Bachan Singh Vs State Of Jammu And Kashmir And Others

Criminal Revision No. 21 Of 2016

Court: High Court Of Jammu And Kashmir And Ladakh At Jammu

Date of Decision: Oct. 20, 2023

Acts Referred:
Jammu And Kashmir State Ranbir Penal Code, 1989 â€" Section 279, 304A, 337, 338 #Code Of Criminal Procedure Svt, 1989 â€" Section 342, 435, 439#Code Of Criminal Procedure, 1973 â€" Section 162, 397, 401#Evidence Act, 1872 â€" Section 9

Hon'ble Judges: Sanjay Dhar, J

Bench: Single Bench

Advocate: Pawan Dev Singh

Final Decision: Dismissed

Judgement

Sanjay Dhar, J

1. Through the medium of instant revision petition, the petitioner has challenged order dated 20.04.2016 passed by the learned 1st Additional Sessions

Judge, Jammu (hereinafter to be referred as the appellate court), whereby judgment of conviction and sentence dated 10.06.2015 passed by learned

Judicial Magistrate 1st Class(Electricity Magistrate), Jammu(hereinafter to be referred as the trial court) has been upheld and the petitioner has been

sentenced to imprisonment of one year and a fine of rupees one thousand in proof of offences under Sections 304-A and 279 RPC.

2. The facts giving rise to the present revision petition are that on 27.02.2008 a Minibus bearing registration No. JK02V 0583 was being driven rashly

and negligently by its driver, while proceeding from Satwari towards Jammu. On reaching near Convent School Crossing at Gandhi Nagar, Jammu, the

deceased-Harnam Kour, who was crossing the road, was knocked down by the vehicle in question, as a result of which, she received grievous

injuries. She was moved to hospital and in the meanwhile, the driver of the offending vehicle fled away from the spot. The Police swing into action,

registered FIR No. 38/2008 for offences under Sections 279, 337 and 338 RPC with Police Station, Gandhi Nagar, Jammu and proceeded to

undertake investigation of the case. On 03.03.2008, injured Harnam Kour succumbed to the injuries in the hospital. After investigation of the case,

offences under Sections 279 and 304-A RPC were found proved against the petitioner and a charge sheet was laid against the petitioner before the

trial court.

3. Vide order dated 05.05.2008, the learned trial court framed charges for offences under Sections 279 and 304-A RPC against the petitioner and his

plea was recorded. The petitioner denied the charges and accordingly, the prosecution was directed to lead evidence in support of its case. The

prosecution examined PWs Bhopinder Singh, Jagdish Raj, Hardeep Singh, Jasmeet Kour, Vishnesh Kumar and Dr. L. D. Bhagat as witnesses in

support of its case. Though the prosecution had cited as many as 15 witnesses in the charge sheet, yet only the afore-named witnesses were

examined leaving out other witnesses including the Investigating Officer. After completion of the prosecution evidence, statement of the

petitioner/accused under section 342 J&K Cr.P.C. was recorded in which he denied his involvement in the offence and claimed that a false case has

been foisted upon him. The petitioner did not choose to lead any evidence in defence.

4. Learned trial court, after appreciating the evidence led by the prosecution came to the conclusion that the accident, which resulted in death of the

deceased, had taken place on account of rash and negligent driving of the offending vehicle by the petitioner/accused. Accordingly, he was convicted

of offences under Sections 279 and 304-A RPC in terms of judgment dated 10.06.2015. In proof of offence under Section 279 RPC, the petitioner

was sentenced to a fine of Rs. 1,000/- whereas in proof of offence under Section 304-A RPC, he was sentenced to undergo simple imprisonment for

a period of one year.

5. The petitioner challenged the impugned judgment of conviction and sentence dated 10.06.2015 by way of an appeal before the appellate court. The

learned appellate court vide its impugned judgment of 20.04.2016 dismissed the appeal and upheld the judgment of conviction and sentence passed by

the learned trial court. It is this judgment which is under challenge by way of the present revision petition before this Court.

6. The petitioner has challenged the impugned judgment of conviction and sentence through the medium of instant revision petition on a number of

grounds but during the course of proceedings, learned counsel for the petitioner has confined the challenge only to two grounds, one that the petitioner

has been convicted on the basis of his dock identification and since he had no previous acquaintance with the prosecution witnesses, therefore, in the

absence of any corroborative evidence in the shape of test identification during investigation of the case, the courts below could not have concluded

that it was the petitioner only who was at the wheels at the time of the accident. The other ground that has been urged is that omission of prosecution

to examine the Investigating Officer of the case as a witness, has resulted in grave prejudice to the petitioner because the contradictions in the

prosecution evidence could not be proved.

