

Rashid Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-10-2004

Reported in : 2004(4)MPHT503

Judge : Uma Nath Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304A

Appeal No. : Criminal Appeal No. 428/93

Appellant : Rashid

Respondent : State of M.P.

Advocate for Def. : A. Upadhyaya, Panel Lawyer

Advocate for Pet/Ap. : Parasmal Bhargat, Adv.

Disposition : Appeal dismissed

Judgement :

Uma Nath Singh, J.

1. This criminal appeal arises out of a judgment dated 7th of July, 1993 passed by learned Fourth Additional Sessions Judge, Ratlam in Sessions Trial No. 130/85 holding the accused appellant guilty of offence punishable under Section 304A, IPC and sentencing him only to a fine of Rs. 11,000/- with direction that out of the

said amount, fine of Rs. 5000/- be paid individually to parents of the deceased towards compensation.

2. Briefly narrated the facts of the prosecution case are that on 5-6-1985 an information was received at Police Station, Station Road, Ratlam that deceased Nanuram had been admitted at Civil Hospital. The police recorded the information (Ex. P-12) and made an application vide Ex. P-13 for his medical examination. The medical examination was conducted vide Ex. P-15 and as per Ex. P-16 the dying declaration of the deceased was recorded by Dr. O.P. Gupta. Another dying declaration of deceased Nanuram was recorded on 6-6-1985 vide Ex. P-17. Nanuram died in the intervening night of 6-6-1985 and 7-6-1985. Inquest panchnama of the dead body was prepared vide Ex. P-25 and Post-mortem report is Ex. P-6. The spot map was prepared vide Ex. P-2 and initially the offence was recorded at police outpost Shivgagh vide Ex. P-24, which was later on registered as a crime at Police Station, Shallana vide Ex. P-22. Accused Rashid was arrested vide Ex. P-10 and was tried upon a charge under Section 302, IPC with owners of the truck being co-accused Bherulal and Shyamsunder, who were tried only under Section 201, IPC. The accused took a plea of innocence and alleged false implication. Dr. Mohan Bhatia (P.W. 8) opined that death of the deceased was caused due to shock resulting from infection and damage to peritoneal cavity of the abdomen. The Trial Court noted that there were three dying declarations. Ex. P-16 is the first dying declaration recorded by Dr. Om Prakash Gupta (P.W. 13). It did not bear the thumb impression or the signature of the deceased. Another dying declaration being Ex. P-17 was recorded on 6-6-1985 by Dr. Naresh Mitnaki. It bore thumb impression of the deceased, but the timing of its recording was noted. That apart, Ex. P-1, a third dying declaration was also recorded on 7-6-1985 by Head Constable Harendra Pal Singh. It appears that the hospital record of admission dated 4-6-1985 mentioned the cause of injuries being fall from a mango tree on 2-6-1985, but during medical treatment on 5-6-1985, the deceased informed Dr. Om Prakash Gupta (P.W. 13) that he suffered the injuries on falling from vehicle of Ganesh Transport Company. Accordingly the doctor sent an information vide Ex. P-12 to the police. The deceased explained that when he was climbing on the front door of moving truck, he had fallen. The Trial Court also noticed that it was mentioned in the statement of Rama (P.W. 9) a hostile witness,

that Nanuram had fallen from truck. Likewise, Mangu (P.W. 1), another eye-witness, stated that Naturam was engaged as Cleaner in the truck and he sustained injuries by falling from the vehicle. The learned Sessions Judge on a careful reading of the dying declarations found that Ex. P-1 recorded by Head Constable H.P. Singh (P.W. 3) was written in the same handwriting as that of Ex. P-17, which was signed by Dr. Naresh Mutnar (P.W. 15). Moreover, the Trial Court also held that the first dying declaration (Ex. P-16) does not show that the deceased died on being dashed by a truck. It appears that in the hospital, the deceased informed his mother Hirkibai (P.W, 2) that when he was cleaning the vehicle, the driver started it and thereby he received an injury in his chest. Thus, the statement of Hirkibai was found to corroborate the statements of Rama (P.W. 9) and Mangu (P.W. 1) as regards the cause of injuries.

3. Thus, on a proper appreciation of evidence the Trial Court found that deceased Nanuram was engaged as a Cleaner/Labour on a truck, and on the date of incident Driver Abdul Rashid asked him to clean the truck, but when he was splashing water on that truck by climbing on the door, the accused started and moved it. Hence, the deceased fell down and succumbed to injuries in the hospital sustained by fall. Thus, the Trial Court held the accused guilty of rash and negligent driving as there was no intention or motive to cause death of the deceased. Hence, the charge of murder under Section 302, IPC was not found proved and instead the accused appellant has been held guilty of an offence under Section 304A, IPC and has been sentenced only to fine as aforesaid. The Trial Court did not find a charge under Section 201, IPC proved against the co-accused and hence they were acquitted.

