

Ram Bilas Vs. State of Rajasthan

Ram Bilas Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/755883

Court : Rajasthan

Decided On : Mar-18-1980

Reported in : 1986(2)WLN90

Judge : Farooq Hasan, J.

Appeal No. : S.B. Criminal Revision No. 190 of 1980

Appellant : Ram Bilas

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Farooq Hasan, J.

1. This revision petition is directed against the judgment passed by the Sessions Judge, Sikar upholding the conviction of the accused-petitioner which was passed by the Judicial Magistrate, Sikar on 3-8-76. The accused-petitioner was held responsible for the offence under Section 304A, IPC and was sentenced to one year's RI and a fine of Rs. 1,000/-. The accused-petitioner filed an appeal against his conviction and sentence, which was dismissed. Hence, this revision.

2. Briefly stated, the facts of the case are that a report Ex.P 1-A was lodged at the police station, Sadar (Sikar) by the accused-petitioner himself in which it was

alleged that he was driving the bus RSM 9960 of the Rajasthan State Road Transport Corporation and was going towards Bikaner from Jaipur. It was further alleged that in the way near Bajor village when one woman was going with her husband on the middle of the road and moved hither and thither she was accidentally hit from the right side of the bus. It was further alleged that the driver stopped the bus and took the injured in his bus to the hospital. On this report, a case was registered by the police and FIR (Ex.P 3) was chalked out. Site Plan (Ex.P 5) was prepared and seizure memo of the bangles of the deceased (Ex.P 4) and arrest memo (Ex.) were also prepared by the Investigating Officer. The vehicle was also mechanically examined vide memo (Ex.P.)

3. The injured died in the hospital and post-mortem report (Ex.P. 13) was prepared by the doctor. After completion of the investigation, a challan was filed in the court of Judicial Magistrate Sikar. Charges under Sections 304A, 279, 337 and 338, IPC were framed to which the accused did not plead guilty and claimed to be tried. The prosecution in all produced six witnesses. Statement of the accused under Section 313, Cr. PC was recorded in which he denied the allegations levelled against him by the prosecution witnesses and gave an explanation about the occurrence but no evidence was produced by him in his defence. The learned trial court after hearing arguments found the accused-petitioner guilty and convicted and sentenced him, as stated above. The appeal of the accused petitioner was also dismissed.

4. Heard learned Counsel for the parties, and perused the entire record.

5. Learned Counsel for the petitioner submitted that the prosecution has completely failed to prove that the accident took place due to the rash and negligent act of the petitioner. He further submitted that deceased Mst. Manbhari who died in this accident was herself negligent in crossing the road from left to right. The driver did not know the fact that she will suddenly cross the road from left to right. He also submitted that it has been admitted by the Investigating Officer that there was a steep near the place of occurrence it has been admitted by the prosecution witnesses that because of this steep usually the vehicles become slow. Due to this circumstance it can be inferred that the speed of the bus was

below the normal speed. Learned Counsel in support of his arguments referred to the cases-Mahadeo Hari Lokre v. State of Maharashtra : 1972 CriLJ49 , Bhanwarlal v. The State of Rajasthan 1970 RLW 68 and Bhagwan v. The State of Rajasthan 1979 Cr. LR (Raj) page 422.

6. The learned Public Prosecutor on the other hand submitted that the accused-petitioner has been rightly convicted by the trial court. He submitted that as per the report of the mechanic the foot brake of the bus was defective and it was the bounden duty of the petitioner not to drive the vehicle with defective brakes. He also submits that from the evidence it has been proved that the petitioner was driving the vehicle rashly and negligently. He referred to the case Baldevji v. The State of Gujarat : 1979 CriLJ1136 .

7. I have considered the arguments advanced by the learned Counsel for the parties. In this case, two eye-witnesses have been examined by the prosecution, i.e., PW 2 Raghunath and PW 5 Bhunaram.

8. It has been contended by the learned Public Prosecutor that as a general rule the High Court will not interfere in revision with a finding of fact. The contention of the learned Public Prosecutor may be correct, but the High Court interferes with the finding of fact where the finding has been arrived at contrary to the well established principles of law, or where there is no evidence to support the finding, or where the finding is perverse or no reasonable man could have arrived at such a finding on the evidence produced.

9. In the light of above principles, now I will have to examine the case as to whether it is based on reliable evidence or not. If it appears that the judgment passed by the courts below is based on reliable and consistent evidence, then definitely no interference is possible, but in the trial court as well the appellate court did not appreciate the evidence in its true sense, or the conclusion arrived at by the courts below is not supported by the evidence on record, then certainly this court is fully competent to interfere with the findings of the courts below and to pass an independent judgment. I have stated earlier that in this case PW 2 Raghu Nath Singh is claimed to be the eye witness by the prosecution. He in his examination-in-chief has stated that the roadways bus was coming from Jaipur and going

towards Sikar. It was running slow and was crossing the steep. He further stated that some camel carts were standing by the southern side of the road and the deceased was talking to her husband on that side, Suddenly, the deceased Mst. Manbhari rushed to cross the road from south to north and then she collided with the said bus. She collided with the right side of the bus. It was also stated by him that the bus was running on the right edges of the road. In cross-examination, this witnesses stated that near about the place of occurrence there is a steep land as such generally the buses while coming from Jaipur become slow at this place. It has been admitted by the witness that the driver had given the horn and that the deceased was talking to her husband while standing near the camel cart on southern side of the road. When the bus was about to cross the camel cart, then suddenly the deceased ran to cross the road from south to north. The driver used the brakes and the bus stopped, but the accident took place.

