even the investigating officer in his deposition has not stated the manner, in which,

the petitioner has been implicated in the case. The learned counsel submits that in absence of any materials on record to show that it was the petitioner who was driving the offending vehicle, conviction of the petitioner for the alleged offence is *ex-facie* perverse and is fit to be set-aside. Apart from this, he has also submitted that there is no finding by the learned trial court that the vehicle was being driven in rash and negligent manner. He submits that if the first point finds favour for the petitioner, the second point need not be gone into, as it is the case where there is no evidence that the petitioner was driving the said vehicle.

Submissions on behalf of the opposite party-State

7. Learned counsel appearing on behalf of the opposite party-State, on the other hand, while responding to the argument of the learned counsel for the petitioner on the point of no evidence, so far as involvement of the petitioner being the driver of the offending truck is concerned, he is not in a position to show any material that it was the petitioner who was driving the offending vehicle at the time and place of occurrence, either from the impugned judgments or from the evidences on record including the evidence of the investigating officer which was fully read over by the learned counsel appearing on behalf of the petitioner during the court proceedings.

Findings of this Court

8. The prosecution case is based on a written report (Ext.-1) submitted to the Officer-in-charge of Jugsalai Police Station by the informant (P.W.-2) that on 27.06.1998 at about 9:30 A.M. while one Ravindra Kumar Singh, an employee of the bear bar shop of the informant, was going to Sakchi, he was dashed by a truck bearing No. BR 16B 9809 near pigment road and he died at the place of occurrence and after the accident, the driver of the truck ran away. On the basis of the written report, Jugsalai

P.S. Case No. 125/1998 was instituted and P.W.-4 was entrusted with the task of investigating the case, who upon completion of investigation, submitted charge-sheet against the petitioner under Sections 279 and 304-A of IPC and cognizance was taken on 25.08.1998 and charges were also framed under the same sections. After completion of prosecution evidence, the statement of the petitioner was recorded under Section 313 of Cr.P.C., wherein the petitioner had denied the allegations levelled against him.

9. During the course of trial, the prosecution produced altogether four witnesses; out of them, P.W.-1 Arun Kumar is the eye-witnesses to the occurrence; P.W.-2 is the informant of the case, P.W.-3 is the Doctor who conducted post-mortem upon the body of the victim and P.W.-4 is the investigating officer of the case. During trial, the prosecution has also produced some documentary evidences. Ext.-1 is the written report, Ext.-2 is the signature of the informant on the post-mortem report, Ext.-3 is the post mortem report, Ext.-4 is the formal F.I.R. and Ext.-5 is the inquest report.

10. P.W.-2 the informant of the case in his evidence stated that on 27.06.1998, his staff (the victim) was going to Sakchi on scooter bearing No. BPH 7781. After hearing the news, when P.W.-2 reached the place of occurrence, he found his staff dead, lying on the road and also found that one truck bearing Registration No. BR 16-B 9809 was standing there. This informant was told by the persons who were present there and that the truck was being driven rashly and negligently by the driver, who dashed the scooter rider. Admittedly, P.W.-2 is not an eye-witness to the occurrence.

11. P.W.-1 Arun Kumar who claims to be an eye-witness to the occurrence has stated that on 27.06.1998 while he was going to Bistupur and when he reached the bridge which was near Tata Pigment, he found that one truck bearing Registration No.

BR 16-B 9890 dashed one scooter as a result of which, scooter rider fell down on the left side of the road and died on the spot. This witness has stated that the speed of the truck was high and the driver of the said truck ran away from the truck. During his cross-examination, this witness has stated that he had seen the occurrence, but he could not see as to who was the driver of the offending vehicle.

12. P.W.-3 is the Doctor, who has conducted the post-mortem report upon the dead body of the victim. He has opined that the injuries sustained by the victim were caused by hard and blunt substance and death was caused due to injury of vital organs and such death is possible by way of road accident.

13. P.W.-4 is the investigating officer of the case, who in his examination-in-chief, has admitted that after getting task of investigating the case, he went to the place of occurrence and prepared inquest report, which was marked as Ext.-5. This witness has stated that at the place of occurrence, there was one truck bearing Registration No. BR 16-B 9809 and after 5-7 feet, the damaged scooter bearing registration No. BPH 7781 was there. In his cross-examination, he has stated that the scooter was in the left side of the truck.

14. The petitioner was examined under section 313 of Cr.P.C and he was in total denial of the prosecution case, but has not led any defence evidence. It was specifically argued by the defence counsel before the learned trial court that the sole eye-witness of the occurrence i.e., P.W.-1 has not identified the driver of the offending vehicle and also that P.W.-1 had stated a different truck number, which by itself creates doubt, so far as the case of the petitioner is concerned. After considering the materials on record, the learned trial court gave the following finding: -

“After hearing the submissions of both the parties and after going through materials available on record, I find that it is a fact that the informant is hearsay in this case, but he has

clearly stated that when he went to the P.O. he saw Ravindre Kumar Singh lying dead on the road. P.W.1 Arun has also stated that he saw that the truck dashed the scooter rider as a result of which scooter rider fell on the ground and he died. Moreover, post mortem report clearly shows that the accused was brought for postmortem. In his opinion the doctor who conducted the post mortem has clearly stated that death is caused by hard and blunt substance due to which he died in road accident.