4. I have heard learned Counsel for the parties and perused the records.

5. The main argument of the learned Counsel for the appellant is that the deceased has given three versions to Dr. Om Prakash Gupta (P.W. 13) during his treatment. As per Ex. P-11 (the Bed head ticket) he told that he sustained injuries on account of fall from a mango tree on 2-6-1985. Thereafter he again told Dr. Gupta (P.W. 13) on 5-6-1985 that he sustained injury by fall from a vehicle of Ganesh Transport Company. Dr. Gupta (P.W. 13) sent such an information vide

Ex. P-12 to the police. On an application (Ex. P-15) sent by the police, P.W. 13 recorded a dying declaration (Ex. P-16) of the deceased on 6-6-1985 at 6.20 a.m., when he was on duty, but this dying declaration did not bear the signature or the thumb impression of the deceased. In this dying declaration which is recorded in questions answers form, the deceased has mentioned that he fell from a moving truck when he was trying to climb through a front window. He also mentioned that he was working in Ganesh Transport Company of co-accused Shyamsunder and after having sustained injury, he was kept at the residence of Shyamsunder and received treatment from a local doctor. The learned Counsel further argued that in another dying declaration being Ex. P-17 which was recorded on 6-6-1985 there is a mention that the appellant intentionally caused death of the deceased by driving the vehicle when he was splashing water to clean it. He sustained injury on the stomach and buttocks on being knocked down. On 6-6-1985, statement of deceased (Ex. P-1) was recorded by H.P. Singh, Head Constable (P.W. 3). As the contents of both the documents (Ex. P-17 and Ex. P-1) appear to be the same and they seem to be authored by P.W. 3 only, their credibility is questionable. On the other hand, learned Counsel for the State has supported the impugned judgment.

6. On a careful re-appreciation of evidence as referred to herein above it appears that the information (Ex. P-12) sent by Dr. Om Prakash Gupta to police and the dying declaration (Ex. P-16) recorded by him contained the same versions of the case. It seems that the deceased was working as a cleaner-cum-labourer in the truck No. M.P.E. 9111 belonging to co-accused Sham Sunder (since acquitted). It also seems that while cleaning the said truck by splashing water through front window, he was knocked down as the appellant started and drove the truck. This version finds full corroboration from the statements of Mangu (P.W. 1), Hirkitabai (P.W. 2), mother of the deceased and Rama (P.W. 9), a hostile witness. Mangu (P.W. 1) testified that he was engaged as a labourer. After the truck was loaded with boulders, he and Rama (P.W. 9) sat behind and the driver started and moved the truck. In the meantime people around shouted and stopped the truck. They saw that deceased Nanuram was lying on the ground and he had sustained injuries in his legs. The appellant, who was driving the truck lifted the deceased and put him inside the truck. On the way the truck was stopped to drop the deceased. Deceased Nanuram had asked him as why the accused had knocked

him down when he had caused no harm to him. In the cross-examination, he mentioned that deceased Nanuram being employed as a Cleaner used to put water into the truck. Earlier also, he had seen Nanuram working. A number of people were around when the deceased was knocked down. Hirkibai (P.W. 2), mother of the deceased deposed that Nanuram (deceased) was admitted in a hospital at Ratlam. When she had gone to see him, the deceased had told that while he was cleaning the truck, the appellant had started and driven it. The deceased on being knocked down had sustained injury in the chest. In the cross-examination, she clarified that the deceased had told her that he used to clean the truck. Rama (P.W. 9) in his examination in chief has said that when he was standing at a little distance from the truck, he heard the shouts that somebody had fell down. He did not know the victim nor his job.

7. Thus, Ex. P-12 and Ex. P-16 are supported by the aforesaid evidences of P.W. 1, P.W. 2 and P.W. 9 that the deceased who was employed as a Cleaner was knocked down while splashing water on the truck as the appellant being the driver had all of sudden started and moved the vehicle. H.P. Singh (P.W. 3) had taken the statement (Ex. P-1) of the deceased and thereafter on his request the doctor had taken the dying declaration. These documents also corroborate the aforesaid evidence. Dr. Mohan Bhatia (P.W. 8) gave the post-mortem report (Ex. P-6) wherein he noted that the cause of death was rupture of descending column and infection of peritoneal cavity. Om Prakash Gupta (P.W. 13) has also supported the prosecution case and proved Ex. P-12 and Ex. P-16 (dying declaration). Ravindra Bahadure Dixit (P.W. 18) recorded the police case diary statements of Mangu, Dr. O.P. Gupta, Thawara, Hirkibai and Afjal Khan. Chhotelal Parmar (P.W. 19) had recorded the FIR (Ex. P-24) and has proved it. I have also considered the evidences of other witnesses but they are either declared hostile or are not the material witnesses of the case, therefore, their testimonies need not be elucidated.

8. Thus, I do not find any infirmity in the appreciation of evidence by the learned Trial Judge. Hence, the judgment of conviction is hereby affirmed. As regards the sentence, the Trial Court has taken a lenient view of the matter and has only awarded a sentence of fine, although the evidences on record clearly prove the act of rash and negligent driving on the part of the appellant. That apart the deceased

was a member of Bhil Tribe and was only aged about 20 years. Hence, I do not find any ground for interference on the ground of sentence also. Thus, the criminal appeal being devoid of merits is hereby dismissed.

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