

Swaran Singh Vs. State

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Court : Delhi

Decided On : Nov-07-1990

Reported in : I(1991)ACC106; 1992ACJ427; 1991CriLJ1867; 42(1990)DLT588; 1991(20)DRJ53

Judge : B.V. Bansal, J.

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

Appeal No. : Criminal Revision Appeal No. 105 of 1989

Appellant : Swaran Singh

Respondent : State

Advocate for Pet/Ap. : C.M. Sanan,; G.S. Vashisht and; M.K. Vashisht, Advs

Judgement :

V.B. Bensal, J.

(1) Swaran Singh has filed this revision petition thereby challenging his conviction under Sections 279/338/104-A, I P.C. in F.I.R. No. 201 of 1985 Police Station, Ashok Vihar. The petitioner Was convicted by Shri Jaswant Singh, Metropolitan Magistrate, Delhi vide judgment dated 4th of February, 1984 and was sentenced to pay a fine to Rs. 500.00 or in default to undergo.

(2) R.I. for one month under Section 279 I.P.C., to pay a fine of Rs. 1,000.00 or in default to undergo R.I. for two months under Section 338 I.P.C. and to R.I. For one year with a fine of RR. 1,000.00 or in default to undergo R 1. for two months for the offence under Section 304-A I, order dated 7th of February, 1989. Appeal filed by the petitioner was dismissed by M/s Sharda Aggarwal, Additional sessions Judge, Delhi vide judgment dated 22nd of April, 1989.

(3) The revision petition came up for hearing in this court when no one appeared for the petitioner while stated was represented by Shri G.S. . Vashisht. The revision petition was dismissed on 1st of September, 1989.

(4) Criminal appeal No. 29/90 arising out of Special Leave Petition No. 309/90 filed by Swaran Singh in the Supreme Court of India was allowed on 23rd of April, 1990 when the order of dismissal of his revision petition was set aside and the revision petition was restored with a request that it may be disposed of after affording an opportunity to the counsel of the accused of being heard.

(5) It would be appropriate to refer to the facts in brief before referring to the arguments advanced at the bar.

(6) According to the prosecution story Swaran Singh petitioner was a, driver in DT.C. on 4th of May, 1985 at about 11.10 Am he was driving Dtc bus No. Dbp 8697 in a rash and negligent manner and when he reached on Ganda Nallah bridge, Shakti Nagar Extension, when Panna Lal was moving ahead of the bus driving his cycle and Smt. Harpiary his mother-in-law was sitting on the carrier. The bus hit the cycle from behind as a result of which both Smt. Harpiary and Panna Lal sustained injuries. Swaran Singh petitioner removed the two injured in his bus to Hindu Rao Hospital where Dr. G K. Tondon, Public Witness -5 declared Smt. Harpiary as brought dead vide Mlc Ext. Public Witness -5/A. Panna Lal was however, admitted in the hospital who had sustained grievous injuries.

(7) Case was registered on the statement of Shri Sunil Kumar, Public Witness -3 who was a passenger in the bus driven by Swaran Singh petitioner. It was inter alias claimed by him that he was standing near the front exit gate of the bus when he noticed that the bus driven by the petitioner hit against the cyclist from behind

while driving the bus in a rash and negligent manner and that the bus had also hit a car from behind.

(8) In support of its case the prosecution examined 10 witnesses. Pleas taken up by the petitioner in his statement recorded under Section 313 Cr.P.C have been that it was a false case and he has falsely been implicated. According to him he was driving the bus from Laxmi Bai College side going towards Regal Cinema and that the cyclist came from right hand side and was hit by one White Fiat car overtaking the cyclist from wrong side. According to the cyclist he had even hit a three wheeler scooter and, thus, received injuries from the scooter. It was claimed by him that he removed the injured persons to the hospital on a request made to him by the passengers of the bus and also passes-by and that the Investigating Officer failed to seize the said car for the reasons best known to him. He, however, did not produce any evidence. As already referred to, petitioner was convicted by the trial Court and his appeal has since been dismissed.

(9) I have heard Learned counsel for the petitioner and learned counsel for the respondent. I have also gone through the record.

(10) At the outset learned counsel for the petitioner expressed his consciousness of his limitation to argue this matter which is the revision petition with concurrent findings of the two courts below against the petitioner. He has however submitted that according to the prosecution story one white fiat car was also involved in the accident but it was not seized during the investigation and no question has been put to the petitioner while recording his statement under Section 313 Criminal Procedure Code . about the car being involved in the accident on account of which the petitioner has been prejudiced and, thus, entitled to get acquittal by benefit of doubt. I have not been able to find any force in this submission. A suggestion was made to .Shri Sunil Kumar, Public Witness -3 and also Panna Lal, Public Witness - 4 that the injuries were caused by the said car which has clearly been denied by them. S 1. Balwan Singh, Investigating, Officer, Public Witness -10 has made a categorical statement that he did not take into possession Fiat car since he did not find any car at the spot and its particulars were not available. The prosecution story has been that it was no account of rash and negligent driving of the bus by

the petitioner that the bus bit the cyclist causing injuries. In these circumstances I failed to understand as to how the petitioner can be said to have been 'prejudice on account of the non putting to him the question with regard to a car being also involving in this accident.

