

Sita Ram Vs. the State

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Court : Rajasthan

Decided On : Sep-11-1975

Reported in : 1975WLN(UC)347

Judge : P.D. Kudal, J.

Appeal No. : S.B. Criminal Revision No. 127 of 1972

Appellant : Sita Ram

Respondent : The State

Disposition : Petition allowed

Judgement :

P.D. Kudal, J.

1. This is a criminal revision against the order of the learned Addl Sessions Judge. Kota dated 8-2-1972. The accused was tried the learned 278 and 304A, IPC by the learned Additional Munsiff Magistrate, No. 4 Kota and was Sentenced to six months rigorous imprisonment for the offence under Section 279 IPC & one year's rigorous Imprisonment with a fine of Rs. 300 for under the offence Section 304A, IPC, in default of payment of fine he Rs. 300 for to undergo further simple imprisonment for two month The substantive sentences were orderd to run concurrently.

2. The prosecution case is that on 13/3/1962 at about 6.30 P.M the accused was driving the truck RJR No. 3123. The truck was coming from Jhalawar side. One Ram Chandra and his son. aged 6 years, was standing on the one side of the road in expectation of a bus. The mother of Latur was standing on the other side of the road. The child Latur tried to cross the road, and while doing so. he was run down by the truck resulting in his instantaneous death Latur was struck down on the right hand side of the road when he was only 2 to 3 ft. away from the foot-path after covering a distance of 20 to 25. The prosecution case is that the accused was driving the truck at a great speed, and was thus acting rashly and negligently. The prosecution examined 17 witnesses in support of the case. The statement of Prosecution was recorded under Section 342, Cr.P.C. wherein he has admitted that the child Latur was struck down by his truck, but he has pleaded that there is no fault on his part. The child suddenly wanted to cross the road, and as such collided with the rear left wheel of the truck. Under these circumstances, no liability can be fixed on the accused. The accused did not lead any evidence in defence. The accused applicant was convicted as indicated above and his appeal before the learned Addl Session. Judge, Kota met with no success.

3. On behalf of the accused-applicant it was contended that the judgments of the lower Courts are no judgments in the eye of law, as the evidence has not at all been properly screened and analysed. It was contended that the father of the boy Ram Chandra (PW 3) was declared hostile other witnesses had changed their version substantially in comparison to their statements under Section 161, Cr.P.C before the police. It was further contended that the road was clear and the truck was moving at a normal speed & that the child all of the sudden took into his mind to (sic) cross the road, and, & collided against the rear left wheel of the truck. Under these circumstances, it was contended that the accused cannot be held responsible for the negligent act of the child himself. It was also contended that the Mechanical Inspector had examined the vehicle, but he was not produced in evidence, which goes to show that the vehicle was in perfect condition.

4. On behalf of the State, it was contended that a Court of revision has a very limited jurisdiction, and that the learned lower Courts have come to the conclusion that the accused was driving the vehicle rashly and negligently as a result of which

the child was run over, and was lured on the spot. It was further contended that the very fact that the truck could stop only after having covered about 80' from the place where it collided with the child, goes to show that the truck was being driven at a high speed.

5. The respective contentions of the learned Counsel for the parties have been considered, and the record of the case perused. In *Amar Chand v. Shanti Bose* : 1973 CriLJ577 , it was held that the jurisdiction under Section 439, is normally to be exercised only in exceptional cases. When there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

6. In this case, the accused moved the High Court at the time when the trial was almost coming to a close, and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its legal conclusion, one way or the other, and decline to interfere with these proceedings. The questions there was whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence. This ruling, though relied on behalf of the State, does not in any way apply to the facts of the present case.

