

Ravinair Vs. State

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Court : Madhya Pradesh

Decided On : Jan-27-1995

Reported in : I(1995)ACC313

Appellant : Ravinair

Respondent : State

Advocate for Pet/Ap. : Shri. H.S. Dubey

Judgement :

1. This revision application is directed against the judgment and order dated 24.1.1995 of the Sessions Judge, Ambikapur in Criminal Appeal No. 31/94 whereby he dismissed the appeal confirming the conviction and sentence of the appellant under Section 304A IPC. The appellant was prosecuted for an offence under Section 304A IPC before the Magistrate First Class, Ambikapur in Criminal Case No. 401/92 on the allegation that on 8.10.1987, P.W. 4 Bhonduluram lodged a report (Ex.P-2) at Lundra Chowki to the effect that at about 11.00 a.m., P.W. 2 Lali Bai was going to Gagar river for fetching water from a public. Her grandson Hariram, aged five years, also followed her. In the meanwhile, the appellant arrived there driving his truck. Hariram was trying to cross the road and the appellant could not check his vehicle, as a result of which Hariram came under the wheels of the truck and was crushed and died at the spot.

2. The police after investigation submitted charge sheet and after taking cognizance the case came up for trial before the Judicial Magistrate, First Class, Ambikapur, who on consideration of the evidence of the prosecution witness convicted the appellant under Section 304B I.P.C. and sentenced him to undergo R.I. for three months and to pay a fine of Rs. 200/- in default to undergo further R.I. for 15 days. The defence of the applicant was innocence. On appeal, the conviction and sentence of the applicant was affirmed by the Sessions Judge.

3. Shri H.S. Dubey, learned Counsel for the applicant has contended that the applicant was not at all negligent in driving the offending truck; he took all precautions to stop the vehicle, but the boy suddenly came before the truck and therefore he could not stop the vehicle. The ingredients of Section 304A IPC are not attracted and therefore the conviction and sentence of the appellant is bad in law. He also placed reliance in the case of Mahadev Hari Lokre v. State of Maharashtra : 1972 CriLJ49 .

4. Shri S.K. Gangrade, Penal Lawyer, has fairly conceded that this case is squarely covered by the decision of the Apex Court.

5. On perusal of the judgment under revision, it is evident that when P.W. 2 Lali Bai had gone to fetch water from the public hydrant her grandson Hariram was also following her, who was on the other side of the road. On seeing the truck P.W. 2 Lali Bai shouted at Hariram not to cross the road, but the deceased did not stop and tried to cross the road and the driver could not stop the truck and the boy was crushed and died at the spot. In Mahadev (supra) the Apex Court has observed that if a person suddenly crosses the road and the bus driver, however slowly driving, may not be in a position to check the vehicle and therefore it will not be possible to hold that the bus driver was negligent. The decision in the case of Mahadev (supra) squarely covers the instant case.

6. Therefore, the conviction and sentence of the appellant cannot be sustained and accordingly it is set aside. In the result the revision is allowed.