

Kishore Chand Vs. the State

Kishore Chand Vs. the State

SooperKanoon Citation : sooperkanoon.com/691165

Court : Delhi

Decided On : Mar-04-2002

Reported in : 2002IVAD(Delhi)235; 2003CriLJ3321; 97(2002)DLT705; 2002(62)DRJ519

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 251, 397, 401 and 465; [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304-A

Appeal No. : Crl. R. No. 612/2000

Appellant : Kishore Chand

Respondent : The State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Raja Chatterjee, Adv

Judgement :

S.K. Agarwal, J.

1. This revision petition under Sections 397/401 Cr.P.C. is directed against the judgment and order dated 11th December, 2000 passed by Addl. Sessions Judge, Delhi upholding petitioner's conviction under Sections 279/304A IPC, in the case

FIR No. 424/84, P.S. Patel Nagar and the sentence under Section 304A IPC awarding RI for one year with fine of Rs. 4000/-, in default of payment of fine SI for three months. No separate sentence was passed u/s. 279 IPC.

2. Notice. Mr. Pawan Sharma accepts notice. Learned counsel for parties submit that since the point involved in the petition is very short, petition be finally hearted at this stage itself. Arguments hearted.

3. Prosecution allegations in brief are that on 3rd September, 1984, Petitioner while driving bus No. DEP 6362 rashly and negligently at a fast speed, hit a boy, who was trying to cross the road near Vivek Cinema. The boy died on account of injuries received in the accident. After investigation, challan was filed. By judgment and order dated 24th February, 1994, petitioner was held guilty by the trial court and was sentenced as aforesaid. Petitioner's appeal was also dismissed by the Addl. Sessions Judge, New Delhi. This order is under challenge.

4. Learned counsel for petitioner argued that in the notice under Section 251 Cr.P.C., containing substance of the accusation, bus number was mentioned as DEP 6365 instead of DEP 6362 on account of which the petitioner was mislead in his defense and, therefore, trial stands vitiated. I have been taken through the record. Wrong mentioning of the bus number in the notice appears to be only a typographical error. In the FIR and all other connected documents, the bus number is correctly mentioned as DEP 6362. All these documents were supplied to the petitioner before the trial began. The bus was seized at the spot. The defense of petitioner is that he was only a passenger. Section 465 Cr.P.C. clearly provides that no finding, sentence or order passed by the Court shall be reversed or altered by a court of appeal or revision etc. on account of any error or omission or irregularity in the proceedings during the trial or other proceedings under the Code unless it is shown that a failure of justice has in effect occasioned. There is nothing on record to show that petitioner was in any way mislead in his defense. It is merely an irregularity which does not affect the trial.

5. Learned counsel for the petitioner next argued that petitioner was held guilty on the basis of sole testimony of PW-6, Constable Tej Ram, who was standing at a distance from where it was not possible to see the accident. This is essentially a

question of fact. Petitioner while cross-examining PW-6, did not put any such suggestion to him. No other evidence was lead in this regard. In the absence of any suggestion or any other evidence, it is not possible to hold that PW-6 could not see the accident from the place where he was standing.

6. Learned counsel for the petitioner next argued that petitioner was only a passenger in the bus; he was falsely implicated; the bus was under DTC operation; nothing was brought on record by the prosecution to show as to who was driving the bus No. DEP 6362. Thus, petitioner is entitled to benefit of doubt. Perusal of the trial court record reveals that bus number is correctly mentioned in all documents. The name of the driver is mentioned in the FIR itself. The document seized from the DTC shows that only bus numbers were mentioned on the sheet which had plied at the said route. The names of drivers of the buses are not indicated. Admittedly, it was private bus under DTC operation, so it was for the accused to produce defense to examine the owner or otherwise show that he was not driving the bus on the given date and that he was falsely implicated. Having not done that, this connection has to be rejected. Learned counsel for the petitioner also argued that the accident occurred on 3rd September, 1984; petitioner was held guilty by the trial court on 24th February, 1994; no valid conviction could be recorded after a span of more than nine years in a summons trial case. As per the settled law, the delay by itself is not the ground for quashing the proceedings especially when there is no material to indicate as to who was responsible for such delay. The delay not attributable to the prosecution cannot give advantage to the accused. Reference in this regard can be made to the Supreme Court decision in Union of India v. Ashok Kumar Mishra, : 1995 CriLJ3633 .

7. Learned counsel lastly argued that petitioner is the sole bread earner in the family; he has suffered the pain and agony of trial for about 18 years; fine has already been deposited; he has already undergone a sentence of about nine months, therefore, he may either be released on probation or his sentence be substantially reduced. Learned APP for State argued to the contrary.

8. I have considered the rival contentions. As per nominal roll, petitioner has already undergone a sentence of more than nine months. Fine is stated to have already been deposited. Looking into the family background of the petitioner, I feel that interest of justice would be met if sentence is reduced to the substantive sentence awarded to the petitioner is reduced to the period already undergone. With the above modification in the sentence, petition stands disposed of.

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