

Roop Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-19-1988

Reported in : II(1989)ACC236; 1989CriLJ241; 1988(1)WLN497

Judge : J.R. Chopra, J.

Appellant : Roop Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Sandhu

Judgement :

ORDER

J.R. Chopra, J.

1. Through this revision, the judgment of the trial Court rendered by the learned Judicial Magistrate I Class (Roadways) Hanumangarh dated 23-9-81 and the appellate judgment of the learned Addl. Sessions Judge No. 1, Hanumangarh dated 14-9-82 have been challenged on a purely legal ground. It is alleged that the trial Court as also the appellate court convicted the accused on the basis of the old Section 117 of the Motor Vehicles Act. The incident took place on 28-7-79 at about 2 P.M. when the accused was found driving Roadways-vehicle No. RSG 2724 under the influence of Alcohol. It is alleged that he had no control over the vehicle and, therefore, the Bus was unsteady. Medical examination of the accused was

not conducted and it was pointed by the Doctor that accused Roopsingh was under the influence of Alcohol. On that basis, a complaint was lodged before the learned Roadways Magistrate who held the accused guilty as aforesaid and that judgment was upheld by the learned Sessions Judge.

2. Mr. Sandhu learned Counsel appearing for the petitioner has submitted that Section 117 of the Motor Vehicles Act has been substituted by a new section which is Section 9 of the Motor Vehicles (Amendment) Act 1977 i.e. the Act No. 27/1977. The old Section 117 of the Motor Vehicles Act reads as under:

117. Driving while under the influence of drink or drugs : - Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or drug to such an extent as to be incapable of exercising proper control over the vehicle shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

3. This new section which came into force w.e.f. 1-3-77 reads as under:

117. Whoever, while driving, or attempting to drive, a motor vehicle or riding or attempting to drive, a motor cycle,-

(a) has, in his blood, alcohol in any quantity, howsoever small the quantity may be, or.

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

4. The occurrence took place on 28-7-79 Le. much after the new section came into force. He has submitted that Clause (a) of Section 117 provides that if a person is found driving or attempting to drive Motor Vehicle or is found riding or attempting to drive a motor cycle can be held guilty of this offence, if he has, in his blood, alcohol in any quantity, howsoever small the quantity may be. He has, therefore, submitted that the Doctor must opine that he has checked the blood of the accused and in that blood, the Doctor found in person, presence of alcohol in whatever quantity it may be. This case has no application so far as Clause (b) of Section 117 is concerned.

5. Mr. Sandhu has drawn my attention to a decision of their Lordships of the Supreme Court in Bachubhai Hassanalli Karyani v. State of Maharashtra reported in : (1971)3SCC930 wherein it has been held that mere smelling of alcohol from the mouth, dilation of pupils and incoherence in speech are not enough and cannot be said to conclusively prove drunkenness. Unless urine or blood test is carried out, it cannot be conclusively established that the driver of the vehicle was under the influence of alcohol. This decision was followed by the Bombay High Court in Kishanbhai Jinubhai Gavit v. State of Maharashtra reported in 1978 Cri LJ 829. Therefore, the law has been changed Even without a change of law, their Lordships of the Supreme Court held that to conclusively establish drunkenness, urine and blood test must be carried out. Now the substituted Section 117 itself of the Motor Vehicles Act provides that to ascertain the drunk's blood and urine examination must be carried out to prove drunkenness. It is immaterial whether the accused has the Control of the vehicle or has not control of the vehicle, whether his pupils are dilated or they are not dilated, whether smell is coming out from his mouth or it is not coming out of his mouth. What is now material to hold the accused guilty under Section 117(a) of Motor Vehicles Act is that his blood test must be carried out by the Doctor and if alcohol is found present in his blood in whatever small quantity it may be he can be held guilty of driving a motor vehicle in a drunken state. Even the Urine test has now become immaterial as per the substituted Section 117 of the Motor Vehicles Act

6. In this case, Dr. Smt. Sushila Choudhary has examined the accused Her certificate has been marked Ex. 3. She has recorded in this certificate that on the

examination of the accused, she found Alcoholic-smell coming out from his mouth and his pupils were dilated and on the basis of these two symptoms, she has opined that this accused was under the influence of alcohol. These two symptoms are not sufficient in holding the accused guilty of the offence under Section 117 of the Motor Vehicles Act.

7. I, therefore, accept this revision, set aside the conviction of accused petitioner recorded by the Judicial Magistrate (Roadways), Hanumangarh and upheld by the learned Addl. Sessions Judge No. 1, Hanumangarh vide his judgment dated 14-9-1982 and acquit him of the aforesaid offence. He is on bail. He need not surrender to his bail bonds.

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