

Suresh Kumar Vs. State

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Court : Delhi

Decided On : Jul-29-1998

Reported in : 1998VAD(Delhi)125; 1998(3)Crimes555; 74(1998)DLT607; 1998(46)DRJ784

Judge : J.B. Goel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304 and 304-A

Appeal No. : CrI. R.No.184/98

Appellant : Suresh Kumar

Respondent : State

Advocate for Def. : Mr. Anil Soni, Adv.

Advocate for Pet/Ap. : Mr. Ranjit Kapoor, Adv

Judgement :

ORDER

J.B. Goel, J.

1. By this criminal revision, the petitioner challenges the legality and validity of his conviction u/s 304A IPC which has been upheld in Appeal by the learned Addl. Sessions Judge and also the sentence imposed. The Trial Court had convicted

him for offences u/s 304A and 279 of the IPC and sentenced to R.I. of one year u/s 304A and to a fine of Rs.1,000/- u/s 279 IPC.

2. In appeal, conviction u/s 304A has been upheld. However, the sentence has been reduced to R.I. of six months and in view of conviction u/s 304A IPC, the conviction and sentence under Section 279 IPC have been set aside.

3. The petitioner was charged in that he on 20.4.1990 at about 2.35 P.M. was driving bus No.DEP 6218 in rash and negligent manner started the bus suddenly while the deceased passenger was boarding the bus who fell down and was crushed by the left rear wheel of the bus and died afterwards.

4. Prosecution inter alias had examined PW-1 Priya Swamy and PW-9 Const. Sanwar Mal as eye witnesses. The trial court and the appellate court believed the testimony of these witnesses.

5. Learned counsel for the petitioner has contended that material contradictions in the testimony of PW-1 and PW-9 have been over-looked; the conductor was a material witness but he has not been examined to prove how the deceased had fallen from the bus; it is also not proved by any reliable evidence either that the bus in question was involved nor that the petitioner was its driver nor it is proved that the accident was due to rash or negligent driving by the petitioner or the death was as a result of his rash or negligent act; that the deceased had fallen down from the moving bus for which petitioner is not liable. In the end, he contends that the petitioner should have been given the benefit of probation and in any case the petitioner has undergone imprisonment for over three months and in the circumstances he may be released on the sentence already undergone.

6. Whereas, learned counsel for the State has supported the conviction and sentence and has contended that the findings of two courts below are concurrent, based on material on record, are reasonable and justified, evidence cannot be reviewed in revision, and there is no illegality or infirmity requiring interference by this court.

7. It appears that the driver of the bus had escaped his arrest and had run away from the spot after the bus and his driving license were seized and was arrested after about two months.

8. The occurrence had taken place near the gate of Nirvachan Sadan at Ashoka Road, New Delhi. Objection has been taken that the identify of the bus and of the driver has not been established inasmuch as PW-1 has not identified the offending bus or the driver and PW-9 has deposed that the offending bus was DEP 6718.

9. PW-1 Priya Swamy has not identified the driver as well as the bus and PW-9 Const. Sanwar Mal has given the bus number as DEP 6718. However, PW-6, Ct. Baleshwar Dayal and PW-10 ASI Amar Singh, IO who had reached the spot first on receipt of information of accident have deposed that the bus No.DEP-6218 was found in accidental condition near the place of occurrence, the said bus was seized vide Memo Ex. PW-6/A and the driving license Ex. P-1 of the petitioner was also seized vide Memo Ex. PW-6/B. There is no cross examination of these witnesses on this aspect. The petitioner in his Statement Ex. PW-8/A made before the M.M. when he was produced for TIP, had refused for TIP stating that he was driving the bus at the time of the accident and then the witnesses had seen him. It is thus admitted by him that he was the driver of the offending bus DEP-6218. The statement of PW-9 was recorded after over 7 years and obviously he would not have remembered the correct number of the bus after such a long time. The Trial Court as well as the appellate Court have come to the conclusion that the offending bus was DEP-6218 and the accused was its driver. This finding is based on material on record and cannot be said to be unreasonable or unjustified.

10. Learned counsel for the petitioner has also contended that it is not proved that the death was caused due to rash and negligent driving of the petitioner inasmuch as the deceased had fallen from a moving bus for which he himself is responsible and he had not died at the spot and may be due to lack of medical help and his death has not been proved on record.

11. Both the courts below have held that the death was caused due to rash and negligent driving believing the testimony of PW-1 and PW-9. PW-1 has stated that he was waiting at Patel Chowk bus stop of route No.920 there, and being asked by

the conductor, he entered into the bus from the front gate and Muttu Swamy (deceased) had followed him, when the driver suddenly started and drove the bus at very high speed as a result of which Muttu Swamy fell down from the bus and the left rear wheel of the bus ran over him and he was taken to hospital where he died.

12. PW-9 Const. Sanwar Mal has deposed that he was on duty at the gate of Nirvachan Sadan, Ashoka Road Along with Government motorcycle, the bus of route NO. 920 stopped at the bus stop and while passengers were boarding, the driver suddenly accelerated the bus as a result of which one person fell down from the front gate who was crushed by the rear wheel of the bus and he had removed the injured to the hospital.

13. It was the duty of the driver to have ensured before starting the bus that the passengers had boarded the bus properly and securely. Obviously the bus had started suddenly before the deceased had properly and securely boarded the bus. The trial court and the appellate court have believed the testimony of PW-1 & PW-9 in this respect and held that in these circumstances the petitioner was guilty of rash and negligent driving as a result of which the deceased had fallen down and was crushed by the rear wheel of the bus. The evidence cannot be re-appraised in revision.

14. The case of Niranjan Singh v. The State (Delhi Admn.) 1996 JCC 677 cited by the Id. counsel is distinguishable on facts as the passenger in that case had fallen down due to a sudden turn taken by the driver who was overtaking, another vehicle to save from collision with an on-coming vehicle from front in fast speed and not due to start of the bus suddenly while boarding. The inference of criminality on the part of the petitioner drawn from these circumstances by the two courts cannot be said to be unreasonable or not justified and there is no illegality or infirmity in this respect.

15. However, both the courts below have overlooked the fact that the injured deceased had not died on spot. He was removed to the hospital and had died afterwards. It is not proved on record when the deceased had died and what was the nature of injuries and cause of his death. Only a clerk from the hospital (PW-5)

has been examined who has only proved the MLC Ex.PW-5/A in the absence of the doctor. The injured was alive when this MLC was recorded. The nature of injuries has not been proved. The doctors who had examined and treated the injured have not been examined nor it is proved that the death was caused due to the accidental injuries. The doctor who had conducted the post-mortem has also not been examined and the postmortem report has not even been proved. This has been overlooked by the two courts. Evidence the prosecutor as well as the two courts have not acted with due diligence and carefully. The finding of conviction under Section 304-A IPC thus is not based on evidence. The conviction and sentence thus are illegal and not warranted by law and are not sustainable.

16. The petitioner has been facing trial for over 8 years. It will not be in the interest of justice to remand the case back to fill in the gap in the prosecution case at this belated stage nor any such request was made by the learned counsel for the State.

17. This revision petition is accordingly allowed. The judgment of conviction and order of sentence dated 22.1.98 & 27.1.1998 respectively of the trial court as modified by the judgment dated 8.5.1998 of the appellate court are set aside.

The petitioner shall be set free forthwith if not required to be detained in any other case.

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