

Ram Kishan Vs. the State

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Court : Delhi

Decided On : Mar-10-1989

Reported in : ILR1989Delhi409

Judge : Santosh Duggal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279; [Motor Vehicles Act, 1939](#) - Sections 88

Appeal No. : Criminal Revision Appeal No. 91 of 1979

Appellant : Ram Kishan

Respondent : The State

Advocate for Pet/Ap. : Dhanbir Singh, Adv

Judgement :

Santosh Duggal, J.

(1) This criminal revision petition is directed against the dismissal of the petitioner's appeal by judgment dated 10th May, 1979 passed by the Additional Sessions Judge, Delhi, upholding his conviction under sections 279/304-A of the Indian Penal Code by judgment dated 16th March, 1979, recorded by the Metropolitan Magistrate, Delhi.

(2) The facts in so far as relevant briefly are that the petitioner was sent up for trial on the allegation that while driving bus bearing No. D.L.P. 5285 on Ring Road on 21st August, 1975 at about 10 a.m., he ran over one pedestrian named Jagan Ram and caused his death by rash and negligent driving on the public road. It was alleged that the accused came driving on the road at a very fast speed and while Jagan Ram was crossing the road, struck him down and crushed him under both the wheels of the bus and then fled away with the bus. The injured was found to have died on the spot. Subsequently, the owner of the bus pursuant to a notice served on him under Section 88 of the Motor Vehicles Act revealed that the present petitioner was driver of the bus at the relevant time. It was on the basis of this information that the present petitioner was arrested. The case had been earlier registered on the basis of statement given by one eye witness named Krishan Pal, (P.W. 6).

(3) During trial besides Krishan Pal on whole statement, (Ex. Public Witness 6A), the case was registered, another witness namely, Multani Ram (P.W. 1), was examined, both of whom deposed to have witnessed the accident. On the basis of their testimony, identifying the accused before the Court as driver of the bus, and on the basis of the information supplied by the owner of the bus and proved in court as Ex. Public Witness 13A; the trial court held it proved that the accused before him was responsible for this accident, and that since the same was a result of rash and negligent driving, he held the accused before him, guilty of the offences under sections 279/304A of the Indian Penal Code.

(4) On appeal taken against this conviction, the learned Additional Sessions Judge while upholding the contention that the information supplied by the owner vide Ex. Public Witness 13A was not substantive evidence inasmuch as he had not corroborated the same in Court, nevertheless dismissed the appeal, placing reliance on the oral testimony of Public Witness 1 and Public Witness 6; namely Multani Ram and Krishan Pal.

(5) The plea now in this criminal revision, as advanced by Mr. Bhanvir Singh appearing for the petitioner, is that the whole case is that of mistaken identity, and that there was no legal evidence before the courts below to hold that the present

petitioner was the driver of the bus, and that it was he who had caused accident, resulting in the death of pedestrian, Jagan Ram. It may be noted that no one appeared for the State in spite of the matter being on Daily Board. Eventually it is being disposed of on the basis of arguments advanced by learned counsel for the petitioner, and on my own perusal of the record and in the light of the legal position on the subject.

(6) It is noteworthy that neither Krishan Pal Public Witness 6 who is author of the F.I.R., nor Multani Ram Public Witness 1 knew the accused earlier to the date of the accident. There is thus reason for there being no reference to the accused by name in the F.I.R.

(7) It is further pertinent to note that there is absolutely no description of the driver of the bus, either in the aforesaid F.I.R. statement i.e. Public Witness 6A, or by the other witness Public Witness 1 in his statement to the police. This witness; namely, Multani Ram discloses that he did not pass over any description of the driver to the police for the reason that the bus had been driving very fast and he had not been able to properly see the driver. Krishan Pal no doubt said that he had seen the driver while the vehicle was moving and that he had mentioned this fact in the Rukka, further adding that he would be in a position to recognise him out when confronted with the statement Public Witness 6A, it was found that it was nowhere recorded that he had seen the driver or that he could identify him on being shown. He too admitted that he had not given any description of the driver such as of age, complexion, height or whether he was Hindu or a Sikh. Both the witnesses, further admitted in cross-examination, that they did not identify this accused soon after the occurrence in any test identification parade. On the other hand, Krishan Pal Public Witness 6 revealed that he was shown the accused at the police post on the day following that of the accident.

