

A. Bihari and anr. Vs. State of Karnataka, Rep. by Spp. and anr.

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Court : Karnataka

Decided On : Dec-12-2003

Reported in : ILR2004KAR2846

Judge : S.R. Bannurmath, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 304A, 397(1) and 482; [Evidence Act, 1872](#)

Appeal No. : Cr.R.P. No. 523/1999

Appellant : A. Bihari and anr.

Respondent : State of Karnataka, Rep. by Spp. and anr.

Advocate for Def. : C.M. Kempegowda, Adv. and ;Associates, for R2

Advocate for Pet/Ap. : S.P. Kulkarni, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

S.R. Bannurmath, J.

1. Heard the learned Counsel for the petitioners and the contesting respondent.

This revision petition is filed challenging the judgment of acquittal dated 14.02.96 passed by the learned Magistrate, Bangalore, in C.C.No. 28727/96 acquitting the respondent for the offences punishable under Section 279 & 304A of IPC.

2. The brief facts leading to the present revision petition are as follows:

In respect of an accident on 14.9.96 at about 12 noon on Dhanwanthri Road, Bangalore, the respondent is tried in C.C.No. 28727/96 for the aforesaid offences. The prosecution has led the evidence of 3 witnesses and got marked Ex.P.1 to P.6. The Trial Court on appreciation of the evidence gave benefit of doubt to the accused only on the ground that the prosecution has examined only one eyewitness and whose evidence, is not corroborated by any other independent eyewitness.

3. It is to be mentioned here itself that even though prima facie the observation of the Trial Court for acquittal is illegal as well as perverse, the State ought to have preferred an appeal against the acquittal. For the reasons best known, the state has not filed any appeal. However, the parents of the deceased who are the aggrieved persons have approached this Court in the present revision seeking justice and punishment of the respondent for the crime committed by him.,

4. At the outset, as objections regarding the maintainability of the revision by an individual in a police case against the judgment of acquittal is raised, I would like to deal with the same. No doubt, right from 1951 till date the Apex Court has emphasized the fact that revisional jurisdiction conferred upon the High Court should not be lightly exercised when it is invoked by a private party against an order of acquittal. However, there is absolutely no bar even emphasized by the Hon'ble Supreme Court if such an order of acquittal is either perverse, illegal or contrary to the interest of public justice wherein Court is required to interfere for the correction of manifest illegality or prevention of gross miscarriage of justice. Few of the decisions in this regard are D. STEPHENS v. NOSIBOLLA, : 1951 CriLJ510 , CHANDRASINH MANIBHAI v. SURJIT LAL, : [1951]2SCR221 , K. CHINNASWAMY REDDY v. STATE OF ANDHRA PRADESH, : [1963]3SCR412 MAHENDRA PRATAP SINGH v. SARJU SINGH AND ANR., : 1968 CriLJ665 , AKALU AHIR AND ORS. v. RAMDEO RAM, : 1973 CriLJ1404 , PAKALAPATI

NARAYANA GAJAPATHI RAJU AND ORS. v. BONAPALLI PEDA APPADU AND ANR., : AIR 1975 SC1854 , and even the latest pronouncement in the case of BINDESHWARI PRASAD SINGH v. STATE OF BIHAR, 2002 CrI.L.J. 3788. As noted already, no doubt, it is true that the Apex Court has cautioned the High Court while exercising revisional jurisdiction especially in the case of judgment acquittal not to exercise the same lightly and as if an Appellate Court. However, as expressed in these very judgments it cannot be said that, even in a case where the judgment of acquittal is emphasis Ely illegal or perverse requires interference in the interest of public justice. The Courts are helpless and cannot exercise revisional jurisdiction. Even otherwise, in my view, when illegality is brought to the notice, the High Court even by exercising the inherent jurisdiction under Section 482 Cr.P.C. can set right the illegality in the order. As such, keeping in view these principles I have considered the case on hand.

