

Ram Chand Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-31-2009

Reported in : 2009CriLJ3257

Judge : Surinder Singh, J.

Appellant : Ram Chand

Respondent : State of H.P.

Judgement :

Surinder Singh, J.

1. The present criminal revision petition has been preferred by the convict-petitioner, against the concurrent findings of conviction and sentence, passed by the learned trial court and affirmed in appeal, for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code.

2. In brief, the facts giving rise to the present petition can be summed up thus. PW2 Govind Ram and PW3 Jagdish Ram visited Bilaspur on 22.3.1997, to attend annual Nalwari

3. Whether reporters of Local Papers may be allowed to see the Judgment?.Yes. fair. In the evening after attending the fair with intention to return to their village, they came to bus stand Bilaspur at about 7 p.m. The petitioner herein was the

driver of Bus No. HP-24-3401 plying on Bilaspur- Brahmpukhar road. It is alleged that when Govind Ram and Jagdish Ram were waiting for the bus, the accused-petitioner drove his bus rashly and negligently while entering into the bus stand, which was packed with the rush of passengers and sandwiched both of them against the building pillar and his bus. Consequently, both of them suffered simple and multiple grievous injuries. Thereafter, they were removed to the hospital for providing them medical-aid.

4. The police was informed. The statement of PW2 Govind Ram, under Section 154 of the Code of Criminal Procedure was recorded, on the basis of which FIR was registered against the petitioner.

5. On the medical examination of the said injured, they were found to have sustained the simple and grievous injuries. After completing the investigation, the case was presented in the court for the trial of the accused petitioner. A notice of accusation was put to him to which he denied and claimed trial.

6. The prosecution examined both the injured along with other witnesses and the petitioner was also examined under Section 313 of the Code of Criminal Procedure. The petitioner denied the circumstances, which were found attendant upon him. According to him, the injured had tried to board the bus in motion, with the result they fell down and suffered the injuries, however, he also placed in defence the time-table of bus Ex.D1.

7. At the end of the trial, the learned trial court convicted the petitioner and sentenced him under each of the section aforesaid to pay a fine of Rs. 500/- and also to undergo simple imprisonment for one month on each count i.e. UNDER SECTION 279 and 337 IPC and further to undergo the simple imprisonment for two months under Section 338 of the Indian Penal Code.

8. Against his conviction and sentence, the petitioner filed an appeal before the court of sessions, which was dismissed and now the present revision petition has been filed, on the ground that the findings of guilt by the courts below was erroneous and the evidence was wrongly appreciated.

9. I have heard the learned Counsel for the parties and carefully examined the record.
10. The petitioner was admittedly the driver of bus in question at the relevant time. He has admitted presence of PWs 2 and 3 at the bus stand Bilaspur, but his defence as noticed above was only that while boarding the bus, both of them fell down with the result they sustained injuries, but on the examination of the evidence on record, this defence is proved to be totally false.
11. PW2 Govind Ram has stated that when they were waiting for the bus at the bus stand, there was a great rush. The alleged offending vehicle entered the bus stand and pressed him as well as PW3 Jagdish Ram against the pillar of the building. He categorically stated that the accident in question had taken place on account of fault of the driver. His version has been corroborated by PW3 Jagdish Ram. He further stated that the accident had taken place on account of negligence on the part of the petitioner-driver. Both the injured witnesses imputed the negligence of the driver in causing the accident. No dent was caused in their statements that their statements cannot be relied up. Thus, the prosecution case to this extent inspires confidence.
12. But however, it is pertinent to note that in order to substantiate the grievous nature of injuries on the persons of the injured aforesaid, neither the doctor nor the Radiologist was examined. The medical certificates of PW2 and PW3 along with X-rays were tendered in evidence by the learned Assistant Public Prosecutor, which were exhibited on record without proving its contents. Further, no attempt was made to prove the X-rays Exts.P6 to P12 and the opinion of the doctor thereon. According to the learned Assistant Advocate General, the said documents were tendered in evidence by the learned Prosecutor and were exhibited and the accused did not raise any objection, therefore, these are to be taken as admitted documents.
13. I am not in agreement with the aforesaid arguments advanced by the learned Assistant Advocate General, simply because that by marking the exhibits on documents when tendered in the statement of the learned Prosecutor even without objection, in a criminal case will not prove the contents of the documents, unless

the said documents are of the nature provided in Section 293 of the code of Criminal Procedure.

14. Further the accused has not admitted the aforesaid documents even in accordance with Section 294(2) of the Code of Criminal Procedure. The accused was also never called upon to admit or deny the genuineness of any of the documents aforesaid, therefore, neither the X-rays nor the medical certificates could be treated as proof of sustaining grievous injuries to the injured persons, so as to pass conviction on the petitioner for the offence punishable under Section 338 of the Indian Penal Code. Accordingly, the conviction of the petitioner for the offence aforesaid passed by the trial court and affirmed in appeal is bad, thus, he stands acquitted for the offence punishable under Section 338 of the Indian Penal Code.

15. Insofar as the offences under Sections 279 and 337 of the Indian Penal Code are concerned, both these offences stand proved against the petitioner beyond a reasonable doubt as both the injured witnesses have testified on oath that the accident in question had taken place on account of the negligence of accused-petitioner wherein they sustained injuries, which in absence of proof of grievous, these were taken to be simple in nature. The defence raised is totally false for the reasons aforesaid, accordingly the conviction of the petitioner under Section 279 and 337 of the Indian Penal Code is affirmed.

16. But however, in so far as the sentence part is concerned, keeping in view the time lag between the accident and conviction during trial, the ends of justice would be met in case, while maintaining the fine under Section 279 and 337 of the Indian Penal code, the substantive sentence imposed by the courts below is modified till rising of the Court which is ordered accordingly.

17. Further in addition, in exercise of the powers vested in this Court under Sub-section (5) of Section 356 of the Code of Criminal Procedure it is ordered that the petitioner shall deposit an amount of Rs. 10,000/- (ten thousand) as compensation within four weeks from today in the learned trial court, out of which Rs. 5,000/- each shall be released to each of the injured i.e. PW2 Govind Ram and PW3 Jagdish Ram. In case of making default in depositing the compensation, the said

amount shall be recovered as a fine. The appeal aforesaid with stands partly the above modiallowed fication as in sentence. Send down the records.

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