10. PW 5 Bhunaram is the husband of the deceased. He has admitted that they were standing at the bus stand and the accident took place at the bus stop of village Bajor where many persons were waiting for the buses. Camel carts were also coming from Jaipur side and going towards Sikar. At the same time, the bus driven by the petitioner also came and collided with the deceased from the right side. The bus passed through the deceased while crushing her. In cross-examination, the witness admitted that from Rewasa bus stand to Bajor bus stand there is a steep land. He further admitted that camel carts (Laddha) were also coming from Jaipur side and they stopped near the place of incident on the left side of the road, and that he and his wife were standing by the right side of the camel carts. But subsequently, this witness disowned his above statement and on a suggestive question by the learned Counsel for the accused he replied in the negative about the facts admitted by him in his cross-examination.

11. Now, it is to be seen whether the petitioner is guilty for causing the death of the deceased by negligent or rash driving. The primary reason given by the courts below while convicting the petitioner is that the petitioner was driving the bus with high speed and the bus collided with the deceased from its right side. It shows that the petitioner had swerved the bus to the extreme right side of the road when the unfortunate accident occurred. In my opinion, taking the vehicle on the right side of

the road did not mean that the petitioner was driving the vehicle rashly and negligently and failed to exercise due care and control on the bus. The accused gave an explanation of his conduct in his statement recorded under Section 313, Cr.PC.

12. From the statements of the eye witnesses, statement of the accused and the statements of other prosecution witnesses and the site plan, the only picture which emerges about this occurrence is that the deceased was standing on the left side of the road and the bus was coming from Jaipur & proceeding towards Bikaner. There was a long steep upto the place of occurrence & before the steep was to be crossed, the accident took place. It was just at this juncture that the accused who according to PW 2 Raghunath was driving the vehicle slowly suddenly saw the deceased from a short distance ahead of the bus on road. In that situation, it cannot be said that the petitioner knew that the deceased will try to cross the road. Even a cautious and skilled driver in that situation will not be able to foresee & judge with accuracy whether the deceased will try to cross the road from left to right. At that moment the driver tried to stop the bus by using the brakes. This fact has been admitted by PW 2 Raghunath. It has not been proved by the prosecution as to what was the probable speed of the bus at the time when the accident took place. In the site plan (Ex.P5) it has not been mentioned that the bus slipped on the road after the brakes were used and there were no signs of the dragging of tyres on the road. This shows that the speed of the bus was normal, otherwise it could have left the signs of dragging on the road.

13. The case of the prosecution is that the deceased was knocked down by the front right wheel of the bus. As per the details given by the prosecution about this accident, it is not possible that the deceased will come left and the bus while swerving to the right side will knock down the deceased on the right side, because in that situation the deceased will always remain on the left side of the vehicle. Because of this situation it can be held that the true picture of the accident has not been brought on record by the prosecution. If the details put forward by the prosecution are admitted to be correct, then also this much is clear that the deceased suddenly tried to cross the road from left to right and at that very moment the bus driven by the accused-petitioner collided with the deceased. This

is not the case of the prosecution that the petitioner know before hand that the deceased will cross the road from left to right. But, as per the statements of PW 2 Raghunath and PW5 Bhunaram it was not possible for the petitioner to have pre-supposed that the deceased will cross the road from left to right and it was on a sudden move of the deceased that the accident occurred. If in the above mentioned circumstances it is to be inferred that there was an error of judgment on the part of the petitioner, then too it cannot be said that the petitioner was negligent or rash or unskilled driver. Error of judgment of the kind such as the one in the instant case which comes to light on coincidence reflection could not be foreseen by the accused-petitioner in that fragmented moment before the accident took place and in that case it cannot be held that the accused-petitioner was negligent particularly when in taking and executing that decision the accused-petitioner was acting with the knowledge and under the belief that this was the best course to avoid the accident and to save the life of the deceased.

14. I have discussed above that in this case it has been admitted by the prosecution witness PW2 Raghunath that the bus was being driven slowly and that the brakes were used by the petitioner before the accident took place, but the deceased suddenly crossed the road from left to right. These circumstances are such which exclude the accused from any liability of rashness or negligence.

15. In view of the foregoing discussion, I am of the opinion that the prosecution has completely failed to prove that the accused-petitioner was driving the bus rashly and negligently and because of his rash and negligent act the accident took place in which Mst. Manbhari died.

16. Accordingly, the revision petition is accepted and the judgments of the courts below are set aside. The accused-petitioner is acquitted of the charges levelled against him. He is on bail and need not surrender. His bail bonds are cancelled.