(11) Learned counsel for the petitioner has submitted that the courts below have recorded a finding about the guilt of the petitioner for the offence under Section 338 Indian Penal Code when in fact there is no evidence at all on record to show that Panna Lal sustained grievous injuries and on this account conviction of the appellant under section Indian Penal Code is bad. I have carefully examined the record and find force in this submission. According to the prosecution story Panna Lal sustained injuries including fracture which were declared to be grievous by the doctor. It is, however, pertinent to note that Mlc Ext. Public Witness -8/A of Panna Lal prepared by Dr. P.K. Jain has been proved only one record Clerk Devinder Kumar, Public Witness -8. Opinion about the injuries being grievous was recorded by Dr. Madhu Kant. This endorsement has also been proved by the same record clerk. It is pertinent to note that Panna Lal PW-4 has nowhere stated that he sustained some fracture and for how long he remained admitted in the hospital. All that has been stated by him was that he sustained injuries in this accident and his mother-in-law also sustained injuries on account of which she died. The law is well settled that in order to hold injuries to be grievous reliance can be placed on the statement of doctor giving reasons for coming to the conclusion as to how the injuries were grievous or by considering the evidence of the injured that he sustained fracture which would amount to the injury being grievous. In the instant case, however, this evidence is conspicuous by its absence and so it cannot be said that the prosecution has proved on record that Panna Lal sustained grievous injuries in this accident. In this way the injuries of Panna Lal have to be held to be proved as simple only which would fall under Section 337 Indian Penal Code .

(12) Learned counsel for the petitioner has also submitted that there has been a default on the part of the Investigating Officer in not getting a detailed report about the damages of the cycle and that had the petitioner been rash and negligent or driving bus at a fast speed the cycle would have come under the wheel of the bus and the injured persons would have been crushed of the very fact that there was

no crush injury would indicate that he was not rash and negligent.

(13) I do not agree with this submission. There are dear statement by Sh. Sunil Kumar, Public Witness -3 and Panna Lal, injured Public Witness -4 to the effect that the accused was driving the bus in a rash and negligent manner and hit the cycle from behind. No doubt a suggestion was made during the cross-examination of the witnesses that the accident was casually a car which suggestion, however, has been denied by them. I have gone through the evidence on record and do not find any material discrepancy in the statements of the witnesses so as to hold that they were not truthful witnesses.

(14) Learned counsel for the petitioner has also submitted that the petitioner took sympathy on the injured and on a request by the passengers and passers-by he removed the injured persons to the hospital inspire of the fact that he was not responsible for causing the injuries. This argument, however, is not based on any evidence on record. In fact the record indicates that it was the petitioner who while driving the bus in a rash and negligent manner hit the cycle from behind causing injuries. It is difficult to believe that a bus driver would have stopped the bus and taken the injured to the hospital it he was not involved in the accident. This argument, thus, has to be rejected.

(15) Learned counsel for the petitioner has submitted that this accident look place more than five years back and the petitioner has suffered a protracted trial. He has also submitted that the amount of fine has already been paid and the petitioner is the sole bread earner of the family including the family of his son. thereforee it has been prayed that he may not be sent to jail. The prayer has, however, been opposed by the learned counsel for the respondent who has submitted that on account of the rash and negligent act of the petitioner one precious life was lost and another person sustained grievous injuries which on account of a fault by the prosecution could be proved to be simple only. He has also submitted that already leniency has been shown to the petitioner and that the sentence awarded to the petitioner is reasonable which calls for no interference.

(16) I have given my thoughtful consideration to the submissions and considering the all facts and circumstances I am of the opinion that the conviction of the

appellant for the offence under section 338 Indian Penal Code .has to be converted to Section 337 Indian Penal Code The maximum sentence prescribed for the offence is 6 months imprisonment or fine which may extend to Rs. 500.00 or both. It would be appropriate to reduce the amount of fine for the offence under Section 337 to Rs, 500.00 . The sentence for other two offences calls for no interference.

(17) As a result the revision petition is accepted in part. Conviction of the petitioner for the offences under Sections 279 and 304-A Indian Penal Code and the sentence awarded for them is confirmed. Conviction of the petitioner for offence under Section 338 IP.C. is modified to offence under Section 337 I.P-C. and the sentence is reduced to a fine of Rs. 500.00 otia default to undergo R.I. for one month. Trial Court will now take steps to take the petitioner to custody and sending him to jail to undergo the remaiaing/sentenee.

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