

Murari Vs. State of M.P.

Murari Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/503355

Court : Madhya Pradesh

Decided On : Feb-23-2001

Reported in : 2001CriLJ2968; 2001(2)MPHT129; 2001(2)MPLJ242

Judge : Mr. Fakhruddin, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 304-A

Appeal No. : Criminal Revision No. 294/97

Appellant : Murari

Respondent : State of M.P.

Advocate for Def. : Shri P.D. Bidua, Panel Lawyer

Advocate for Pet/Ap. : Shri Rakesh Saxena, Adv.

Disposition : Criminal revision dismissed

Judgement :

ORDER

Fakhruddin, J.

1. The applicant has filed this revision against his conviction under Section 304A, Indian Penal Code, and sentence of nine months simple imprisonment and a fine

of Rs. 2,000/- and in default, to further simple imprisonment for six months, passed by the Fifth Additional Sessions Judge, Morena, in Criminal Appeal No. 19/1994, vide judgment dated 12-9-1997, whereby the Lower Appellate Court while affirming the conviction under Section 304A, IPC, reduced the sentence of imprisonment from one year to nine months and affirmed the fine, passed by the Judicial Magistrate First Class, Jaura (District Morena), in Criminal Case No. 82/1986, decided on 22-1-1994.

2. Briefly stated, prosecution case is that the applicant on 8-5-1986 at about 9 P.M. in the night was driving truck bearing No. MPW/1875. The truck was carrying stone slabs. Several people including the three deceased persons and the injured were sitting on the stone slabs in the truck. Due to rash and negligent driving of the truck by the applicant, near village Khera the truck overturned as a result of which two children named Guddu and Pappu and a lady named Shakuntala who were sitting on the stone slabs in the truck died and one person was injured. First information report was lodged at the Police Station by Ramjan Khan (P.W. 1) on the basis of which Crime No. 22/86 under Section 304A, IPC was registered against the applicant. 'Panchanama' of the dead bodies was prepared, the dead bodies were sent for post-mortem examination and the injured was sent for medical examination, spot map was prepared and the truck was seized. After usual investigation, the 'chalian' was filed. Applicant abjured the guilt. He pleaded that due to failure of the brake the accident occurred. Prosecution examined 7 witnesses, namely Ramjan Khan Chowkidar (P.W. 1), Dr. R.K. Saxena (P.W. 2), Baburam (P.W. 3), Sarwar Khan (P.W. 4), Jamil Khan (P.W. 5), R.S. Bhadoria (P.W. 6) and Shivilal, Mechanic (P.W. 7). The Trial Court after considering the evidence found the accused guilty, convicted him under Section 304A, IPC and sentenced to imprisonment for one year and a fine of Rs. 2,000/-. In appeal, the Lower Appellate Court again considered the evidence and found that the conviction is well merited but reduced the sentence of imprisonment from one year to nine months and affirmed the fine.

3. Shri Rakesh Saxena, learned counsel appearing for the applicant, contended that the conviction is illegal and contrary to law, whereas Shri P.D. Bidua, learned Panel Lawyer for the State supported the conviction and the sentence.

4. The contention of the learned counsel for the applicant has no force. Though this revision had been admitted on the question of sentence, still this Court has gone through the entire material and evidence on record to satisfy itself about the legality and propriety of the sentence. Dr. R.K. Saxena (P.W. 2) performed the autopsy on the dead bodies of Guddu, Pappu and Shakuntala. Post-mortem reports are Exs. P-6, P-7 and P-8. Baburam (P.W. 3), Sarwar Khan (P.W. 4) and Jamil Khan (P.W. 5} who were working as labourers and travelling in the truck at the relevant time. The truck was being driven by the applicant. They stated that the truck was carrying stone slabs. They along with the deceased persons and the injured were sitting on the stone slabs in the truck. Near Gura Nala in the night at about 8-9 P.M. the applicant was driving the vehicle rashly and negligently in a high speed. They asked the driver not to drive the vehicle in such an excessive speed, but the driver did not pay any heed with the result that the truck overturned and the lady and the two children were crushed to death under the stone slabs. Nothing has been brought in the cross-examination of these witnesses to rebut the prosecution allegation that the vehicle was being driven rashly and negligently with a high speed. Having thus considered the entire evidence on record, in the opinion of this Court, the conviction under Section 304A, IPC is well merited and needs no interference. The conviction is accordingly affirmed.

5. As regards sentence, learned counsel for the applicant submitted that the benefit of probation under the Probation of Offenders Act be given to the applicant. So far as the question of giving the benefit of probation under the Probation of Offenders Act in an offence under Section 304A, IPC, is concerned, the Apex Court in Dalbir Singh v. State of Haryana, reported in 2000 (II) MPWN 72, has considered the scope of giving the benefit of probation under the Probation of Offenders Act, and observed :

'Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under Section 304A, IPC as attracting the benevolent provisions of Section 4 of the PO Act.'

6. Learned counsel for the applicant then submitted that the applicant has undergone twenty days imprisonment, the incident had occurred on 8-5-1986, the applicant is leading a settled peaceful life and no useful purpose would be served if he is again sent to jail. Under these circumstances, learned counsel submitted that in the interest of justice the period of imprisonment be reduced to the period of imprisonment already undergone by the applicant.

7. It cannot be lost sight of the fact that in the accident three persons -two children and a lady - have lost their lives. While considering the sentence, one of the prime considerations should be deterrence as held by the Apex Court in Dalbir Singh's case (supra). It is proved that due to rash and negligent driving of the truck in a high speed the accident had occurred. Learned counsel for the applicant then contended that the applicant was driving the vehicle steep on the road. If that was the situation, the driver ought to have been much more careful, as it was within his knowledge that the several persons including the two children and the lady who lost their lives in the accident, were sitting on the stone slabs in the truck. To appreciate this contention it will be pertinent to quote the observation of the Apex Court in Dalbir Singh's case (supra) :

'While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout its working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattention when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the Courts can play, particularly at the level of Trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.'

8. The revision fails and is dismissed.

9. Criminal Revision dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com