

Ramcharan Vs. State of M.P.

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Court : Chhattisgarh

Decided On : Mar-30-2007

Reported in : 2007CriLJ2884

Judge : Vijay Kumar Shrivastava, J.

Appellant : Ramcharan

Respondent : State of M.P.

Disposition : Petition allowed

Judgement :

ORDER

Vijay Kumar Shrivastava, J.

1. Judgment of conviction and order of sentence dated 5-10-90 was passed by Judicial Magistrate First Class, Janjgir, in Criminal Case No. 128/98 whereby applicant was held guilty for committing offence punishable under Section 304A of the I.P.C. and was sentenced to undergo R.I. for 1 (one) year and to pay a fine of Rs. 500/-with default stipulation. The legality of conviction and sentence was challenged in Criminal Appeal No. 111/90. Additional Sessions Judge, Sakti, Camp at Janjgir, vide judgment dated 23-12-95 sustained conviction and sentence passed by the trial Court. Hence, this revision.

2. Factual matrix of the case, in brief, is that on 13-3-1988 when Suniram Yadav and Gangaram were going to BALCO on motorcycle bearing registration No. WBN 4317, on way the driver of truck bearing No. CPL 6684 driving the truck in a rash and negligent manner dashed the motorcycle driven by Suniram Yadav and fled away from the spot. Gangaram received severe injuries and was taken to hospital where he succumbed to injuries. Suniram Yadav lodged the report. Investigation took place. Applicant was found driving the fateful vehicle rashly and negligently and thereby causing the accident, therefore, he was prosecuted under Section 304A of the I.P.C. On the strength of eye-witnesses Suniram Yadav (PW/2) and Makhan Singh (PW/3), the trial Court convicted and sentenced the applicant and appellate Court too relying on both these witnesses confirmed the conviction and sentence.

3. Learned Counsel for the applicant contended that both the Courts below did not appreciate the evidence properly and appreciation of evidence done by both the Courts below is perverse. Negligence on the part of the applicant was not proved by the prosecution, even then both the Courts below convicted and sentenced the applicant. Learned Counsel for the State supported the judgments of both the Courts below.

4. During the course of arguments, learned Counsel for the State frankly concedes that the applicant was the driver of Truck bearing registration No. CPL 6684. His truck was stopped for a while on the road and at that time deceased riding the motor-cycle driven by Suniram Yadav came from back side and the pillion driver tried to cross the truck, at that juncture, Truck driver also in order to move his truck onwards started his truck and unfortunately, the motor-cycle struck from back portion of the truck and resultantly accident was caused.

5. Suniram Yadav (PW 2) in his examination-in-chief deposed that the truck to carry the passengers was stopped, they wanted to cross the truck and at that time the driver of the truck started his truck. The angle attached in the back portion of the truck struck the motor-cycle and they fell down. In cross-examination, he stated that the offending vehicle was going ahead their motor-cycle near Shivni square, the truck was stopped and they wanted to cross the truck, at the same

time, the truck driver started his truck. The angle of the truck struck the pillion rider as such they fell down. Makhan Singh (PW 3) in his cross-examination deposed that when truck was standing at Shivni square, Suniram Yadav wanted to cross the truck. When they reached the spot, they saw Suniram Yadav and Gangaram lying on the ground. He further admits that whenever vehicle starts it does not pick up speed, but gradually it picks up its speed.

6. For convicting a person under Section 304A of the I.P.C., it is necessary that the death of the person must be caused by rash and negligent act of the accused. Here in the instant case, from the aforesaid evidence, it is clear that although the applicant was driving the truck, but neither he was driving the vehicle rashly nor the prosecution could prove any negligence on his part. If a truck driver starts his truck and someone riding motor-cycle come behind and attempts to cross the truck and receive stroke from back portion of it, it cannot prove negligence of the truck driver. Both the Courts below without having considered the substantial evidence disproving the guilt, have held the applicant guilty under Section 304A of the I.P.C. In such circumstances no doubt, the appreciation done by both the Courts below amount to perversity and that cannot be sustained.

7. In the result, the revision is allowed. The conviction and sentence passed by the trial Court and affirmed by the appellate Court, is set aside and applicant is acquitted of the charge under Section 304A of the I.P.C.