

State Vs. Kaptan Singh

State Vs. Kaptan Singh

SooperKanoon Citation : sooperkanoon.com/714979

Court : Delhi

Decided On : Nov-06-2007

Reported in : 2008CriLJ1458

Judge : Pradeep Nandrajog, J.

Acts : [Motor Vehicles Act, 1939](#); [Probation of Offenders Act, 1958](#); Indian Penal Code (IPC) - Sections 279, 304 and 304A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 38/1991

Appellant : State

Respondent : Kaptan Singh

Advocate for Def. : Neelam Grover, Adv.

Advocate for Pet/Ap. : Pawan Sharma, Adv

Judgement :

Pradeep Nandrajog, J.

1. On 11.1.1988 at around 8:10 A.M., master Anubhav Khanna, a student of Air Force Senior Secondary School, Subhroto Park suffered an untimely death when he was hit by a motor vehicle. The young boy was a student of Class III and was

aged 8 years. Prosecution alleged that the respondent who was driving bus No. DEP - 8474 under management of DTC and had caused the accident when, plying on route No. 773, the bus was on the road and had reached Air Force Senior Secondary School.

2. Learned Metropolitan Magistrate who conducted the trial has held that offence under Section 279 and Section 304 IPC was not established against the respondent. In so holding, learned Trial Judge has held that there are material discrepancies in the testimony of PW-2 & PW-3 which casts a doubt whether PW-2 had witnessed the accident. Further, learned Trial Judge has drawn an adverse inference against the prosecution from the fact that vide DD Entry Ex.PW-9/A recorded at 9:05 A.M. no particulars about bus in question were noted. Lastly, testimony of PW-3 another eye witness has been disbelieved.

3. PW-2, Babu admittedly working as a chowkidar in the school stated that he was an eye witness to the accident as he was present at the gate No. 1 of the school. That the bus was being driven very fast and that after the young boy was hit, lot of people collected at the spot. He went to inform the principal who sent two boys with him to see the injured. When he went back to the road, the boy had been removed to the hospital. That he had seen the driver of the bus. That the accused was the driver of the bus. In cross examination, he stated that the police recorded his statement but immediately thereafter stated that the police did not record his statement but noted down his name and address. He further deposed in cross examination that the bus stopped at a distance of about 25 paces ahead of the accident and that after hitting the boy the bus ran over the body resulting in the boy getting crushed.

4. PW-3, P.R.Ganpathy, a student of the school stated that 2 or 3 students of the school had informed the principal regarding the accident.

5. PW-4 Karuna Sharia stated that she was standing at the bus stop and had witnessed the accident. She also stated that the bus in question crushed the child and stopped at a distance of about 10-15 paces from the place of impact. That she tried to stop cars so that the child could be taken to the hospital but nobody stopped. That thereafter two student arrived from the school and stopped a car

which removed the child to the hospital. She opened the bag of the child and found his name and address and went to the school and informed the office of the same. That she went to the house of the child to inform his parents. In cross examination she stated that she saw blood oozing from the nose and mouth of the boy. She stated that she did not see any other injury.

6. The learned Trial Judge disbelieved the testimony of the two aforementioned witnesses i.e. PW-2 and PW-4 primarily on the ground that the body of Anubhav was not crushed and that the bus had not run over the body. Further, in view of testimony of PW-3, P.R. Ganpathy, a student of the school who stated that 2 or 3 students from the school informed the principal about the accident, learned Judge held that the version of PW-2 that he informed the principal was incorrect. Further, learned Trial Judge has noted that the place where PW-2 was stationed i.e. gate No. 1 was not towards the side of the road on which the accident took place.

7. Ms. Neelam Grover, learned Counsel for the accused urges that since accused has been acquitted, presumption of innocence in favor of the accused has got reinforced. Learned Counsel urges that the conclusions arrived at by the learned Trial Judge cannot be called perverse. Counsel further urges that if on the evidence brought on record, two views are possible and learned Trial Judge has preferred to adopt a particular view, notwithstanding that this Court has the power to re-appreciate the evidence, view adopted by the learned Trial Judge would not be differed from.

8. Having considered the record of the learned Trial Judge, in my opinion, two very vital pieces of evidence and statement of the accused under Section 313 Cr.P.C. have been totally ignored by the learned Metropolitan Magistrate. Firstly is the written statement filed by the driver of the bus in the claim petition filed by parents of the deceased under the MV Act 1939, certified copy whereof was obtained and filed before the learned Metropolitan Magistrate, defense pleaded by the accused was as under:

On 11.1.1988 Bus No. DEP-8474 was plying on route No. 773 from Bharthal village to Ambedkar Stadium. The driver was driving the bus slowly carefully, cautiously on the correct side of the road. At about 8.30 a.m. the bus reached near

Central school suddenly a young boy with a heavy bag came running in front of the bus and hit against the bumper and got the accident injurious. It is submitted that the accident was not caused due to any negligence on the part of the DTC driver. The accident was caused due to sudden emergence of the boy in front of the bus. The accident was also witnessed by some of the passengers who made necessary endorsement in the complaint book which is maintained in the ordinary course of the business.

