

Hari Ram Vs. State

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Court : Delhi

Decided On : Aug-23-1990

Reported in : I(1991)ACC2

Judge : V.B. Bansal, J.

Appellant : Hari Ram

Respondent : State

Advocate for Def. : Ms. Meera Bhalia

Advocate for Pet/Ap. : Shri. Mukesh Kalia

Judgement :

V.B. Bansal, J.

1. Hari Ram, petitioner, was convicted for the offences under Sections 279/304-A IPC and he was sentenced to R.I. for 1-1/2 years under Section 304-A IPC and fine of Rs. 200/- or in default to undergo simple imprisonment for 10 days under Section IPC vide judgment dated 29th July, 1989 and order dated 5th August, 1989 by a metropolitan magistrate, Delhi. He filed an appeal which was dismissed by an Additional Sessions Judge, Delhi on 18th January, 1990.

2. Being not satisfied with his conviction and sentence Hari Ram has filed this petition.

3. Briefly stated the allegation against the petitioner have been that on 23rd April, 1986 he was driving bus No. DEP 5557 in a rash and negligent manner so as to endanger human life and safety and at about 12.30 P.M. near Punjab Tent House, Nazafgarh Road hit scooter DHM-4324 causing the death of Anil Kumar. FIR No. 165 was got registered by ASI J.C. Sharma who after completing the investigation got the accused-petitioner challaned.

4. Shri Mukesh Kalia, Advocate was appointed amicus curiae at State expense to argue the case for the petitioner.

5. I have heard Shri Mukesh Kalia learned Counsel for the petitioner and Ms. Meera Bhalia learned counsel for the respondent and have also carefully gone through the record.

6. It is not disputed that the petitioner was the driver of bus No. DEP 5557 on 23rd April, 1986 at Nazafgarh Road near Punjab Tent House at about 12.30 P.M. Submission of learned counsel for the petitioner had been that Anil Kumar (deceased) in fact was at fault who tried to over-take the bus from wrong side when a pedestrian came in front of the scooter on account of which the scooter fell down and Anil Kumar sustained injuries resulting in his death. He has further submitted that the only fault of the petitioner was that he stopped his bus finding injured person lying on the road and removed him to the hospital. He has also submitted that there was no eye witness of the incident and false witnesses have subsequently been introduced to indicate that they, in fact, had witnessed the occurrence. According to him had the eye witnesses Narinder Kumar (PW2) and Ram Kumar (PW9) witnessed the occurrence they would have been available to the police officer when he reached at a spot and the very fact that no eye witness was available at that time is clear indication that they have falsely been introduced at a last stage. A prayer has, therefore, been made for the acquit of the petitioner. I have carefully gone through the evidence keeping in view the aforesaid submissions but have not been able to find any cogent reason to differ from the conclusion arrived at by the learned Metropolitan Magistrate confirmed by the appellate court of Additional Sessions Judge. Narinder Kumar (PW2) has made a category statement that the bus driven by the petitioner hit the scooter of

Anil from behind as are suit of which Anil Kumar and his scooter were dragged up to a distance of 6-7 paces. He has also claimed that Anil Kumar was taken out by him and the other witness from under the bus and thereafter removed to the hospital while he went to give information at the house of Anil Kumar who was his neighbour. The statement of this witness has nowhere been challenged to the fact that Anil Kumar and the scooter were found under the bus and they having been dragged by the bus after the scooter was hit by the bus. This testimony of the witness finds corroboration from the testimony of S.I. Ram Singh (P.W.5) who has proved the inspection report Ext. PW5/A in respect of the scooter and Ext PW5/B in respect of the bus involved in this accident. A perusal of these reports clearly indicates that there was damage on the back side of the scooter and front left side of the bus. There is no doubt that Ram Kumar (P.W.9) supported the case of the prosecution in the examination-in-chief but during cross-examination admitted the suggestion made by counsel for the accused that a pedestrian trying to cross the road struck against the scooter of the deceased on account of which he fell on the road along with the scooter and that the accused stopped the bus and then removed the injured to the hospital. This witness, thus, has made contradictory statement and so is admittedly not truthful witnesses. Merely because he has made contradiction statement cannot be a ground to disbelieve the prosecution story and the testimony of Narinder Kumar (PW2) which finds corroboration from the inspection report of the vehicle. There is no cogent reason to disbelieve Narinder Kumar merely because he happened to be neighbour of the deceased.

7. Dr. R.P. Srivastava (PW 3) who conducted the post-mortem examination has clearly stated that the injuries sustained by Anil Kumar could be caused in a vehicular accident and were anti-mortem.

8. The principles of contributory negligence cannot be applicable in such cases and the petitioner having been proved to have hit the scooter while driving the bus in a rash and negligent manner. I do not find any ground to interfere with the finding of the courts below.

9. Counsel for the petitioner has submitted that the sentence awarded to the petitioner is disproportionate to the offence committed by him. It is also submitted

that the petitioner is a poor man and sole bread earner of the family. Prayer has, therefore, been made for reduction in the sentence. In this accident Anil Kumar a young boy of 25 years of age lost his life and considering all the fact and circumstances, I do not find any cogent reason to interfere in the discretion exercised by the courts below in awarding the sentence which cannot be said to be disproportionate to the offence proved against the petitioner.

10. As a result the revision petition stands dismissed. Petitioner be informed through Superintendent Jail.

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