

Liyakat Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/482763

Court : Allahabad

Decided On : May-06-1993

Reported in : 2(1993)ACC241

Judge : G.S.N. Tripathi, J.

Appellant : Liyakat

Respondent : State of U.P.

Judgement :

G.S.N. Tripathi, J.

1. The accused Liyakat was held guilty on the charge under Section 304-A and 279 I.P.C. He was sentenced to undergo 1 1/2 years R.I. and 6 months on the charges under Section 304-A and I.P.C. respectively. The order of conviction and sentence was passed by the Sessions Judge, Mirzapur on 2.8.1979.

2. The prosecution case started on the basis of written F.I.R. lodged by Sri Achutanand at P.S. Robertsganj, Distt. Mirzapur on 2.7.1973 at 10.45 A.M. He has alleged that the occurrence took place on 2.7.1973. The accused was the driver of truck No. UTD 2819. The truck was attached to a company located at Lucknow and it was used for transporting empty cement bags of Rupa Rail Company Lucknow and which were unloaded at Cement Factory, Churk. The deceased also carried on a competitive business of the same nature and his truck was attached

to the gunny bag agency at Robertsganj. On 2.7.1973, the complainant was sitting near a restaurant, where exchange of hot words took place between the deceased Mata Sewak and the accused and allegedly the accused threatened to finish the deceased Mata Sewak soon on the same day. The deceased proceeded towards Robertsganj on a motorcycle. The accused closely followed him and after covering a distance of about a mile within the boundaries of village Kasauli, the accused over-ran his truck on the motorcycle of the deceased and crushed him on the spot. He wanted to run away with the Truck but as the motorcycle got entangled in the rear shaft of the truck, he left the track on the spot and ran away. The complainant learnt about the incident within a hour thereafter and after seeing the dead body, he collected information from Kanhiya Lal (P.W. 6) and Golai (now dead). Thereafter he lodged the report and the prosecution machinery started functioning. After usual investigation, the charge sheet was filed.

3. The prosecution examined the complainant, who has proved the incident near the restaurant and also the fact that he lodged the report after gathering information on the spot. Kanhiya Lal, P.W. 6 is the only eye witness of the occurrence. Other evidence is of formal nature.

4. Before the learned Sessions Judge, the prosecution pressed on the charge under Section 302 IPC and in the alternative for the charge Under Sections 304-A and 279 I.P.C. The learned Sessions Judge was rightly convinced that the case under Section 302 I.P.C. was not made out. He found that there was no motive for the murder. Accordingly, he acquitted the accused of the charge under Section 302 I.P.C. However, he convicted the accused on the charge Under Sections 304-A I.P.C. and 279 I.P.C. and sentenced him as noted above. Appeal filed.

5. I have heard learned Counsel for the parties at stretch and gone through the record. I find that there is no force in this appeal, which deserves to be dismissed.

6. Now the only point to be determined is as to whether the accused was responsible for rash and negligent driving as a result of which the deceased Mata Sewak met his unceremonious end. The date, time and place of occurrence have not been denied. The involvement of the disputed truck is also not disputed. The I.O. took search of the truck and recovered from it the driving licence of the

accused which he has also admitted. The accused in reply to the question No. 3 under Section 313 Cr.P.C. has admitted that he was the first driver of this truck. Another driver was Ram Chandra. On the date of occurrence, the truck was being driven by Ram Chandra. Neither the truck owner nor Ram Chandra has been examined. The accused wants to say that on that date he was on leave. But in reply to question No. 13 he admits that his truck driving licence was in the truck itself. Therefore, it is difficult to believe that when the accused was on leave, he would leave his driving licence in the truck which he was in fact driving. Similarly, if Ram Chandra was driving the truck on the fateful day, his driving licence could have been recovered and not that of the accused. So the learned Sessions Judge has rightly rejected the theory of the accused appellant that he was not driving the truck himself on the fateful day.

7. The witness Kanhiya Lal is the only person who had the opportunity to identify the accused. He chased him while the accused wanted to run away but he could not catch hold of him, but all the same he identified him. It was a broad day light incident. There was ample opportunity available to Kanhiya Lal to identify the accused. Therefore, there could be no mistake in identifying him correctly.

8. The accused Claimed for identification. He was accordingly identified by Kanhiya Lal. Of course, it took some time because some litigation on the point of maintenance of Claim for identification parade were going on. Now the accused cannot say that he was identified after a considerable delay. In fact the prosecution was reluctant to hold the test identification parade, because the accused had been named. The accused cannot blow hot and cold together by saying that he was identified after a considerable delay. If he had not been identified, he would have Claimed that he had been wrongly named. If he has been named, he cannot say that he was not identified within time. Thus his confusing and contradictory arguments have rightly been rejected by the learned Sessions Judge.

