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Court : Rajasthan

Decided On : Aug-26-1997

Reported in : 1998CriLJ716; 1998(3)WLC614

Judge : B.J. Shethna, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4 and 12; Code of Criminal Procedure (CrPC) - Sections 360 and 361; [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304A

Appeal No. : Criminal Rev. Petn. No. 326 of 1997

Appellant : Ganpat Singh

Respondent : State of Rajasthan

Advocate for Def. : Bhati, Adv.

Advocate for Pet/Ap. : Suresh Kumbhat, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.J. Shethna, J.

1. Heard the learned counsel Shri Kumbhat for the petitioner and Shri Bhali for the State.

2. This revision petition is arising out of the judgment and order of conviction and sentence recorded by the courts below convicting the petitioner accused for the offence punishable under Section 304A, I.P.C. and sentenced him to suffer one year S.I. and pay fine of Rs, 500/-, in default to further under go one month's S.I. and for the offence under Section 279, I.P.C. to suffer six months S.I. and to pay fine of Rs. 500/-, in default to further under go one month's S.I. which was confirmed in appeal by the learned Addl. Sessions Judge, Pali. On 20-10-1989 in a road accident life on an innocent child of 5 years, who has not even seen the world property, lost his life because of rash and negligent driving of the petitioner accused who was driving a bus on that day. He drove the bus in such an excess speed and in such a rash and negligent manner that he knocked down a pillion rider sitting on the bicycle/from behind and crushed under the rear wheel of his bus in the broad day light a about 7-7.30 a.m. Not only that he ran away with the bus though persons over there raised shout to stop the bus. After the court below concurrently found that the accused was guilty for the offence under Section 279, 304, I.P.C. for rash and negligent driving, therefore, convicted and sentenced him as stated above.

3. Learned counsel Shri Kumbhat first submitted that no test identification parade was held in this case. He submitted that three prosecution witnesses have failed to identify the accused. This submission of Mr. Kumbhat loses all its significance when the accused himself stated that he was not driving the bus in rash and negligent manner.

4. Second submission raised by Shri Kumbhat there was no evidence regarding rash and negligent driving. It is true that merely because the bus was driven in an excessive speed itself would not constitute an act of rash and negligent driving. But, in this case there is an ample evidence that bus was not only driven in an excessive speed but absolutely in a rash and negligent manner by the petitioner. The child was a pillion rider sitting on a bycycle and was knocked down from behind by the petitioner while driving the bus in a rash and negligent manner and

crushed under the rear wheel of the bus. The persons over there raised shout to stop the bus but he did not even stop the bus and ran away. The Courts below have also considered these aspects and also the 'panchanama' which goes to show that the petitioner was driving the bus in a rash and negligent manner. The facts of the present case speak for itself. No other conclusion can be drawn except that the petitioner was rash and negligent while driving the bus and an innocent child of 5 years lost his life.

5. Mr. Kumbhat then contended that the petitioner should have been given the benefit of probation by the courts below. He submitted that no good reasons are assigned by the courts below for not granting the probation. In support of his submission Shri Kumbhat has relied upon the Supreme Court judgment in case of Aitha Chander Rao v. State of Andhra Pradesh reported in 1982 Cri LR (SC) 7. It is true that in that case the Hon'ble Supreme Court has granted benefit of probation to the accused, it is a small order which I would like to reproduce :

This appeal by special leave is directed against the judgment of the High Court of Andhra Pradesh affirming the conviction of the appellant under Section 304A, I.P.C. for 2 years' R.I. and a fine of Rs. 500/-. After having gone through the judgment of the courts below, we do not find any reason to interfere with the merits of the appeal. The only question that may be considered is if it is a proper case in which the appellant may be released on probation. The Sessions Judge had found that there was some amount of contributory negligence on the part of the appellant' and having regard to the peculiar circumstances of this case we think it is eminently a fit case in which the appellant may be released on probation. We therefore suspend the sentence of imprisonment only maintaining the fine imposed on the appellant and instead release him on probation of good conduct under Section 4 of the Probation of Offenders Act and Section 361, Cr.P.C. The appellant shall execute a bond of Rs. 1 000/- for maintaining peace and good behaviour for a period of one year and if he violates any condition of the bond, he may be called upon to surrender and serve the remaining part of the sentence. Out of the fine of Rs. 500/-, the entire amount shall be paid as compensation to the widow and legal heirs of the deceased.

