

Salim Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-07-2002

Reported in : 2002(3)WLC84; 2002(4)WLN228

Judge : Sunil Kumar Garg, J.

Acts : Evidence Act - Sections 9; Indian Penal Code (IPC) - Sections 279 and 304A; [Motor Vehicles Act, 1988](#) - Sections 134, 184 and 187

Appeal No. : S.B. Criminal Revision Petition No. 588 of 2001

Appellant : Salim

Respondent : State of Rajasthan

Advocate for Def. : Anil Upadhyaya, Public Prosecutor

Advocate for Pet/Ap. : P.N. Mohanani, Adv.

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the judgment and order dated 20.8.2001 passed by the learned Sessions Judge, Balotra in Criminal Appeal No. 2/2000 by which he dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 4.1.2000 passed

by the learned Addl. Chief Judicial Magistrate, Balotra by which the learned Addl. Chief Judicial Magistrate convicted the accused petitioner for the offence under Sections 279, 304AIPC and 184 and 134/187 of the Motor Vehicles Act (hereinafter referred to as 'the MV Act') and sentenced in the following manner:-

Name of accused petitioner

Convictedu/Section

Sentence awarded

Salim

279 IPC

Two months R.I. and to pay a fine of Rs. 250/-, in default of payment of fine to further undergo 15 days S.I.

304-A IPC

Six months R.I. and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo one month S.I.

184 of MV Act

One month S.I. and to pay a fine of Rs. 250/-, in default of payment of fine to further undergo 15 day S.I.,

134/187 of MV Act

One month S.I. and to pay a fine of Rs. 250/-, in default of payment of fine to further undergo 15 days S.I.

All the above substantive sentences were ordered to run concurrently.

2. The facts giving rise to this revision petition, in short, are as follows:-

On 25.8.1995, PW3 Bhera Ram Lodged a written report Ex.P/1 with the Police Station Balotra District Barmer stating inter-alia that on that day he along with his

nephew Nainaram (hereinafter referred to as the deceased) at noon started from his house after taking food towards his field and they were going on the side of the road and at that time, from the side of Balotra, a Truck bearing No. GJ 7/T 8236 came with fast speed and dashed against the deceased from the back side, as a result of which, deceased fell down on the earth and the Truck passed over the body of the deceased and dragged him upto 7-8 feet and, thereafter, deceased died on the spot and this incident was, witnesses by PW1 Dalpal Singh and PW2 Beenjraj Singh.

On this report, police registered the case and chalked out regular FIR Ex.P/12 and started investigation.

During investigation, site plan Ex;P/3 was prepared by-PW9 Lala Ram and the post mortem of the body of the deceased was not conducted by PW4 Dr. Dinesh Kumar Charan and the post mortem report is Ex.P/4 and Ex.P/5.

After usual investigation, police submitted challan for the offence under Sections 279, 304A IPC, 134/187 and 184 of the MV Act against the accused petitioner in the Court of Addl. Chief Judicial Magistrate, Balotra.

On 31.7.1976, the contents of the charges for the offence under Sections 279, 304A IPC, 184 and 134/187 of the MV Act were read over and explained to the accused petitioner, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined as many as 9 witnesses and got exhibited some documents. Thereafter, statement of the accused petitioner under Section 313 Cr.P.C. was recorded. No evidence was produced in defence by the accused petitioner.

After conclusion of trial, the learned Addl. Chief Judicial Magistrate, Balotra through his Judgment and order 4.1.2000 convicted the accused petitioner for the offence under Sections 279, 304A IPC and 184 and 134/187 of the MV Act and sentenced him in the manner as indicated above holding inter-alia:-

1. That at the time of alleged accident, the accused petitioner was driving the Truck in question and he was driving the Truck rashly and negligently and in

coming to that conclusion, the learned Addl. Chief Judicial Magistrate has placed reliance on the statements of PW1 Dalpat Singh and PW2 Beenraj Singh.