7. Before embarking upon decision on merits of the contentions raised by the learned counsel for the petitioner, it would be apt to notice that the

petitioner has been convicted by the trial court and his conviction has been upheld by the appellate court. Therefore, conviction of the petitioner

concurrently upheld by two inferior courts has to be appreciated within the limits of revisonal jurisdiction. In the absence of any serious infirmity that

would amount to miscarriage of justice, this Court would not be in a position to interfere under revisional jurisdiction. This is clear from the language of

Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.) which are in pari materia with Sections 435 and 439 of the J&K Cr.P.C.

applicable to the present case. A revisional court is only vested with jurisdiction to correct and rectify the orders of inferior courts provided such

orders suffer from serious infirmities likely to cause miscarriage of justice. While exercising revisional jurisdiction, fresh appreciation of evidence is not

permissible unless the findings arrived at by the inferior courts are perverse and unacceptable. Merely because another view is possible than what

was formed by the inferior courts on the basis of the evidence on record, would not be a ground to exercise revisional jurisdiction.

8. In light of aforesaid legal position, the issue that needs to determined is whether in the instant case, the inferior courts have committed any illegality

or impropriety, while passing the impugned judgment of conviction and sentence.

9. As already noted, the first contention of the petitioner is that during the investigation of the case, no test identification parade of the petitioner was

conducted and the witnesses have seen him for the first time in the court at the time of making their statements. It has been contended that prior to

the accident, the prosecution witnesses did not have any previous acquaintance with the petitioner and as per the story narrated by the prosecution

witnesses, the petitioner had fled away from spot after the accident, therefore, there was no occasion for the witnesses to have identified the

petitioner on spot, particularly when he was not arrested on spot and he was not even named in the FIR. In this regard, learned counsel for the

petitioner has placed reliance upon the judgments of the Supreme Court in the case of Dana Yadav alias Dahuand and others v State of Bihar,

(2002)7 SCC 295 and Mahavir vs State of Delhi, (2008)16 SCC 481.

10. Before dealing with the merits of the contention raised by learned counsel for the petitioner, it would be apt to notice the legal position laid down by

the Supreme Court in the cases referred to and relied upon by the learned counsel for the petitioner. In Dana YadavÃ¢â‚¬â„¢s case (supra), the Supreme

Court has, while discussing the legal position as regards the importance of test identification in a case where identity of the accused who is stranger to

the witnesses, becomes an issue for determination, observed as under:

Ã¢â‚¬Å“5.....Section 9 of the Evidence Act deals with relevancy of facts necessary to explain or introduce relevant facts. It says, inter alia, facts

which establish the identity of anything or person whose identity is relevant, in so far as they are necessary for the purpose, are .relevant. So the

evidence of identification is a relevant piece of evidence under Section 9 of the Evidence Act where the evidence consists of identification of the

accused at his trial. The identification of an accused by a witness in court is substantive evidence whereas evidence of identification in test

identification parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by

a witness in court. This Court has dealt with this question on several occasions. In the case of Vaikuntam Chandmppa and Ors. v. State of Andhra

Pradesh, AIR (1960) SC 1340 which is a three Judge Bench decision of this Court, Wanchoo, J., with whom A.K. Sarkar and K. Subba Rao, JJ.

agreed, speaking for. the Court, observed that the substantive evidence of a witness is his statement in court but the purpose of test identification is to

test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are stranger to the

witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding or any other evidence. The

law laid down in the aforesaid decision has been reiterated in the cases of Budhsen and Anr. v. State of U.P., [1970] 2 SCC 128, Sheikh Hasib alias

Tabarak v. The State of Bihar, [1972] 4 SCC 773, Bollavaram Pedda Narsi Reddy and Ors. v. State of Andhra Pradesh, [1991] 3 SCC 434, Ronny

alias Ronald James Alwaris and Ors. v. State of Maharashtra, [1998] 3 SCC 625 and Rajesh Govind Jagesha v. State of Maharashtra, [1999] 8 SCC

428. It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses

to identify either the properties which are the subject matter of alleged offence or the persons who are alleged to have been involved in the offence.

Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to

assure themselves if the investigation is proceeding on right lines. In other words, it is through these identification parades that the investigating agency

is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits.....

