

Om Prakash Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-27-1990

Reported in : 1990(2)WLN599

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cri. Revi. Petition No. 31 of 1989

Appellant : Om Prakash

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

N.L. Tibrewal, J.

1. This revision is directed against the judgment-dated 23.1.1989 passed by the learned Addl. Sessions Judge No. 2 Ajmer in Criminal Appeal No. 17/86 by which the conviction of the petitioner Under Section 304A IPC and sentences passed against him by the Judicial Magistrate No. 1, Ajmer were maintained.

2. The facts of the case are that a report was lodged at police station, Civil Lines, Ajmer on 5.1.1981 by one Anna Singh. In the said report it was stated that he (informant) and one Bhanwar Singh both were standing near a tree and were talking then one truck bearing No. R.S.Z. 1175 came from Ajmer side and struck to

his grandson Surendra @ Pappu who was aged 6 1/2 years, while he was crossing the road. It is alleged that the boy had already covered 3/4 of the road but before he could cross the road the truck struck to him and the boy was run over from the right-side wheel of the truck.

3. On the aforesaid report, police registered criminal case Under Section 304 IPC. After usual investigation a charge sheet was filed against the petitioner Under Section 304A IPC and the petitioner was prosecuted in the Court of learned Judicial Magistrate No. 1, Ajmer. The learned Magistrate after recording the statement of the witnesses and completion of the trial convicted the petitioner Under Section 304A IPC and sentenced him to undergo 11/2 years R.I. and to pay fine of Rs. 300/-, in default of payment of fine he was required to further undergo 2 months S.I. Against the aforesaid conviction and sentence, the petitioner filed an appeal which was heard and disposed of by the learned Addl. District & Sessions Judge No. 2 Ajmer but, without any success as the appeal was dismissed vide judgment dated 23.1.1989. Now the petitioner has come before this Court by preferring this revision Under Section 397/304A IPC.

4. The main contention of the learned Counsel for the petitioner is that from the material on record itself no offence Under Section 304A is made out against the petitioner, in as much as the boy who was aged 6 1/2 years, came running to cross the road and while he was crossing the road the petitioner's truck happened to come there and as such the accident took place. In the alternative the learned Counsel for the petitioner submits that the incident is of the year 1981 and the petitioner was below 21 years of age at the time of the incident as such the benefit of probation should be granted to him. Contrary to this, the learned P.P. supports the conviction and the sentences passed against the petitioner.

5. On the facts narrated above, the prosecution case itself is, as per the report, that the accident took place when the boy aged 6 1/2 years was crossing the road and then the truck came all of a sudden and the accident took place PW 1 Anna Singh who was the informant and is also an eye-witness of the incident has stated in his examination-in-chief that the grandson of Bhanwar Singh aged 6 1/2 years came on the road to cross it for going to his house. He also stated that he had

crossed 3/4th of the road, in the meantime the truck came and collided with the boy. He further stated that the truck stopped after covering a distance of 25-30 feet when the driver applied the brake. In cross-examination he stated that he and Bhanwar Singh did not alarm the boy when the truck was approaching to him.

6. P.W. 2, Bhanwar Singh is the maternal grandfather of the boy and he also claims to be an eyewitness of the incident. He also stated in the examination-in-chief itself that his grand-son Surendra @ Pappu, aged 6 1/2 years, was crossing the road while he was coming from his 'Bada' to his house and the truck collided to him on the road when the boy had crossed 3/4th part of the road. He also stated that no vehicle was coming from the opposite side and there were only two eyewitnesses namely, he himself and P.W. 1 Anna Singh.

7. Thus from the aforesaid statements of witnesses as well as from the FIR one thing is clearly born out that the accident took place on the road and the accident took place when the boy was crossing the road for going to his house from 'Bada'. From the statement of P.W. 1 it also transpires that the petitioner applied the brake but could not save the accident.

8. The question, then arises, under the aforesaid facts and circumstances, can it be said that the petitioner was driving the truck rashly or negligently?

9. It cannot be disputed that before recording the conviction of the driver Under Section 304A IPC the act of rashness or negligence should be culpable and in a case when the accident takes place where the driver is put in such a position that he cannot avoid the accident then in that situation he cannot be held liable Under Section 304A IPC. In this connection a reference can be made to the decision in Mahadeo Hari Lokre v. The State of Maharashtra : 1972 CriLJ49 . The facts in that case were that one Ravikant was run over by a bus while he was crossing, the road without taking note of the crossing bus. The Hon'ble Supreme Court abserved:

But the case assumes a different complexion if we agree with the sole eye witness in the case Dayanand PW 1 that at the time of the impact Ravikant was actually crossing the road from West to East. That would mean that if-Ravikant suddenly

crossed the road from West to East without taking note of the approaching bus there was every possibility of his dashing against the bus without the Driver becoming aware of his crossing till it was too late. If a person suddenly crosses the road the Bus Driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore, it will not be possible to hold that the Bus Driver was negligent.

10. The aforesaid principle squarely applies in the present case. The admitted facts are that the boy, aged 61/2 year, was crossing the road from West to East then the truck approached suddenly. In a case of crossing the road by a boy all of a sudden then it becomes very difficult for a vehicle drivers specially for a heavy vehicle driver, to stop the truck immediately even though he might have driven it slowly. In my view and on the principles Laid down by the Hon'ble Supreme Court it cannot be held that the petitioner was guilty of rash or negligent driving but the possibility cannot be rule out that the boy struck to the truck while he was crossing the road running from West of East.

11. My aforesaid conclusion also gets support from the site plan Ex.P 3. In such state of affairs I think it proper, to. Give the benefit of doubt to the accused petitioner. Consequently I allow this revision and set aside the conviction and sentences of the petitioner Under Section 304A IPC. He is on bail and need not surrender.