7. PW/1 Abdul Gafoor is the photographer, who has taken some photographs at the instance of the SHO. PW/2 Shivpal Singh is a motbir, and his evidence is hardly relevant. PW/3 Ram Chandra is the father of the child Latur, who was struck down by the truck. He has stated that he does not see the truck coming. At the instance of the prosecution, this witness has been declared hostile. PW/4 Nandu is the mother of the child Latur. She has stated that her husband Ram Chandra was standing on the other side of the road with Latur, and that she was standing on the opposite side of the road. Latur wanted to cross the road, but was

struck down by the truck. The driver did not blow the horn, and did not use the brakes otherwise the accident could have been avoided. The child was coming slowly towards her through the road, and when she saw the truck coming she wanted to catch hold of the boy, but as the truck had drawn too much near she could not save him. The witness was confronted with her statement before the police under Section 161, Cr.P.C. to the various portions. She stated that when her son came running towards her, she tried to catch him, but could not do so. The rear wheel of the truck collided with the head of Latur. PW/5 Mst. Shanti was also declared hostile and has not stated anything material about the case PW/6 Mohan stated that the truck was coming at a great speed. Latur ran from the other side of the road. He collided with the front wheel of the truck, and was run over by the rear wheel. The driver did not blow the horn. The truck stopped after having covered about 20 yards after the accident. He has further stated that three vehicles could pass this road. The boy had suddenly run to cross the road. He has further stated that he saw the boy running and being run over by the truck, but did not see anything intervening. He has further stated that the boy came under the truck from the front side, and was run over by the right rear wheel. The witness was confronted with his statement recorded under Section 161, Cr.P.C. wherein he has stated that at the time the boy suddenly wanted to cross the road from the point near the Chunidas Hotel. He saw the boy dead when he heard the voice of the accident. He did not see the boy being crushed by the vehicle as he was busy taking tea. PW/7 Roopa has stated that the truck was coming with full speed. The boy was trying to follow his father when he collided against the truck. The boy collided against the truck. The truck could be stopped only at a distance of 50 to 60 paces after having collided with the store. He has further stated in cross-examination that the boy was run over by the front wheel and not by the rear wheel. The witness was confronted with his statement under Section 161, Cr.P.C., but he denied them. PW/8 Rema has stated that the truck had collided with the front wheel, at the time when the boy was crossing the road. The driver did not blow the horn. He has further stated that it is wrong that the child collided with the rear wheel. He was also confronted with his statements under Section 161, Cr.P.C. PW/9 Natlu Lal stated that he was taking tea (sic) the place where the accident took place, The truck was coming at the speed of 26 to 30 miles. He did

not bear the brunt of the truck. He could not see anything about the accident as he was facing the hotel. This witness has denied having deposed before the police that the head of the child collided with the left rear wheel of the truck, and was crushed, and that he died there. PW/10 Vijay Singh is a constable of the police, and is only a formal witness. PW/ 11 (sic) also a formal witness. PW/12 Dr. S.S. Buxi performed the post-mortem PW/13 Prabhu is also a formal witness PW/14 Abdul Majid is the SHO who conducted the investigations. He has stated that the truck was coming at a great speed when the child was with his mother running towards his father. The mother tried to catch hold of the child, but she could not succeed. The child collided with the truck and died; but the truck stopped after 15 or 20 paces from the place of the accident. The child came under the left rear wheel of the truck. In cross-examination, he has stated that it was not found out by investigation that the child was struck by the left rear wheel of the truck. The witness further stated that the child collided with the right wheel. Then the witness corrected himself that after seeing the record he states that the child collided with the left rear wheel PW/15 and PW/16 are formal witnesses PW/17 is Kalyan Singh, Head Constable. He has stated that the truck was coming with usual speed. It was neither too fast nor too slow. The child collided with the left rear wheel and was run over. He has also stated that he cannot say at what distance the truck was, when the boy started running

8. The learned Counsel for the accused relied on State v. Hari Singh 1968 RLW 485, wherein the following observations have been made :

The mere fact that a fatal accident took place would not by itself be enough to make the accused liable under Section 304A, IPC. To bring home an offence under this Section, it must be proved beyond reasonable doubt by the prosecution that the death of the victim was the direct result of rashness or negligence on the part of the accused.

In order to impose criminal liability on the accused, it must be found as a fact that the collision was entirely or at least mainly due to rashness or negligence on the part of the accused. It is not sufficient if it is only found that the accused was driving the vehicle at a fast speed.