(8) In the face of this position, when the driver of the bus, namely, the accused before the court, was not at all previously known to the witnesses who identified him and when they had not volunteered any type of description while making statement to the police, and had not been asked to participate in any test identification parade; the identification of the accused before the court when one

was appearing after more than a year of the accident and the other, after about two years, was not worthy of any credence. The statement of the Investigating Officer that the accused declined to take part in the test identification parade is of no consequence because the main eye witness, namely, Krishan Pal, had categorically stated in the court that he was shown the accused at the police post on the very next date. The stand of the accused, in declining to take part in the test identification parade, on the plea that he had been shown to the witnesses, was thus justified and no adverse inference could be drawn against him on that account.

(9) The information supplied by the owner of the bus was another connecting link but he totally disowned that information while appearing in court and stated that on the pretext that he was signing the papers for release of the bus on supurdari, 1.0. incorporated that information on his own. The learned Additional Sessions Judge rightly held that the notice under Section 88 of the Motor Vehicles Act can be statutorily served only in respect to offences connected with the violations of any of the provisions of that Act, and when there was no contravention of any of the legal provisions of the said Act, the 1.0. in seeking information from the owner of the bus, in regard to the name or particulars of the driver of the bus, in the event of cases registered under Sections 279/304-A Indian Penal Code , could be said to be only examining persons, during the course of investigation.

(10) The statement. Ex. Public Witness 13/A, would be thus no better than any other statement before the police. After the witness had disowned that statement in Court, even when cross-examined by the Assistant Public Prosecutor, it could not be legal evidence. I, therefore, find it to be a case, where conviction of the petitioner was liable to be set aside, as there was no evidence before the court to connect him with this alleged act of rash and negligent driving, of which he stood charged, and to that extent Additional Sessions Judge also erred) while confirming the conviction.

(11) I am fortified in saying so, on the authority of a judgment of the Supreme Court, reported in 1983 Scc 139, (Mohd. Abdul Hafeez v. State of Andhra Pradesh) (1), wherein it was held that in cases where name or description of an

accused person is not given in the F.I.R., and no test identification parade was held, and the accused persons were not known earlier to the witnesses, then the identification made in court after about four months of the occurrence was not worthy of reliance and could not be taken as evidence connecting the accused and the crime.

(12) In the instant case, as already noted, the distance in time from the date of accident and the dates when the two witnesses were deposing in court, is much longer because in case of one witness it was 13 months, and in the other about 23 months. Although, it is a case of unfortunate death, on account of a road accident, actually due to rash and negligent driving on the part of the driver of a bus, but there is no escape from accepting the plea that on record of the case there was no credible or legal evidence, to connect the present petitioner with the said rash and negligent driving, justifying his conviction.

(13) I thus find it to be a fit case to allow this criminal revision on account of this infirmity in the judgments of the courts, below, and set aside the judgment in appeal dated 10th of May, 1979 as well as the judgment of the trial magistrate dated 16th of March, 1979. Ordered accordingly.

(14) I would also like to administer a word of caution to the trial courts, to see that statements and documents are not exhibited mechanically in the course of recording of evidence, unless proved in strict conformity with rules of procedures, as law of evidence. For, any lapse in this regard tends to vitiate their final judgment because of error and infirmity of taking such evidence into consideration, which was not legally admissible.

(15) As a result of the foregoing discussion, the petitioner stands acquitted. Be is on bail. He need not surrender. The bail bonds shall he discharged.