5. As noted already, the prosecution has examined 3 witnesses and got marked several documents in support of the case. Out of these 3 witnesses, PW-3 is the independent eyewitness who has seen the accident and in fact by lodging the first information has set the investigation on role. The Trial Court though prima facie found that his evidence is truthful and believable, rejects his evidence only on the ground that there is no corroboration to this evidence. Corroboration of evidence always is not a sine quo non in criminal cases. It is always the quality of the evidence and not the quantity, which should be the criteria for deciding a criminal case. It is time and again emphasized that in heinous crime case also, even if there is one eyewitness who is truthful and believable, inspite of failure of the prosecution to substantiate its case for peripheral reason like non establishing recovery or even some irregularity in investigation, the Court can accept the truthful version of the single eyewitness, and can proceed to convict the accused.

6. In the present case the learned Magistrate though has accepted the evidence of P.W3 as independent and truthful, rejected the same and ultimately gave the benefit of doubt to the accused only on the ground of evidence being uncorroborated. In my view, the stand taken by the Trial Court is not only illegal but perverse also. It is also to be noted in this case that the respondent driver has in fact admitted that he was driving the vehicle. In his statement under Section 313

Cr.P.C. however, does not offer any explanation as to how the deceased Jayakrishna Ananda came under the wheel of his Bus and killed him. In my view some explanation in such cases from the accused is a must and the stage to explain is, at least when his statement is being recorded under Section 313 Cr.P.C. As held by the Apex Court in the case of RATAN SINGH v. STATE OF H.P., 1997 SCC Cri 525 examination of the accused under Section 313 Cr.P.C. is not an idle formality. Apart from affording an opportunity to the accused to explain incriminating circumstance's his answers or explanation would also help the Court in appreciating the entire evidence and if the accused does not explain in cases like under Section 304-A IPC category possibly it is open for the Court to draw adverse inference against the accused also. This finding of mine is also based on the principles under Section 106 of the Evidence Act. In cases of accident, most of the time the so-called eyewitnesses are the persons, who immediately after the accident look towards the spot and then by gathering their memory, recollect as to how the vehicle came rash and negligently and how it was being driven, then try to connect the accident with the speed, rashness or negligence. In fact it is only the victim and the driver of the vehicle who alone knows how exactly the accident took place. The victim is no more and it is only the driver of the erring vehicle, who is left with the knowledge as to the accident and as such he is the person having special knowledge of the accident and even after a chance is given to him to explain under Section 313 Cr.P.C., he does not explain, I am of the view that the Courts are entitled to draw the adverse inference against the accused.

7. As noted in 313 statements, in the present case even though the accused has admitted he being the driver and present on the spot, has not explained as to how exactly the accident took place. Taking into consideration the facts scenario, in my view, as held by the Apex Court in the case of SYAD AKBAR v. STATE OF KARNATAKA, : 1979 CriLJ1374 the doctrine of *res ipso loquitur* [sic] are squarely attracted to the present facts and circumstances of the case and as such, apart from the illegality committed by the Trial Court in discarding the believable version of PW-3 - accident eyewitness, it also amounts to perversity and hence the impugned judgment is liable to be interfered with by holding the accused guilty of the offence under Section 304-A IPC. This takes me to the next case as to sentence to be imposed.

8. No doubt, the Apex Court and this Court has laid down that taking into consideration the growing menace and killing of innocent persons on the road because of rash and negligence on the part of auto driven vehicle, when the Court finds such person has committed the offence of rash and negligent act, the minimum punishment should be severe and minimum of six months imprisonment apart from the fine to be imposed, even though under Section 304-A discretion itself with the Court either to give substantive sentence of imprisonment or fine or both. However, in the present case taking into consideration the fact that the accident has taken place in the year 1996, almost 7 years back and the accused has been acquitted in the year 1998 though illegally, in my view, interest of justice would be met instead of sentencing the accused to imprisonment after such a long time, fine alone would be sufficient.

9. For the reasons stated above, revision petition is allowed. The Judgment of acquittal passed by the learned Magistrate is set aside. The respondent is now found guilty of the offences punishable under Section 279 and 304-A IPC and is sentenced to pay fine of Rs. 2,500/- for each of the offences with default sentence to undergo RI for 3 months. Time to deposit the fine amount as prayed for by the learned Counsel is four weeks.