In this way I find that the occurrence of dashing the scooter by the truck is well proved and the prosecution has been able to prove the charges levelled against the accused beyond the shadow of all reasonable doubts. So in light of discussion made above the accused needs to be convicted u/s 279 and 304A of I.P.C."

15. This Court finds that admittedly the solitary eye-witness of the occurrence P.W.-1 has clearly admitted in his cross-examination that he could not see who was driving the offending vehicle. In the entire judgment passed by the learned trial court, there is no discussion of any evidence indicating that any of the witnesses had stated that the petitioner was driving the vehicle at the time and place of occurrence and that it was the petitioner who ran away from the truck after the accident. But the learned trial court without any discussion and without any evidence on the point came to a finding that the prosecution has been able to prove the case against the petitioner beyond shadow of all reasonable doubts. Further, the learned trial court has not recorded any finding that the truck was being driven in rash and negligent manner.

16. So far as the learned appellate court is concerned, it also considered all the materials on record and also recorded the submissions of the learned counsel appearing on behalf of the appellant, wherein specific plea was raised that neither any witness has identified the petitioner as a driver of the offending vehicle nor there is any definite finding by the learned court below that the petitioner was driving the truck at the time of accident in negligent manner. The learned appellate court after

considering the materials on record, gave a finding that it was very clear from the evidences on record that the offending truck was in speed and dashed the scooter, in which, the victim was riding. However, so far as identity of the petitioner as driver of the truck is concerned, no finding, as such, has been recorded. The appellate court recorded that it was very much clear that the truck bearing Registration No. BR 16-B 9809 was involved in the accident and the investigating officer of the case had stated that after investigation, he submitted charge-sheet against the petitioner who was the driver of the said truck and so the accident took place by the said truck. The learned appellant court recorded that the prosecution has been successful in proving the charges against the petitioner under Sections 279 and 304-A of IPC.

17. The learned counsel appearing on behalf of the petitioner has placed the materials on record during the course of hearing to satisfy this Court that there is no evidence on record that the petitioner was driving the offending vehicle. It is not in dispute that the P.W.-1 had clearly stated that he had not seen the driver of the offending vehicle though he was an eye-witness to the occurrence. So far as P.W.-4, investigating officer of the case is concerned, in his entire evidence, he has not referred or stated as to how he has made the petitioner an accused in the case and has submitted charge-sheet against him. So far as P.W.-2 (informant) is concerned, he is admittedly not an eye-witness to the occurrence and he had reached the place after the accident and by that time, the driver of the offending vehicle had already run away and so far as P.W.-3 is concerned, he was the Doctor who conducted the post-mortem on the body of the informant.

18. This Court further finds that although it was stated by the informant that a number of persons had gathered at the place of occurrence after accident, who had informed him about the

manner in which the accident had taken place, but no such person was produced before the trial court to give evidence, who could have thrown some light on the point of identity of the petitioner as the driver of the offending vehicle. From the records of the case, it appears that the petitioner had surrendered before the learned court below and was taken into custody on 30.06.1998 and after he was taken into custody and even before the police, he had denied the allegation. As already recorded above, the investigating officer of the case has not disclosed a word as to how and on what basis, he has submitted charge-sheet against the petitioner.

19. Considering the totality of facts and circumstances of the case and after going through the materials on record including deposition of the witnesses, this Court finds that the prosecution has not been able to prove the case against the petitioner beyond shadow of all reasonable doubts, as they have not been able to produce any evidence that the petitioner was driving the vehicle at the time and place of occurrence. In view of the aforesaid facts and circumstances, this Court finds that judgment of conviction passed by the learned trial court and confirmed by the learned appellate court suffers from perversity calling for interference in revisional jurisdiction to secure the ends of justice. Accordingly, the petitioner is acquitted and he is discharged from the liability under his bail bond. Consequently, the impugned judgment of conviction and order of sentence dated 12.06.2006 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in G.R. Case No. 1202/98, T.R. No. 72/06 and also the judgment dated 06.10.2007 passed by the learned 4th Additional Sessions Judge, East Singhbhum, Jamshedpur in Cr. Appeal No. 184/06 are hereby set-aside.

20. Accordingly, the present revision application is allowed.

21. Pending interlocutory application, if any, is closed.

22. Let the lower courts record be sent back to the court concerned.
23. Let a copy of this order be communicated to the learned court below through 'E-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Mukul