2. That prosecution has proved its case beyond all reasonable doubts against the accused petitioner.

Aggrieved from the said judgment and order dated 4.1.2000 passed by the learned Addl. Chief Judicial Magistrate, Balotra, the accused petitioner preferred appeal before the learned Sessions Judge, Balotra. The learned Sessions Judge, Balotra through his judgment and order dated 20.8.2001 dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 4.1.2000 passed by the learned Addl. Chief Judicial Magistrate, Balotra.

Aggrieved from the said judgment and order dated 20.8.2001 passed by the learned Sessions Judge Balotra, the accused petitioner has preferred the present revision petition before this Court.

3. In this revision petition, it has been submitted by the learned counsel appearing for the accused petitioner that the findings of the courts below on the point that at the time of alleged accident, the Truck in question was being driven by the present accused petitioner are palpably erroneous one as there is no oral or documentary evidence to prove that fact and for that it has been submitted by the learned counsel for the accused petitioner:-

(1) That the name of the accused petitioner has not been mentioned in the FIR.

(2) That identification parade for establishing the identity of the accused petitioner was not conducted in the present case.

(3) That so-called eye witnesses, namely, PW1 Dalpat Singh and PW2 Beenraj Singh have for the first time identified the accused petitioner in the Court and such identification has no value in the eye of law.

Thus, the basic requirement that at the time of alleged accident, the Truck in question was being driven by the accused petitioner has not been established by the prosecution and in these circumstances, the findings of both the courts below

are erroneous one and the same are liable to be set aside.

Hence, it was prayed that this appeal be allowed and the accused petitioner be acquitted of the charges framed against him.

4. On the other hand, the learned Public Prosecutor supported the impugned judgments and orders passed by the courts below.

5. I have heard the learned counsel of the accused petitioner and the learned Public Prosecutor and perused the record of the case.

6. To prove the charge for the offence under Section 304-A IPC, the prosecution has to prove the following three points:-

(1) the death of the person in question;

(2) that the accused caused such death;

(3) that such act of the accused was rash or negligent, although it did not amount to culpable homicide.

7. So far as the points No. 1 and 3 are concerned, they are not much in dispute and the learned counsel for the accused petitioner has mainly stressed on point No. 2.

8. There is no dispute in this case that the report Ex.P/1 does not bear the name of the accused petitioner. There is also no dispute in this case that no identification parade for identification of the accused petitioner was got conducted during investigation by the police.

9. So far as the statement of PW3 Bheraram, who lodged the report Ex.P/1 is concerned, he has categorically stated that after the alleged accident, the driver of the Truck in question fled away from the scene. He has further stated that the driver of the Truck in question was not seen by him after the accident. Thus, the statement of PW3 Bheraram is of no value for establishing the identity of the accused petitioner.

10. From the statement of PW3 Bheraram and the report Ex.P/1, it further appears that the accident was witnessed by PW1 Dalpat Singh and PW2 Beenjraj Singh.
11. PW1 Dalpat Singh in his statement recorded in Court states in the examination-in-chief that the Truck in question was being driven by the accused petitioner, but in cross examination, he has admitted that the name of the accused petitioner was known to him when he came to give evidence in the Court and he did not know the accused petitioner before the alleged accident and he was not in a position to ask the name of the accused petitioner on the date of accident as he ran away after the accident. He has further admitted that after the accident, he for the first time saw the accused petitioner in the Court and before that accident, the accused petitioner was not known to him and by attending the court peshies, he came to know the name of the accused petitioner. He has further admitted that he identified the accused petitioner for the first time in Court.
12. Similar type of statement has been given by another eye witness PW2 Beenjraj Singh and he has further admitted that while attending the court peshies he came to know the name of the accused petitioner.
13. The question that arises for consideration is whether the findings of both the courts below that by the statements of PW1 Dalpat Singh and PW2 Beenjraj Singh, the identity of the accused petitioner has been established, are liable to be confirmed or not in this revision petition.
14. In Kanan and Ors. v. State of Kerala (1), the Hon'ble Supreme Court has held that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous Identification parade to test his powers of observations. The idea of holding T.I. parade under Section 9 is to test the veracity of the witness on the question of capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.
15. Thus, from the above authority, it becomes very much clear that identification for the first time in Court has no value.

