

Kan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-02-1988

Reported in : 1989WLN(UC)10

Judge : Miss Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Revision Petition No. 82 of 1981

Appellant : Kan Singh

Respondent : State of Rajasthan

Disposition : Petition Allowed

Judgement :

Miss Kanta Bhatnagar, J.

1. Petitioner Kan Singh, was tried for the charge under Section 304A and 279 of the Indian Penal Code by the Munsif & judicial Magistrate, Jodhpur District, Jodhpur. He was held guilty for the aforesaid charges and vide judgment dated 17th July, 1980 sentenced to one month's rigorous imprisonment for the offence under Section 279, IPC and 6 month's rigorous imprisonment and a fine of Rs. 200/-, in default to undergo three months' simple imprisonment for the offence under Section 304A, Indian Penal Code. Aggreived petition Kan Singh preferred appeal which was rejected bu the learned Additional Sessions Judge No. 1,

Jodhpur vide judgment dated 20th February, 1981.

2. Briefly stated, the prosecution case leading to the trial of the petitioner and his conviction was that on 24-11-1974 at about 10 a.m. near bus stand Sarecha, he while driving bus RSQ 2439, caused injuries to Nathu Singh who succumbed to the those injuries while taken to the hospital. The allegation against the petitioner was that he was driving the bus rashly and negligence which resulted into the accident causing death of the Nathu Singh. Prosecution examined 11 witnesses. In his statement under sect. on 313 Cr.P.C. the petitioner denied the allegation levelled against him and stated that he was not driving the vehicle rashly or negligence. Two defence witnesses were examined.

3. The learned Counsel for the petitioner strenuously contended that there is not an (sic) of evidence to substantiate the prosecution case that the accident had taken place on account of the rashness and negligence of the petitioner. According to Mr. Gaur, the learned council for the petitioner, even from the prosecution witnesses, it is established that the accident had taken place on the road and therefore, the finding of the trial Magistrate that the accused had taken the vehicle on the Kachcha route where the bus hit Nathu Singh, stands falsified. It has also been stressed that neither the Investigating Officer nor the doctor who conducted the post mortem examination, have been examined by the prosecution Mr. Gaur submitted that the post mortem report was of course admitted by the council representing the accused but not a single question was put to the accused in his statement under Section 313 Cr.P.C. regarding the contents of the post mortem examination report. According to the learned council when prosecution could not establish that the accident had been caused on account of the rash driving of the accused petitioner, the finding of the two courts below do n not stand justified.

4. The learned Public Prosecutor controverted these arguments and submitted that from the statement of Mukna Ram and Bhoor Singh who were standing by the side of the deceased, it is proved that because of the negligence of the bus driver Nathu Singh met an incident which resulted into his death. Regarding the post mortem examination, the submission of the learned Public Prosecutor is that there

was no necessity of any question when the report was admitted.

5. There is no dispute on the point that it was the bus RSQ 2439 driven by the petitioner which had caused the accident which resulted into the death of Nathu Singh. The pertinent point to be determined is whether the petitioner was rash or negligent in driving or he was driving the vehicle carefully and the accident was a major. The prosecution version is that the deceased along with a few others, including Mukna Ram and Bhoor Singh, was standing by the side of a 'Nishan Truck' carrying milk. When the bus reached near that truck, the deceased was hit by the bumper of the bus, and fell down and was crushed by the wheel of the bus. The defence version is that the deceased had just jumped from the Nishan Truck and at that juncture he got injured by the bus driven by the petitioner.

6. It is important to note that even Bhura Singh, the informant has stated that the bus was being driven at slow speed. Similar is the version of other prosecution witnesses that the bus was being driven at slow speed because it was to stop at the bus stand which was near the place of the incident. The learned Magistrate has also opined that the bus was being driven at speed of 20/25 Kilometer per hour and had stopped at a distance of 7 feet only after the accident. The learned Magistrate has specifically observed that it is not a case of rash driving. The learned Magistrate, has how ever, held the petitioner guilty of negligent driving on the ground that the bus had gone to the Kachcha route where Nathu Singh and a few others were standing. The learned Appellate Judge has affirmed the findings of the trial court. Ordinarily, while deciding a revision petition, this Court does not enter into the niceties of the evidence but then the learned Counsel for the petitioner drew my attention to the statements of the witnesses and submitted that the accident had taken place on the Kachcha route is not borne out from the record, I carefully examined the statements of the witnesses. Bhoor Singh is the most important witness in the matter He was an eye witness to the occurrence. He has initially stated that the bus had not gone on the Kachcha route. Then in the next breadth he stated that it had gone down 2 feet towards the Kachcha route. His attention was drawn to portion C to D of Ex. P 3, the memo prepared at the site and he admitted it to be correct. At that portion it has been stated that the blood was on the road and there the accident had taken place. Mahmood Khan,

Laxmi Narayan and Suwa Lal examined as prosecution witnesses were in the bus at the time. They have stated that when the accident took place, the bus was on Pukka Road. The breadth of the road is said to be 12 feet. Two defence witnesses, namely Mal Chand and Narayan Lal, were also there in the bus at the relevant time and have supported the defence version. Bhura Singh has admitted portion E to F of Ex. P 3 to be correct. It has been mentioned there in that just when Nathu Singh got down from the Nishan truck the bus reached the site and the bumper hit Nathu Singh and he fell down and was crushed by the wheel of the bus. Apart from the two defence witnesses stated above who were there in the bus at the relevant time namely Laxmi Narayan (PW 4) Suwa Lal (PW 5), have stated that Nathu Singh had jumped from the truck and was hit by the bumper of the bus. It is very important to note that for the reasons best known to the prosecution, the Investigating Officer has not been examined. For that reason the site inspection memo and the site plan said to have been prepared by the Investigating Officer could not be proved and I am not in a position to make out as to what exactly was the place of accident and what was the distance between the Nishan truck and the bus at the time of the accident. From the careful examination of the statements of the witnesses, I am inclined to hold that prosecution has failed to prove beyond reasonable doubt that the accident was on account of negligence of the driver. As stated earlier, even the trial court has not held the petitioner guilty for driving the vehicle rashly. In due circumstances, it is a fit case in which the accused may be given benefit of doubt and I accordingly do so.

7. Consequently, the revision petition Kan Singh is allowed. The conviction and sentence of the petitioner are set aside and he is acquitted of the charge. He is on bail. His bail bonds stand discharged.