

Ramdayal Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-25-1992

Reported in : I(1995)ACC391

Judge : S.K. Chawla, J.

Appellant : Ramdayal Singh

Respondent : State of M.P.

Judgement :

S.K. Chawla, J.

1. By this revision, the accused challenges his conviction and sentence for the offence under Section 304A of the Indian Penal Code.

2. It was the prosecution story that on 3.5.1981 at about 9.00 a.m. applicant Ramdayal Singh was driving a speeding truck (CPD 8478) along Indore-Bhopal Highway. Near Village Refiqueganj on that highway, the applicant by his truck knocked down a labourer of P. W.D. gang named Mohd. Khan who was at that time pushing a hand trolley along that road. Mohd. Khan was knocked down while he was on the left side of the road itself. He died on the same day. On trial, Judicial Magistrate First Class, Sehore, convicted the applicant of the offence under Section 304A, Indian Penal Code and sentenced him to R.I. for 11/2 years and a fine of Rs. 4,000/-, in default to further R.I. for four months. In appeal

Sessions Judge, Sehore, maintained the conviction of the appellant but slightly reduced the sentence by visiting the applicant with R.I. for one year and fine of Rs. 1,000/-, in default to further R.I. for three months. Aggrieved by the appellate judgment, the applicant has now come in revision to this Court.

3. Having heard Learned Counsel for the parties and perused the record, in my opinion, on the prosecution evidence it was doubtful if applicant Ramdayal Singh was really driving the truck which caused the accident. In the first place, the F.I.R. did not name applicant Ramdayal Singh as the person who was driving the truck. On the prosecution case, the F.I.R. was recorded at the spot itself as Dehati Nalshi by Head Constable Omprakash Singh at the instance of PW 1, Shikh Hameed, living close by to the place of the accident. It is natural to expect that if applicant Ramdayal Singh was really driving the truck in question, his name should have been so mentioned in the F.I.R. The prosecution found it convenient not to prove the said F.I.R. by failing to examine Head Constable Omprakash Singh. Shikh Hameed, PW 1, on his part denied having made any kind of report at the spot or anywhere. In these circumstances, the F.I.R., although a document of the prosecution, went unexhibited and unproved. Can an unproved document of the prosecution be used by the defence? A view has been taken, with which I concur, that the defence should not be shut out from using the document like F.I.R. just because the prosecution failed to formally prove it. It is also the view that if the prosecution suggests that its document should not be relied upon because it was a garbled document, it should have given evidence to that effect. In the absence of such evidence by the prosecution, the defence is entitled to use a prosecution document although unexhibited and unproved. The decision of our High Court in *Samedas v. State of Madhya Pradesh*, 1969 J.L.J. SN 54 is one such decision. There is also an earlier decision of Nagpur High Court in *Sheo Prasad v. Emperor*, 39 Cri LJ 917 to that effect. The following observations of Gruer, J., who spoke on behalf of the Bench, appearing at page 922 of the report, are pertinent:

The next irregularity is that the First Information Report, Exh. P-1, has not been proved by examining the scribe who wrote it. This is a formal objection and not one that should be advanced on behalf of the prosecution whose document Exh. P-1 is. The defence should not be shut out from using this document because the

prosecution did not formally prove it. The presumption is that such a First Information Report represents the actual information given to the police and taken down by them, and if the prosecution wished to imply that the record of the information made by the police was garbled, it should have given evidence to that effect.

As such, it is open to the defence to say that Dehati Nalshi may be looked into in this case for showing the fact that it did not name the applicant as the driver of the truck in question. This circumstance may not be conclusive to establish the innocence of the accused, for the accused may be a stranger whose name might not be known to the eye-witnesses, in whose presence the report was lodged at the spot.

4. Another salient feature of the case is that the applicant was not even caught at the spot. On the prosecution case itself, he had disappeared from the truck in question in another passing truck. The person who was, on the other hand, actually caught at the spot was the cleaner of the truck in question. It is in this context of eye-witnesses as to the driver which has to be scrutinised. The eye-witnesses examined were Kanchi Bai, PW 2, Abdul Shakoor, PW 3, Deokaran, PW 4 and Babu Khan, PW 5. Of these, Abdul Shakoor, PW 3, was a timekeeper supervising the work of the P.W.D. gang in question and other witnesses were actual labourers in that gang. It is their evidence that their attention was attracted when the accident occurred and at that time the truck was at least a furlong away from the place where they were working. The distance of one furlong was admitted by one and all of them. They are in the P.W.D. and hence their estimate of the distance being one furlong could not be mistaken. They claimed that applicant was the person who was driving the truck. But the question is: how could they have recognised a person sitting in the driver's seat of the truck from such a long distance as one furlong? Of them, Deokaran, PW 4, in fact candidly admitted in his cross-examination that he could not say if the applicant was the person who was actually driving the truck because, as he said, he had seen the accident from a long distance. The other eye-witnesses were not differently situated.

5. No doubt, the version of the eye-witnesses further was that immediately after the accident they had rushed to the place of the incident. It is also their evidence that at that time they saw the alleged driver of the truck running away from that truck into another passing truck. It may be accepted that at that time at least, if not earlier, the eye-witnesses had some opportunity to observe the alleged driver. At the same time, it is clear that it was the assumption of the eye-witnesses, which could well be mistaken, that the person who had fled in another truck was the person who was driving the truck in question and had caused the accident. If Babu Khan, PW 5, is to be believed he had seen applicant Ramdayal Singh sitting at the cleaner's side of the truck in question before he had run away in another truck. This fact by itself greatly contradicts the possibility that applicant Ramdayal Singh was seen before driving the truck. Cleaner's side, as is well-known, exists to the opposite of driver's seat. A person seen running away from the cleaner's side could be most unlikely the person who was seen before driving the truck. That situation, to some extent, fits in with the defence version in the present case that the applicant was really sleeping in the truck, implying that the cleaner was driving the truck at the crucial time. It is in this context that it becomes important to know as to whether the prosecution evidence had clearly established that accused/applicant was the person who was really driving the truck at the time of the accident. As already observed, the accident was seen by the eye-witnesses from a long distance of at least one furlong when they could not have recognised the person in the driver's seat. The eye-witnesses, no doubt, immediately rushed to the place of the accident. At that time the accused was seen sitting at the cleaner's side of the truck and running away in another passing truck. On this evidence, it is doubtful if the accused/ applicant was really the person who was driving the truck at the time of the accident.

6. The two Courts below mainly relied upon dock identification of the applicant/accused by the eye-witnesses as the person who had caused the accident. This dock identification was done some 3 years after the incident. It has also to be viewed in the context of the further circumstance, which was admitted by the eye-witnesses, that they had seen the applicant/accused also on some previous dates in the Court, giving them a just ground to think that accused could really be the person who was driving the truck and there could be no other person.

It does not need to be emphasised that dock identification in Court long after the incident where wrong-doer was a stranger to the witnesses, is of little value. The two Courts below were wrong in attaching implicit credence to that piece of evidence and to hold that the applicant/accused was really driving the truck in question. On the evidence already adverted to above, it was doubtful if the applicant/accused was really the person who was driving the truck and had caused the accident. As such, the offence under Section 304A, Indian Penal Code, was not brought home to the applicant.

7. For the foregoing reasons, this revision is allowed. The conviction and sentence of the applicant for the offence under Section 304A, Indian Penal Code, are set-aside. He is acquitted of that offence. His bail bond shall stand discharged.

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