9. The other witness Golai is since dead. Therefore, the prosecution had examined only Kanhiya Lal, P.W. 6. He had no enmity with the accused. There is no reason for him to falsely implicate the accused. He knew Mata Sewak deceased from

before, who was travelling on his motorcycle. He was on the left side of the patri of the road. The motorcycle was being driven in the ordinary speed. Whereas, the truck was driven with extraordinary and rash speed. What could be the actual speed was extracted from this witness but it is only a matter of guess. But on the point that the accused was driving the truck rashly and negligently, there is a categorical statement of the witness. Moreover, the truck was found entangled with the motorcycle on the left side of the road. Therefore, the prosecution case finds support that the deceased was travelling towards the left side of the road. In the left side wheel on the rear parts, the motorcycle had been entangled and the deceased was lying dead in two parts, his body parts severed from each other. This is again a very strong circumstance to find that the deceased was travelling on the left side on the road. The learned Sessions Judge in paragraph 9 of the judgment has observed that the testimony of Kanhiya Lal, P.W. 6 finds support from the fact that Truck No. UTD 2819 involved in the collision was found stationed 10-15 paces from the place where the dead body was lying and the motorcycle of the deceased was found entangled in its rear shaft. Wind Screen of the truck was broken and there was blood-stains on the front axle of the truck. From these statements of Kanhiya Lal, the only logical conclusion, which could be drawn was that this truck was involved in the incident. It is also established that the truck had drifted towards further left side of the patri which was being used by the deceased. This is a natural result of rash and negligent driving and from this, one can easily infer that the accused was driving the truck rashly and negligently.

10. As observed earlier, the burden was on the accused to prove that it was not he but Ram Chandra who was driving the truck on that fateful day in the light of the recovery of his licence from his truck by the I.O. This burden has not been discharged by him. So an adverse inference can be drawn against the accused.

11. Apart from it, there is evidence of P.W. 6 Kanhiya Lal, a resident of Robertsganj, who was returning from village Sarmaura when he saw the incident with his own eyes. The FIR which was lodged without loss of time mentioned his name as an eye witness. I have scrutinised his evidence very carefully because he is the solitary witness of fact.

12. After a thread-bare analysis, I find that no major discrepancy can be detected in his evidence as a result of which there could be no doubt regarding his truthfulness. In absence of anything, I agree with the conclusion arrived at by the learned Sessions Judge that it was the accused and he alone who was rashly and negligently driving the truck. In absence of any motive as has been concluded by the learned Sessions Judge, there could be no reason to falsely implicate the accused as far as Kanhiya Lal, P.W. 6 is concerned. Kanhiya Lal was neither inimical to the accused nor under the thumb of the complainant.

13. He has said that within 15 minutes of the occurrence, the complainant arrived there and he narrated the entire incident to the complainant. He did not name the accused. He identified him on the spot and later on in the parada. Therefore, he gave an unvarnished version of the case within 15 minutes of the occurrence. Therefore, there was no room to tutor or brain-wash him. Moreover, the complainant was very much chocked. His brother had the d and his dead body was lying and he was mentally to tutor the witness. Further he says at page 2 that he remained on the spot for an hour after the occurrence. The constable had also arrived there. An objection was taken as throly (?) this witness remained there for an hour. A very spectacular incident had occurred before the eyes of this witness. Such incidents do not occur every day. Therefore, it was quite natural for this witness to remain on the spot for an hour and there was nothing unnatural.

14. Regarding his visit to village Sarmaura, he has been cross-examined at page 3 and has remained unscathed. I have scrutinised that part of the evidence also and I find that he has given reliable explanation for his presence on the spot. At page 3 in the second paragraph, he has clearly said that the truck drifted towards the left and hit the motorcycle from the front side of the truck and thereafter it was proceeding further but the rear shaft of the truck was entangled in the motorcycle and thus further movement of the truck became impossible beyond 15-20 paces. The learned Counsel has urged that if the truck was being driven very fast and rashly, the truck could not have stopped within 20 paces from the spot. This argument is not correct. The truck stopped not because it was being driven slowly level because the motorcycle was entangled in the rear shaft of the truck, so the truck stopped, as further movement became impossible. Accordingly this

argument of the learned Counsel is rejected.

15. At page 4, he admits that the I.O. had recorded his statement after a month of the occurrence. On this point, I find that the witness cannot be blamed for that.

16. I have examined the statement of Kanhiya Lal very minutely. I find him to be a natural and truthful witness and I concur with the conclusion drawn by the learned Sessions Judge that this accused alone was responsible for the death of Mata Sewak deceased on the date, time and place of the occurrence.

17. My attention has been invited to an observation of the Lordships of the Supreme Court in Subhash and Shiv Shanker v. State of U.P. 1987 ACC (Vol. 24 page 507). That was a case in which the accused Shiv Shanker was not put for test identification parade promptly and there was no explanation offered for the delay in holding the test identification parade. In that circumstance their Lordships found the value of the test identification parade negligible. In that case the name of the accused Shiv Shanker did not find place in the F.I.R., so the observations made by their Lordships of the Supreme Court in that case do not help the appellant. Here, he has been named in the F.I.R. The prosecution was not at all inclined to hold test identification parade but only on the order of the Court, he was put up for test identification parade. Therefore, this ruling does not help the accused.

18. In a case like this, there is no motive as such for the crime but the accused becomes liable on account of extremely unreasonable, rash and negligent act. The incident itself speaks for it and the principles of magna culpa doluere are attracted in such a cause.

19. Thus this appeal has no force. It is accordingly dismissed. The judgment and order passed by the learned Sessions Judge is made absolute. The accused is on bail. His bail bonds are cancelled. He shall be taken into custody forthwith by the learned Sessions Judge/C.J.M., Mirzapur and compliance report shall be submitted to this Court within 2 months hereafter. After the arrest/surrender of the accused, his sureties shall be discharged.