6. ----------

7----------

8. In the case of State of Maharashtra (supra), it was laid down that if a witness had any particular reason to remember about the identity of an

accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first

time, conviction can be based. In the case of Ronny alias Ronald James Alwaris and Ors. (supra), it has been laid down that where the witness had a

chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which

lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely

because no test Identification parade was held. In that case, the concerned accused had a talk with the identifying witnesses for about 7/8 minutes. In

these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the

same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case

of Rajesh Govind Jagesha (supra), it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently

described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the

occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction

without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of State

of H.P. (supra), it was observed that ".....test identification is considered a safe rule of prudence to generally look for corroboration of the sworn

testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule,

when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration." In that

case, laying down the aforesaid law, acquittal of one of the accused by High Court was converted into conviction by this Court on the basis of

identification by a witness for the first time in court without the same being corroborated by any other evidence. In the case of Ramanbhai Naranbhai

Patel and Ors. (supra), it was observed ""It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence

of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the

evidence deserves any credence or not would always depend on the facts and circumstances of each case."" The Court further observed..... "" the fact

remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance

and identity would well remain imprinted in their minds especially when they were assaulted in broad day light."" In these circumstances, conviction of

the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court.Ã¢â‚¬â€‹

11. In MahavirÃ¢â‚¬â„¢s case (supra), the Supreme Court has, while dealing with this aspect of the matter, observed as under:

Ã¢â‚¬Å“12. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the

Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons,

are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The

evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose

of prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence

to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the

form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a

particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of

investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test

identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to

hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification

should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

(See Kanta Prashad v. Delhi Administration (AIR 1958 SC 350), Vaikuntam Chandrappa and others v. State of Andhra Pradesh (AIR 1960 SC

1340), Budhsen and another v. State of U.P. (AIR 1970 SC 1321) and Rameshwar Singh v. State of Jammu and Kashmir (AIR 1972 SC 102).Ã¢â‚¬â€‹

12. From the foregoing analysis of law on the subject, it becomes clear that it is a rule of prudence to generally look for corroboration of the sworn

testimony of a witness in court as to identity of the accused, who is stranger to him in the form of identification proceedings. It also becomes clear that

the evidence relating to test identification is corroborative in nature whereas the evidence of the witness relating to identification of accused in court is

a substantive piece of evidence. It is also manifest that failure to hold a test identification parade would not make inadmissible the evidence of

identification in court. In appropriate cases, the court may accept the evidence of identification even without insisting on corroboration.

13. In light of aforesaid legal position, let us know advert to the facts of the present case. It is not in dispute that the accused /petitioner was unknown

to the prosecution witnesses. It is also not in dispute that no test identification parade of the petitioner has taken place during the investigation of the

case. The question that arises for consideration is whether the evidence relating to the identity of the petitioner/accused in the form of his dock

identification by the prosecution witnesses at the time when they deposed in court without any corroboration in the form of evidence as to test

identification is sufficient to prove the identity of the accused/petitioner.

14. If we have a look at the statement of the star eye witness, PW Jasmeet Kour, the daughter in law of the deceased, who accompanied her at the

time of the accident when the deceased was crossing the road, she has categorically stated that she identified the accused present in court. In her

cross examination, she has stated that after the accident, she caught hold of the petitioner/accused brought him down from the Metadoor and slapped

him. The defence has not cross examined the witness so far as her statement regarding identity of the accused is concerned. Not even a suggestion

has been put by the defence that the accused was not driving the vehicle in question at the relevant time. Another witness PW Vishnesh Kumar has

also identified the accused at the time of making his statement in the court. This witness has also not been cross examined by the defence on this

aspect of the matter. The only question that has been put to the witness in the cross examination in this regard is whether he had seen the accused

prior to the occurrence to which, he replied that he had not seen him prior to the occurrence and that he saw him for the first time on the date of the

occurrence and thereafter, in the court. PW Bhopinder Singh another eye witness, who as per his version, was also present at the place of

occurrence, has also identified the accused as the person who was driving the offending vehicle. He has in his cross examination stated that prior to

the occurrence also, he has seen the accused on a number of occasions.

15. From the aforesaid nature of evidence on record, it is clear that all the eye witnesses to the occurrence have identified the accused in the court

while making their statements. While PW Jasmeet Kour and Vishnesh Kumar had no previous acquaintance with the petitioner, however, PW

Bhopinder Singh has stated that even prior to the occurrence, he had seen the petitioner a number of times. It is also clear that the defence has not

cross examined these witnesses in respect of their statements regarding identity of the accused nor the defence has put any suggestion to the

witnesses to the effect that the accused was driving the vehicle in question at the relevant time.