2. As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of Offenders Act. The appeal is disposed of with the aforesaid, observations.

6. What were the facts of that case, we are not able to get from the above order. It appears that the earlier Judgment of the Apex Court in case of Rattan Singh v. State of Punjab reported in AIR 1980 SC 84 : 1980 Cri LJ 11 was not brought to the notice of the Hon'ble judges of the Supreme Court. In that case the Apex Court has specifically ruled out the granting of probation to the accused who was convicted for the offence under Section 304A, I.P.C. for rash and negligent driving. If that judgment was pointed out then perhaps in a subsequent Judgment of Aitha Chandra case (supra) the Apex Court might not have granted the benefit of probation. There is yet another recent judgment of Apex Court in case of A.P. Raju v. State of Orissa reported in 1996 (1) All Cri LR 452, wherein, the Apex Court granted the benefit of probation to the accused who was convicted for the offence under Section 304A, I.P.C. for rash and negligent driving. That was a case of accused who was driving the bus belonging to Orissa State Road Transport Corporation. The accident in that case took place way back in 1979. The trial Court acquitted the accused, however, in an acquittal appeal acquittal was reversed by the High Court and the accused was convicted and sentenced. The Apex Court confirmed the order of conviction recorded by the High Court but granted probation under Section 360, Cr.P.C. on the ground that occurrence took place almost 15 years back and the accused was acquitted by the trial Court in 1981. After the High Court convicted the accused special leave petition was filed in 1985 which was granted and the operation of the Judgment was stayed and the accused was granted bail by the Apex Court in 1985 itself. Thus, for more than 8 years accused remained on bail. Taking into consideration all the above factors the Apex Court thought it fit to extend the benefit of probation to the accused and accordingly released him on probation. The facts of this case are totally different than the facts of A.P. Raju's case (supra).

7. That apart, as stated earlier, Rattan Singh's case (1980 Cri LJ 11) (supra) was never brought to the notice of Hon'ble Supreme Court. Relying upon the Rattan Singh's case (supra) in S.B. Criminal Revision Petition No. 316/88 decided on 29-

7-1997 (reported in 1997 Cri LJ 4353) I have held that benefit of probation cannot be extended in a case where the accused is convicted for the offence under Section 304A, I.P.C.

8. In view of the above discussion, there is no question of extending the benefit of probation to the accused as submitted by Shri Kumbhat.

9. Lastly, Mr. Kumbhat submitted that the petitioner has remained in jail for more than a month. He submitted that incident in question took place in 1989 and almost 8 years have passed by now. He also submitted that now the petitioner is aged about 61 years, therefore, order of sentence as already under gone may be passed. In support of his submission he relied upon several judgments of this Court : (i) Simrath Singh v. State of Rajasthan reported in 1995 (2) Raj LW 254 : 1995 Cri LJ 3525; (ii) Prakash Chand v. State of Rajasthan reported in 1996 WLC (Rajasthan) 758, (iii) Raja Ram v. State of Rajasthan reported in 1996 Cri LR (Raj) 474 and Om Prakash v. State of Rajasthan reported in 1996 Cr LR (Raj) 749. Sentence is a discretion part of the Court. It depend to upon the facts and circumstances of each case. There cannot be any hard and fast rule. The accused has remained in jail hardly for a month. The courts below have ordered S.I. and not R.I. and that too for a period of one year only where the maximum is provided for two years. In Rattan Singh's case (1980 Cri LJ 11) (SC) (supra) the sentence was two years still the Apex Court confirmed it. In my view, the facts of this case call for maximum sentence of two years R.I. but as no enhancement appeal is filed, therefore, there is no question of enhancing the sentence in this case. The petitioner drove the bus in such a rash and negligent manner that he knocked down a child aged only 5 years sitting on bicycle and crushed under the rear wheel of the bus and he has not even stopped the bus even though shouts were raised. Such persons do not deserve any sympathy.

10. In view of the above discussion, this petition fails and is hereby dismissed at the admission stage.