16. The Court is aware that failure to hold test identification of accused is not fatal in all cases, if the accused is well known to prosecution witnesses before the incident.

17. In the present case, both the eye witnesses PW1 Dalpal Singh and PW2 Beenjraj Singh have stated that the accused petitioner was not known to them and from the statement of PW3 Bheraram, who lodged the report Ex.P/1, it is also crystal clear that the accused ran away just after the alleged accident and in these circumstances, the possibility of seeing accused by the two eye witnesses PW1 Dalpat Singh and PW2 Beenjraj Singh by face is also doubtful, especially when accused was not known to them.

18. When the evidence of identification for the first time in Court is of very little value and absence of identification parade, the so-called statements of PW1 Dalpat Singh and PW2 Beenjraj Singh for establishing the identify of the accused petitioner are of no value, especially when the name of the accused petitioner is not found in the report Ex.P/1 and none has identified the accused petitioner during investigation and that the accused petitioner was not known to them prior to alleged accident.

19. There is one more aspect in the present case that PW9 Lala Ram, who conducted investigation in this case, has stated that the driver of the Truck in question was found on the spot, but that part of his statement is falsified by the statement of PW3 Bheraram, who lodged the report Ex.P/1 and who has categorically stated that after the accident, the driver of the Truck ran away from the scene and similar are the statements of PW1 Dalpat Singh and PW2 Beenjraj Singh. Therefore, the statement of PW9 Lala Ram that accused (driver of the Truck in question) was available on the spot after accident cannot be accepted.

20. To prove the identify of the accused in any case especially in accident cases, there are some other methods also. During investigation, the police should have enquired from the owner of the Truck in question after giving him a notice as to who was driver of the Truck at the lime of alleged accident, but that was not done by the police in the present case. Therefore, in absence of that also, the identify of the accused petitioner that he was driving the Truck in question at the time of

accident, cannot be accepted.

21. For the reasons stated above, the findings of the courts below that accused petitioner was driving the Truck in question at the time of alleged accident, cannot be accepted.

22. The Court is also aware that while hearing a revision petition, the Court of revision is not entitled to re-assess and re-appraise the evidence unless it finds that the judgment to be revised suffers from some illegality or perversity or when there is glaring defect in the procedure.

23. It may be stated here that where conclusions of the courts below are grossly erroneous and great injustice has resulted therefrom, in such cases', Revisional Court may re-assessee the evidence.

24. Similarly, in the present case, from the evidence on record, the identify of the accused petitioner in no manner has been established by the prosecution to prove the fact that on the relevant day, the driver of the Truck in question was accused petitioner. In these circumstances, the findings of conviction recorded by the courts below cannot be sustained and they are to be interfered with by this Court as they suffer from basic infirmity.

25. Apart from this, if the identity of sole accused is in doubt, findings of conviction should not be sustained and whole case of the prosecution should end in acquittal. From this point of view also, the accused petitioner is entitled to acquittal.

26. For the reasons stated above, the findings of conviction recorded by both the courts below cannot be sustained and the same are liable to be set aside and this revision petition deserves to be allowed and the accused petitioner is entitled to acquittal.

Accordingly, this revision petition filed by the accused petitioner Salim is allowed and the impugned judgments and orders dated 20.8.2001 passed by the learned Sessions Judge, Balotra and 4.1.2000 passed by the learned Addl. Chief Judicial Magistrate, Balotra are set aside and the accused petitioner is acquitted of the charges framed against him.

Since on the date of pronouncement of judgment by the court below, the accused petitioner was not in Court, therefore, he was not sent to jail and in these circumstances, the bail bonds of the accused petitioner are hereby cancelled.

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