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Mahadev Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-16-2006

Reported in : III(2006)ACC370; 2007ACJ1778; 2006CriLJ4246; 2006(2)MPHT146

Judge : S.C. Vyas, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313, 397 and 401; Indian Penal Code (IPC), 1860 - Sections 80, 279, 304A and 338

Appeal No. : Criminal Revision No. 122/2000

Appellant : Mahadev

Respondent : State of Madhya Pradesh

Advocate for Def. : G.S. Chouhan, Govt. Adv.

Advocate for Pet/Ap. : L.S. Chandiramani, Adv.

Disposition : Revision allowed

Judgement :
ORDER

S.C. Vyas, J.

1. This criminal revision under Sections 397 and 401 of the Code of Criminal Procedure is directed against the judgment passed by Sessions Judge, West Nimar, Mandleshwar, in Cr. Appeal No. 214/1999 on dated 24-3-2000 confirming the judgment passed by JMFC Mandleshwar in Cr.C. No. 38/99 wherein learned Magistrate found the applicant guilty for the offence punishable under Sections 304A, 338 and 279 of IPC and sentenced him with R.I. for six months and fine of Rs. 3,000/-, R.I. for 3 months and fine of Rs. 500/-, R.I. for one month and fine of Rs. 500/- respectively.

2. The short facts of the case are that on 27-1-1999 at about 11.30 a.m. Vesta and Kunwar Singh were working in the field of Ganesh Patidar. Applicant came from the side of the village driving tractor bearing number M.P.-10-A/1109 rashly and negligently. Vesta was dashed by the tractor and was crushed by the wheels of the tractor. Kunwar Singh also sustained injury on his hand in this accident. Police registered a case under Sections 304A, 279 and 338 of IPC against the applicant and after investigation charge-sheet was filed before the learned Magistrate. Learned Magistrate after trial found applicant guilty and convicted him as stated herein above.

3. Learned Counsel for the applicant Shri L.S. Chandiramani contended that there is no evidence to prove that accused/applicant was driving the tractor rashly and negligently at the time of incident. He has drawn attention of this Court specifically towards mechanic report of the tractor Ex. P-9 and the statement given by prosecution witness Rewaram P.W. 9. Learned Counsel submitted that by the statement of witness Rewaram P.W. 9 it was proved before learned Trial Court that the steering of the tractor was not working and it had become free when vehicle was examined. Shri Chandiramani submitted that as the steering bolt of the steering wheel all of a sudden broke and steering became free so it was not possible for the applicant to control the tractor and, therefore, the incident was merely an accident and not an act of rashness or negligence on the part of applicant/accused. Shri Chandiramani, Advocate drawn the attention of this Court towards the provision of Section 80 of the IPC.

4. Per contra Shri G.S. Chouhan, learned Government Advocate submitted that some other evidence is also available on record to prove that the applicant was driving the tractor negligently which resulted into dashing against deceased Vesta, therefore, Shri Chouhan learned Government Advocate submitted that there is no scope of interference in the findings given by the Trial Court as well as by the Appellate Court.

5. Prosecution examined the owner of the tractor Ganesh (P.W. 1) before Trial Court. The witness was not declared hostile, this witness admitted in his cross-examination that immediately after accident the applicant informed him that the steering bolt of the steering wheel was broken all of a sudden which resulted into this accident.

6. Apart from this witness Rewaram (P.W. 9) mechanic who examined the offending vehicle after the incident has also stated before the Trial Court that the steering of the tractor became free and it was not possible to control tractor with such steering wheel. Report Ex. P-9 given by this witness also contains the fact that steering becoming free and was not in working order. This witness Rewaram P.W. 9 was also produced by the prosecution, his statement and report Ex. P-9 submitted by him become a part of prosecution story and, therefore, the statement given by this witness and report Ex. P-9 submitted by him undoubtedly proves that at the time of incident the steering wheel of the tractor was not in working order. In such a situation 80 of the IPC comes into force which provides as under :-

Section 80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

7. As steering wheel being not in order and was not workable is a part of prosecution story itself shows that it was not necessary for the accused/applicant to state these facts in so many words even in his examination under Section 313 of the Code of Criminal Procedure. This plea was placed into service before the learned Appellate Court. Learned Appellate Court ignored this plea by picking up some portion of the statement given by P.W. 9 but the learned Appellate Court failed to consider this aspect of the matter that witness Rewaram P.W. 9 and his

report Ex. P-9 were part of prosecution story as the witness was not declared hostile by the prosecution so the statement was binding on the prosecution and was sufficient io prove the fact that the steering wheel of the vehicle not in working order.

8. Apart from this none other witnesses who were examined by the prosecution during trial have said that the applicant was driving the vehicle rashly or negligently. Witnesses Kunwar Singh (P.W. 2), Nanbai (P.W. 3), Bhurla (P.W. 4), Bhaila (P.W. 5), Dayaram (P.W. 6) and Jarso Bai (P.W. 8) have all been declared hostile by the prosecution and even during their cross-examination by the prosecutor none of them have said that applicant was driving the vehicle rashly and negligently.

9. Considering the prosecution evidence in its totality and specially the statement given by witness Rewaram P.W. 5 and his report Ex. P-9 it can safely be inferred that incident was merely an accident and there is nothing to infer that the applicant was driving the vehicle either rashly or negligently.

10. Therefore, the revision succeeds and is allowed. The judgment passed by the Appellate Court as well as by the Trial Court are set aside. The applicant is acquitted from the offences punishable under Section 304A, 338 and 279 of the IPC. He is on bail. His surety is discharged from the liability.

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