

**Pawan Kumar Sharma Vs. State of U.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/484455](http://sooperkanoon.com/484455)

**Court :** Allahabad

**Decided On :** Jul-06-1995

**Reported in :** 1996CriLJ369

**Judge :** S.C. Jain, J.

**Acts :** Uttar Pradesh Probation of First Offenders' Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304, 304A and 429

**Appeal No. :** Criminal Revn. No. 784 of 1995

**Appellant :** Pawan Kumar Sharma

**Respondent :** State of U.P.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Rajul Bharguva, Adv.

**Judgement :**

ORDER

**S.C. Jain, J.**

1. The facts giving rise to this revision petition are that the applicant. Pawan Kumar alias Pappoo. was prosecuted for an offence under Sections 279, 304 and 429 IPC for having driven truck bearing registration No. RMB 1679 in a rash and

negligent manner at about 4.00 A.M. On 12-3-1987 near village Gosna at Muthura Raya Road hitting a bullock cart, as a result of which Satyvir and a buffalo of that cart died at that spot and another person travelling in that cart, i.e. Pooran Singh also sustained injuries.

2. The trial court, i.e. Addl. Chief Judicial Magistrate. Mathura found the applicant. Pawan Kumar alias Pappoo guilty for the said offence and convicted and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/- and in default of payment of fine to undergo imprisonment for one month under Section 279 IPC. six months rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to undergo imprisonment for one month under Section 304-A and six months rigorous imprisonment and to pay a fine of Rs. 2000/- and in default of payment of fine to undergo imprisonment for four months under Section 429 IPC. All the sentences were made to run concurrently.

3. The appeal filed before the learned Sessions Judge, Mathura being Criminal Appeal No. 40 of 1993 was dismissed and conviction and sentence passed by the learned Addl. Chief Judicial Magistrate was confirmed vide judgment and order dated 28-6-1995.

4. Aggrieved by that judgment and order of the learned Sessions Judge passed in appeal, this revision petition has been filed by the applicant.

5. It is settled principle of law that in revision the evidence is not re-appreciated. It is only in exceptional cases where there is apparent error of law the court in revisional jurisdiction can look into the evidence. It is only on the manifest illegality in the impugned judgment that the Court in revisional jurisdiction can interfere.

6. The main submission of the learned counsel for the applicant is that the judgments and orders of the courts below are illegal in as much as the conviction under Section 429 IPC is not sustainable in the eyes of law. He has put reliance on two decisions, one of Rajasthan High Court in the case of Arjunsingh v. The State reported in , and other of Gujarat High Court in the case of Fiduhusen Abdulali v. The State reported in : AIR1962 Guj318 in support of his contention that in order to prove an offence of mischief it is necessary for the prosecution to

establish that the accused had an intention or knowledge of the likelihood to cause wrongful loss or damage to the public or to any person. Where it was only accidentally that the truck of the accused struck the bullock-cart of Satyvir Singh from behind as a result of which he died of the injuries and also his buffalo died, the conviction under Section 429 IPC cannot be allowed to be sustained. In order to prove the offence of mischief, which is the main ingredient of Section 429 IPC it is necessary for the prosecution to establish that the accused had intention or knowledge of livelihood to cause wrongful loss or damage to the public or to any person.

7. Regarding the conviction under Section 279 IPC as well as under Section 304 IPC the argument of the learned counsel for the applicant is that no test identification parade was held and that in the statement of one of the witnesses, i.e. Kartar Singh, P.W. 1, it has come that the driver ran away after the accident. The trial court has not appreciated this evidence of Kartar Singh and when the driver was not available on the spot the test identification was necessary because he was not known to the witnesses from before, the other witnesses, i.e. P.W. 2 Pooran Singh and P.W.3 Ram Bharosey could not see as to who was driving the truck. The courts below have wrongly relied upon their evidence to arrive at a finding that the applicant was driving the truck at the time of accident.

8. Lastly the learned counsel for the applicant has submitted that the applicant is a young man and the benefit of the probation under the Probation of First Offenders' Act be granted to him. He has put reliance on a decision of this Court in the case of Munshi v. State of U.P. reported in 1990 All Cri C 90. According to him the ends of justice will better serve if the applicant instead of being sent to prison is directed to be released on probation of being good behaviour. No useful purpose will be served in sending him to jail after such a long period. The incident in question is of the year 1987.

9. Learned A.G.A. when was asked to satisfy this court as to how the conviction under Section 429 IPC is sustainable, he could not advance any argument and submitted that this plea was not taken in appeal before the learned Sessions Judge.

10. Any legal plea can be taken at the revisional stage also if it does not require any evidence.

11. On a reading of the impugned judgment and the other documents on record it is apparent that it was only accidental that the truck of the applicant hit the bullock-cart of the deceased as a result of which the buffalo and the driver of the bullock cart died. Another person, Pooran Singh, who was sitting in the bullock-cart also sustained injuries. It was not the allegation in the first information report that the accused had grudge against him and that he intended to cause wrongful loss or damage or likely to cause them to the deceased or any person and there was no such allegation either in the charge-sheet or was this ingredient brought out in the statements of the persons examined as eye witnesses. The conviction of the applicant for an offence under Section 429 IPC cannot be sustained. The courts below have committed manifest error of law in convicting and sentencing the applicant under Section 429 IPC for accident where the mens rea of causing the loss is absent. Therefore, the conviction of the applicant under Section 429 IPC is not sustainable in the eye of law and is hereby set aside.

12. Regarding conviction of the applicant under Sections 279 and 304-A IPC I find no illegality or irregularity in the judgment of the courts below. Both the courts below have appreciated the evidence of the witnesses correctly and legally. This appreciation done by the courts below cannot be re-appreciated by the court in revision in these circumstances.

13. Regarding non-holding of the test identification parade it is in the statements of P.W. 2 Pooran Singh and P.W. 3 Ram Bharosey that it is the accused-applicant who was driving the truck rashly and negligently and after the accident he could not come out of the truck as he was fixed up in between the seat and the steering of the vehicle. From the inquest report prepared on the same day by the police it is apparent that the driver was found fixed up in between the seat and steering and he was in an unconscious state and was sent to district hospital. His medical examination was done at the district hospital, Mathura at 8.40 A.M. The trial courts have rightly appreciated the evidence on record and rightly convicted the applicant under Sections 279 and 304-A IPC. I find no illegality or irregularity in their findings

and decline to interfere, in the findings arrived at by courts below and therefore. I confirm the findings of the courts below for conviction of the applicant under Sections 279 and 304-A IPC.

14. On the point whether the applicant is entitled to the benefit of probation under the provisions of the U.P. Probation of First Offenders Act, I think, it is a very serious case where the life of a poor person has been lost besides death of a buffalo and injuries to another man sitting in the bullock cart, i.e. Pooran Singh. In the present circumstances of the case I find no ground to grant him the benefit of probation under the provisions of the U.P. Probation of First Offenders Act. I also confirm the findings of the trial court on the point of sentence which cannot be said to be on the higher side.

15. In view of my above discussion, the revision petition is partly allowed. The conviction and sentence under Section 429 IPC is set aside and the conviction as well as sentence under Sections 279 and 304-A IPC is hereby confirmed and the revision is hereby dismissed on this point.

16. The fine amount, if realised, be paid to the heirs of the deceased.

17. Let a copy of this order be sent to the court concerned immediately for compliance.