9. The second vital piece of evidence ignored by the learned Judge is Ex. PW-9/4, the photograph showing the place where the young boy was hit and the position where the bus stopped. The photograph shows that the bus has crossed ahead by about 25 feet from the place where the school bag of the young boy is to be seen on the road.

10. In his statement under Section 313 Cr.P.C. the driver explained that he had stopped the bus as he had seen the child lying in an injured condition on the road, a fact different from what was pleaded by him in his written statement filed before the MACT.

11. Learned Trial Judge has ignored the fact that in the written statement filed before the MACT, the driver admitted that the bus hit the child. Further, his Explanationn under Section 313 Cr.P.C. was at variance with his pleas in the written statement. Lastly, if indeed the child was lying injured on the road, the bus wold have stopped before crossing over the child and not thereafter.

12. As regards the testimony of PW-2, PW-3 and PW-4 suffice would it be to state that when an accident takes place, everybody runs helter skelter. Possibility of the chowkidar, PW-2 and some students reaching the office of the principal and all informing about the accident cannot be ruled out. Thus, the fact that PW-3 stated that 2 -3 boys gave information of the accident to the principal does not contradict the testimony of PW-2 that he informed the principal of the school about the accident. Further, PW-4 is an independent eye witness. She has no reasons to falsely implicate the driver of the bus.

13. Dealing lastly with the fact that in the daily diary when first information of the accident was received, number of the bus was not noted, in my opinion, no adverse inference can be drawn on said fact i.e. of not recording the number of the bus for the reason Ex.PW-9/A, a DD Entry merely records an information transmitted to the police station by the police post that a child had been hit by a bus near the school in question.

14. Under the circumstances, the appeal is allowed.

15. Impugned judgment dated 19.9.1990 acquitting the respondent for having committed the offence punishable under Section 279/304 IPC is set aside. I hold the respondent guilty of the offence of rash/negligent driving as also the offence of causing death by a rash/negligent act.

16. In respect of the sentence, I note that the accident took place on 11.1.1988 i.e. nearly 19 years ago, learned Counsel for the State submits that the respondent has not been involved in any other FIR. His conduct has been spotless, save and except the unfortunate accident which took place on 11.1.1988.

17. On the sentencing policy, on 31.10.2007 while deciding CrI. Appeal No. 36/1986 Manmohan v. State in paras 15 to 18 I had noted as under:

15. Learned Counsel for the appellant submits that the incident in question relates to 20.12.1982. 25 years have gone by. Counsel further points out that the impugned judgment is dated 24.12.1985 and for 21 years the appeal has remained pending. Counsel submits that the current jurisprudential thinking in the field of criminology is laying greater emphasis on the reformatory aspect of sentencing policy and less on the deterrent aspect of the sentencing policy. Learned Counsel has cited the following decisions:

1. B.G. Goswami v. Delhi Administration : 1974 CriLJ243
2. Ram Narain v. State of U.P. AIR SC 2200
3. Narinder Kumar v. The State (Delhi Admn.) : 17(1980)DLT302
4. Parveen Kumar v. The State : 17(1980)DLT297

5. Kathi Odhabhai Bhimabhai v. State of Gujarat : 1993 CriLJ187
6. Alam and Ors. v. State of Rajasthan 1981 SCC (Cri.) 624
7. Ved Prakash v. State of Haryana 1981 SCC (Cri.) 182
8. Ashok Kumar v. State (Delhi Administration) 1980 SCC (Cri.) 426
9. Vishnu Nagnath Deshmukh v. State of Maharashtra AIR 2000 SC 3677

16. I need not copiously note the observations in the afore-noted judgments except the observation from the decision in B.G. Goswami's case (supra).

17. The paragraph which is intended to be noted highlights the purpose of sentence. It highlights 3 attributes of a sentence. The first facet is that the accused must realise that he has committed the act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future both as an individual and as a member of the society. The second facet highlights the punitive deterrent aspect of a sentence. The third facet highlights the reformatory aspect of a sentence.

18. The Court has observed as under:

Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the consideration already noticed by us and the fact that to send the appellant back to jail now after 7 years of the agony and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of

justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.

18. I thus impose the minimum sentence. I sentence the respondent to undergo simple imprisonment for 1 month for having committed the offence punishable under Section 279 IPC. I sentence the respondent to undergo simple imprisonment for period of 3 months for the offence under Section 304A IPC. Both sentences shall run concurrently. However, I grant benefit of probation to the respondent under the Probation of Offenders Act 1958.

19. I grant 2 weeks time to the respondent to furnish the requisite bond to the Registrar (General) of this Court as required by law undertaking good behavior for a period of one year. If the bond is filed, sentence imposed would remain suspended for a period of one year. If respondent successfully completes the period of probation, the sentence would not be given effect to.

20. LCR be returned.

21. No costs.