

Randhir Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/694178

Court : Delhi

Decided On : Nov-11-1998

Reported in : 1998VIIAD(Delhi)604

Judge : J.B. Goel, J.

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

Appeal No. : Cri.R.No. 366/98

Appellant : Randhir Singh

Respondent : State

Advocate for Pet/Ap. : Mr. J.P. Dhanda, Adv.

Judgement :

ORDER

J.B. Goel, J.

1. Petitioner was convicted by the learned Metropolitan Magistrate (M.M.) for offences under Sections 279 and 304-A IPC and was sentenced to RI of two years and a fine of Rs. 2,000/- under Section 304-A IPC and SI of six months and a fine of Rs. 500/- under Section 279 IPC with default clause vide judgment and order dated 25.3.1998 and 27.4.1998. His conviction and sentence have been upheld by

the appellate court of learned Addl. Session Judge.

2. By this revision petition under Section 397 Cr.P.C. the petitioner challenges the legality and propriety of his conviction and sentence. Learned counsel for the petitioner has contended that the finding of conviction is based on misreading of evidence, the conclusions drawn are not reasonable and proper. The finding about the identity of the petitioner as the driver of the offending vehicle is unreasonable and not justified; the circumstance not put to the accused has been taken into consideration and also that on the material on record finding of guilt is also not justified. It is further contended that the Appellate Court has shown bias and prejudice and has made sweeping allegations about the drivers involved in motor accidents and has not considered the material properly and with judicious mind.

3. First point is whether the petitioner was the driver of the offending vehicle. It is not disputed that the vehicle involved in the incident is DEP-6989; place and time of occurrence about 7.40 a.m. on 28.10.92 on the Link Road from Lucknow Road to Timarpur Road. The victim is a child aged about six years who was going to his school.

4. PW-2 Rajinder Singh is the father of the victim who had accompanied the child to leave him to his School Bus Stand. He could not say definitely but most probably the accused was the same driver, because of lapse of two years and also at the time of accident, he was having beard which he did not have when he deposed. It appears that after the occurrence the driver and conductor had run away from the scene, but the driver was arrested on the same day.

5. PW-12, ASI Zile Singh, IO has deposed that he had given a notice Ex. PW12/C to the owner of the bus; owner Vinod Kumar gave reply Ex. PW 9/A and produced the accused Randhir Singh who was driving this vehicle at the time of accident. The accused was arrested vide memo Ex. PW4/C. PW-9 Vinod Kumar has deposed that in the year 1992 his father was the owner of the vehicle but in his absence he used to look after the affairs of running this bus. He admitted having given reply Ex. PW9/A to the notice of the IO. He has further stated that at the time of the accident the bus was being driven by the accused and he was still working as driver with them. He had also stated that he had gone to the police station and

produced the accused. Though in his cross-examination, it was elicited that he had produced the accused as the other driver was out of station, but he has further stated that '... he had asked the accused who replied in affirmative and that he was the only driver available on that day and therefore it was he only who could be the driver of the vehicle in question and the other driver was out of station'. This statement was not challenged further on behalf of the accused. Not only this after the charge was framed on 5.4.1994 when the accused was examined, he had admitted that he was the driver. He was examined as under :

Q. Do you plead guilty or claim trial or have any defense to make?

A. I was driving the bus in question at the time of accident but was not at fault. I plead not guilty and claim trial.

This admission forms part of the record.

In view of this material the evidence led in defense to the contrary could not be said to be reliable and trustworthy and has been rightly rejected by the two courts below. The finding of the courts below is reasonable and justified. This contention thus is misconceived and has no merit.

6. The second contention is that the material on record does not justify the conclusion of guilt of the petitioner.

7. PW-2 father of the deceased had deposed that he had accompanied his son, the victim to leave him to the school bus stand and on reaching Tikona Park he was standing on the pavement, his son on crossing the road had already reached in the middle of the road and on seeing the bus he ran to cross the other half of the road when this bus came at a fast speed, hit his son, as a result of this the child fell down on the road and received injuries as the bus passed over his body.

8. The child has obviously died at the spot as he was removed to the hospital soon thereafter where he was declared to be 'Brought Dead'. In cross-examination it was suggested which he denied that another bus was parked at the right hand side while coming from the Lucknow Road and the child was crossing from behind that bus and after seeing this bus he moved back in a hurry and fell down on the

road and received injuries. The accused has not taken this plea in his statement under Section 313 Cr.P.C. DW-1 has stated that he was the conductor, when their bus was taking the turn from Lucknow Road towards Timarpur one bus was already standing there and one boy came from the front side and sustained injuries as he himself struck with the bus. The child has fallen down and sustained injuries on his head. As conductor, sitting on the rear side, he would not have seen how the accident had taken place. But he must have seen the occurrence after it took place. His statement also proves that the child was hit by this bus and thereby received fatal injuries.

9. DW-2 has also deposed that he was traveling in that bus; he was sitting 3-4 seats behind the conductor seat; the accused was not the driver; the boy came running from the Mandi side and hit towards the bus. He is obviously not a trustworthy witness. He has made false statement about the identity of the driver. He would also not have seen while sitting at the rear side of the bus, assuming he was actually traveling in the bus, the circumstance how the accident took place. The statement of the father of the deceased remains unchallenged. This has been believed by the two courts below. Both the courts below have found the petitioner guilty of rash and negligent driving on material available on record. This finding cannot be said to be unreasonable or not justified.

10. Not only the petitioner has taken a false plea that he was not the driver of the offending vehicle, but having admitted himself so as noticed above, the two defense witnesses examined by him are also not reliable and trustworthy witnesses and they have deposed falsely.

11. In the circumstances, there is no infirmity or illegality in the findings of the courts below.

12. This revision petition has thus no merit and the same is hereby dismissed in limine.