16. Apart from the above, the petitioner/accused while making his statement under section 342 Cr.P.C. and explaining the incriminating evidence as

regards the fact that he was driving the vehicle in question at the relevant time has simply stated that the witnesses have deposed falsely. He has not

specifically taken a stand in his statement that he was not driving the offending vehicle at the relevant time. Therefore, the statements of prosecution

witnesses about the identity of the petitioner/accused cannot be termed as unreliable in the absence of evidence relating to test identification

particularly when the accident had taken place in broad day light at about 11 AM and the prosecution witnesses had full opportunity to see the

accused.

17. According to PW Jasmeet Kour, she even brought down the petitioner from the Metadoor and then slapped him. Therefore, her statement in the

facts and circumstances about the identity of the petitioner even in the absence of corroboration by way of evidence of test identification, cannot be

doubted. She being close relative of the deceased would not have falsely implicated the petitioner as she was not having any reason to do so. Because

of close relationship of the deceased, PW Jasmeet Kour would be the most interested person to implicate the real culprit. Therefore, her evidence as

regards identity of the accused even without any corroboration deserves to be accepted. Keeping in view the special circumstances attending the

instant case as have been discussed hereinbefore, the statements of prosecution witnesses as regards identity of the petitioner/accused even in the

absence of the test identification deserves to be accepted and no interference to the conclusions drawn by the courts below in this regard is warranted

in exercise of revisional jurisdiction.

18. The other contention raised by the learned counsel for the petitioner is with regard to the non examination of the Investigating Officer. It has been

contended by the learned counsel for the petitioner that due to non examination of the Investigating Officer, a grave prejudice has been caused to the

petitioner inasmuch as he was deprived of the opportunity to effectively cross examine the witnesses and to bring out contradictions. In this regard, the

learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of Jamuna Choudhary vs State of Bihar, (1974) 3

SCC 774 and the judgment of the High Court of Mysore in the case of J K Devaiya vs State of Coorg, AIR 1956 Mysore 51.

19. First of all, it has to be noted that although it is desirable for the prosecution to examine the Investigating Officer, yet non examination of the

Investigating Officer does not in every case create dent in the prosecution case. The Supreme Court in the case of Behari Prasad vs State of Bihar,

(1996) 2 SCC 317 held that for non examination of the Investigating Officer, the prosecution case need not fail and it would not be correct to contend

that if the Investigating Officer is not examined, the entire case would fall to the ground as the accused were deprived of the opportunity to effectively

to cross examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of

each case and no universal strait jacket formula should be laid down that non examination of the Investigating Officer per se vitiates the criminal trial.

20. In the case of Ambika Prasad vs State of Bihar AIR 2000 SC 718, it was held by the Supreme Court that non examination of the Investigating

Officer could not be a ground for disbelieving eye witnesses. Again in the case of Behadur Naik vs State of Bihar, AIR 2000 SC 1582, it was held by

the Supreme Court that non examination of an Investigating Officer was of no consequence when it could not be shown as to what prejudice had been

caused to the accused by such non examination. Similar view has been taken by the Supreme Court in the case Ram Ghulam Choudhary vs State of

Bihar AIR 2011 SC 2842.

21. Coming to the facts of the instant case, it is true that the prosecution has not examined the Investigating Officer but it is also a fact that none of

the prosecution witnesses including the eye witnesses to the occurrence have been confronted with their previous statements made during the

investigation of the case nor any contradiction has been brought forth during their cross examination. Therefore, non examination of the Investigating

Officer in the instant case, would have no effect on the prosecution case. An adverse inference could have been drawn against the prosecution only if

contradictions would have been brought forth during the cross examination of the prosecution witnesses and for their proof by examination of the

Investigating Officer. Since no contradictions with the previous statements of the prosecution witnesses have been brought forth, therefore, non

examination of the Investigating Officer in the circumstances of the case is of no consequence and it has not caused any prejudice to the

petitioner/accused. The statements of the eye witnesses to the occurrence in the circumstances of the case cannot be disbelieved only because the

Investigating Officer has not been examined. The contention of the petitioner is, therefore, without any merit.

22. For the foregoing reasons, I do not find any illegality or irregularity having been committed by the trial or the appellate court, while passing the

impugned judgment of conviction and sentence against the petitioner. Therefore, there is no ground to interfere in the judgments passed by the courts

below.

23. Accordingly, the revision petition is dismissed. The petitioner is directed to surrender before the trial court within a period of 15 days from today,

whereafter, the trial court shall send him to jail for serving the balance sentence. In case, the petitioner does not surrender before the trial court within

the aforesaid period, the trial court shall take all necessary steps for execution of the sentence in accordance with law.

24. A copy of this order be sent to the trial court as well as to the appellate court.