

Manoj Kumar Ghildiyal Vs. State

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Court : Uttaranchal

Decided On : Sep-07-2010

Judge : Sudhanshu Dhulia, J. (Oral)

Acts : Indian Penal Code (IPC) - Section 279, 304(A), 274, 337, 338, 427; Code of Criminal Procedure (CrPC) (Cr.p.C) - Section 313; [Indian Evidence Act, 1872.](#) - Section 6; [Probation of Offenders Act, 1958.](#) - Section 4

Appeal No. : Criminal Revision No. 8 of 2002

Appellant : Manoj Kumar Ghildiyal

Respondent : State

Judgement :

1. Heard Mr. Vinod Sharma, Advocate for the revisionist and Mr. G.S. Sandhu, Government Advocate for the State of Uttarakhand.

2. This criminal revision has been filed against the judgment and order 28.2.2002 passed by the Sessions Judge, Uttarkashi in Criminal Appeal No. 36 of 1999, by which the judgment and order of the trial Court convicting the accused/revisionist under Section 279/304-A I.P.C. and sentencing him to undergo R.I. for six months and to pay a fine of Rs. 500/- under Section 279 I.P. and in default of payment of fine further undergo simple imprisonment of one month and a sentence of one year R.I. under Section 304-A and to pay a fine of Rs. 1,000/- and in default of payment of fine to further undergo simple imprisonment of one month, has been

upheld.

3. Brief facts of the case are that the revisionist was driving a Jeep No. UP 09-0216 from Chinyalisaur to Brahamkhal. This Jeep had a head on collision with a Scooter at 1.00 p.m. in the afternoon on the road, which resulted in the death of the Scooter-driver as well as the pillion rider. Whereas the pillion rider died on the spot, the driver of the scooter Mr. Raghu Nandan Prasad died while he was being taken to the Hospital at Dehradun. The revisionist was charged for an offence under Section 274/304-A/337/338/427 I.P.C. As many as eleven witnesses were examined. There was even an eye-witness in the form of a Police Head Constable -P.W.8 (Padam Singh), who was on patrol duty at the relevant time. He gave a statement that the Jeep was coming from "Chinyalisaur" in a "rash and negligent way" and had a head on collision with the Scooter, which was on its right side, whereas the Jeep was on the wrong side. Apart from this, there were other witnesses such as P.W.1- Puran Chand, P.W.2-Kasturi Lal, P.W.3 Roshan Lal, P.W. 4- Shankar Dutt, P.W. 5-Rajesh Gairola, P.W.6-Khimanand, P.W.7- Somdutt Kataria, P.W.8 - Padam Singh (reference of whom has already been made above) and P.W.9-H.C.M.T. Beer Singh. The factum of accident is admitted by the accused in his statement under Section 313 of Cr.P.C., although he denies that he was driving in a rash and negligent manner. Therefore, what has to be determined in the present case is as to whether the accused/revisionist was actually driving the Jeep in a rash and negligent manner? This is an admitted fact that it was an incident at afternoon, which had resulted in the death of two persons. There is an eye-witness of the incident, which has deposed that the accused/revisionist was driving in a rash and negligent manner. There was no occasion for the trial Court as well as for this Court to disbelieve the version of that eyewitness. Further P.W.4, who is the brother of the deceased, who came immediately after the accident to the place of occurrence he stated that when he reached the spot of accident, he was told by the Head Police Constable i.e. P.W.8 Padam Singh that a Jeep, which was being driven rashly and negligently had resulted in the accident. Therefore, though P.W.4 Shankar Dutt is actually not an eye witness, but definitely his statement is relevant for the purpose under Section 6 of the [Indian Evidence Act, 1872](#).

4. During the investigation, the site plan Ex. K-9 was also prepared, which shows that the Jeep suddenly turned towards right side and collided with the Scooter at the extreme corner of the road. It is also clear from the map that the Jeep dragged the scooter for some distance.

5. The defense which has been put forward by the accused is that the accident actually took place due to third vehicle, which was coming toward the Jeep and which was being overtaken by the Scooter. However, this has not been proved by the defendant by placing any kind of evidence. From the perusal of the photographs also, it was clear that the Jeep turned towards its right side. Scooter is also seen at the edge of the road, where the accident took place. From the technical inspection, which is carried out by P.W.9 H.C.M.T. Beer Singh, it is also clear that there was no technical failure of the Jeep nor technical failure is alleged by the defense. Therefore, there is no ground for interfering with the order of the trial Court as well as of the lower appellate Court. There is no jurisdictional error or any error in the appreciation of evidence by both the Courts below. Therefore, this Court finds no merit in the instant Criminal Revision and the same is liable to be dismissed and is hereby dismissed. No order as to costs.

6. Under the facts and circumstances of the case also, there is also no ground for releasing the revisionist/accused on probation under Section 4 of the [Probation of Offenders Act, 1958](#).

7. Interim order dated 5.3.2002 regarding suspension of fine as well as the order granting Bail to the accused are vacated/cancelled. Accused/Applicant be taken into custody.

8. The Registry is directed to send a copy of this order to the Court concerned for necessary compliance.

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