It is plain from the prosecution evidence itself that the bus was being driven with a normal speed and towards the correct side of the road. It is also manifest from the prosecution evidence that Kumari Indu, who was coming on a bicycle from the northern side of the road, did not wait till the bus passed off and took a turn on her right side of the road. The fact that she was knocked down by the rear wheel of the bus and not by the front wheel or mud guard further indicates that the mishap was not the result of negligence or rashness on the part of the driver. It is further plain from the prosecution evidence itself that the driver stopped the bus, after taking it towards the extreme left, at a distance of about 7 ft. from the actual place of the accident.

When there was no rashness or negligence on the part of the bus driver, for having killed the girl, so far as the use of the road and manner of driving the bus was concerned, the fact that the vehicle of the accused had free play cannot be taken into consideration in convicting the accused under Section 304A, IPC. though it can be made the subject of prosecution under the Motor Vehicles Act, when it is clear that the defect in question was not in any way responsible for the accident.

When a person is run over by a bus and is crushed on the spot, the spectators are prejudiced against the driver of the vehicle and in such a case it becomes difficult for the court to ascertain the circumstances of the case. It is possible that the present mishap took place because the girl abruptly padded from the left side of the road towards its right, without knowing its consequences. The lorry stopped at a distance of about 7 ft. away from the place of the accident. In that circumstance, the accused cannot be held liable for the accident.

9. The learned Counsel for the accused also relied on H.H. Lokre v. State of Maharashtra : 1972 CriLJ49 , wherein it has been held as under :

It must be said that there is really no good evidence on the side of the prosecution to show how exactly the accident took place.

XXX XXX XXX XXX XXX XXX XXX 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 In the present case, there is no evidence how the accident took place. Child Latur was standing by the side of his father Ram Chandra, and suddenly he ran to cross the road to go to his mother, who was standing on the other side of the road. Ram Chandra PW/3, the father of the child, has not witnessed how the collision took place. This leads to the irresistible conclusion that the child suddenly thought of crossing the road. This fact is also borne out by the evidence of the other prosecution witnesses, as indicated above. The SHO, PW/14 Abdul Majid has wavered in his evidence and has elated, firstly, that the collision took place with the front wheel; then stated that the collision took place with the rear right wheel, and then ultimately he took the stand that the collision took place with the rear left wheel. The learned Addl. Sessions Judge has observed that the brakes of the truck were not sound; but there is no evidence on the record on the basis of which this inference could be drawn. As a matter of fact, the SHO got the vehicle inspected by the Mechanical Inspector. But the Mechanical Inspector has not been produced in evidence, and, therefore, an inference shall have to be drawn that that vehicle was in perfect order, otherwise, the Inspector would have been examined in evidence. The learned Addl. Sessions Judge has also relied on the site-plan, and has observed that the driver must have seen the child crossing the road from a distance of 39 ft. He has relied on the site-plan, but this has not been supported by any evidence. A site-plan is not a substantive piece of evidence on which no reliance can be placed. PW/17 Kalyan Singh has said that the truck was coming on a normal speed; it was neither fast, nor slow. PW/9 Nathu Lal has stated that the truck was coming with the speed of 25 to 30 miles an hour. The learned lower Courts have drawn an inference that the accused was driving the vehicle rashly, as the truck could be stopped only at a distance of 70 to 80 ft after the accident. As the accident took place with the rear left wheel, this yardstick will not hold good, as the driver (sic) have come to know of the accident only on the noise of the people assembled there, or when the boy collided with the rear wheel. The prosecution witnesses, as indicated above, have improved upon their statements, and they have given a go by to the previous statements made under Section 161, Cr.P.C. It is extremely unfortunate that the prosecution has not been able to lead

good evidence in this case, which could bring the guilt home to the accused. Under these circumstances, the accused is entitled to the benefit of doubt,

11. For the reasons stated above, the revision filed by the accused is hereby allowed. His conviction and sentence under Section 279 and 304A, IPC are hereby set aside. He is acquitted of the charges framed against him under Sections 279 and 304A, IPC. The accused is on bail. He need not surrender, and his bail bonds are hereby cancelled.

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