

Manohar Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-07-1998

Reported in : 1998CriLJ1900

Judge : Mohd. Yamin, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304A and 338; Code of Criminal Procedure (CrPC) - Sections 311 and 313

Appeal No. : Cr. Revn. Petn. No. 67 of 1989

Appellant : Manohar Singh

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Mohd. Yamin, J.

1. This is a revision against the judgment dated 28-3-89 passed by learned Sessions Judge, Merta in Cr. Appeal No. 15/83 by which the judgment and

sentence passed by Special Judicial Magistrate, Nagpur in Cr. Case No. 140/81 dated 18-1-83 was confirmed. By his judgment the learned Judicial Magistrate had convicted the petitioner under Section 304A IPC and sentenced him to undergo 6 months rigorous imprisonment and a fine of Rs. 200/-. It was further ordered that in case of default of payment of fine the accused petitioner will undergo sentence for one month rigorous imprisonment.

2. I have heard the learned counsel for the petitioner as well as learned Public Prosecutor at length and have gone through the record of the case.

3. Briefly stated the facts, as alleged by the prosecution, are that Bhagguram son of Manroop aged about 70 years was admitted in hospital Degana where he gave statement to Station House Officer, Degana, that at about 5 p.m. on 25-9-79 he and his relation Girdhari were going from Railway Station Degana towards 'mela' on their left side on foot. When they went about 1 km. from Gerodi Kama a 'fat falia' (motor-cycle) came from the opposite direction with a high speed. The driver of the vehicle came towards him on the wrong side and dashed against him. Bhagguram jumped and fell down at about 10-15 feet on the left side of the road. His left leg was broken. He also suffered injuries on the right leg. The driver of the vehicle stopped, saw towards him and then started running. Girdhari tried to stop him but the driver of the vehicle did not stop and went away towards the Railway Station, Degana. After some time a tractor came from the side of 'mela' and took him and Girdhari to hospital. First aid was given there but the compounder said that Bhagguram had suffered an injury on his head, therefore, he should be taken to the main hospital. Thereafter Girdhari brought him to Primary Health Centre, Degana. On this report a case under Sections 279 and 338 IPC was registered at Police Station Degana. Injury report of Bhagguram prepared. Bhagguram expired and his postmortem was conducted on 26-9-79. After investigation accused appellant was challaned before the learned magistrate who read over the accusation to the accused on 3-3-80 who denied his indictment. Then the learned magistrate examined 7 witnesses on behalf of the prosecution. He also examined Girdhari as Court witness. Accused petitioner was examined under Section 313 Cr.P.C. He produced one witness in defence. Then after hearing both the parties he convicted the accused petitioner as stated above. On appeal the conviction and

sentence were maintained.

4. Learned counsel for the petitioner submitted that both the Courts below have misread the evidence. He submitted that the statement of 'Bhagguram' which is the basis of FIR does not mention the name of the driver of 'fatfatia' (motorcycle). He also submitted that in ordinary parlance 'fatfatia' means a motor-cycle but as the evidence has come on record the accused petitioner was driving a scooter at the relevant time. The case of the prosecution further is that the number of the scooter is RSZ-973 but the scooter belongs to Gautam DW-1 who has stated that it was never handed over to Manohar Singh. He has also submitted that the accused petitioner was not identified by Girdhari at the time of accident and the connecting evidence is a piece of paper Ex. P/12 which mentions the number of scooter RS7-973 and there is no evidence that the accused petitioner ever drove this scooter. He has, therefore submitted that both the Courts below have committed illegality in convicting the accused petitioner.

5. On the other hand learned Public Prosecutor has tried to support the conviction made by both the Courts below.

6. The material question in this case is whether the Courts below have rightly connected the accused with the crime. Ex. P/10, the basis of the FIR, mentions that the accident was caused by a 'fatfatia'. In ordinary parlance the villagers name motor-cycle as 'fatfatia'. Therefore, from the very inception of the FIR the case of the prosecution was that the accident was caused by a motor-cycle but the prosecution has changed its version by bringing a scooter No. RSZ-973 which was examined by Chandra Singh, MTO, PW-3 on 10-10-79.

7. PW-4 Dr. Kailash Mathur conducted the post-mortem of deceased Bhagguram and according to this post-mortem report the cause of death of Bhagguram was coma, syncopa as a result of head injury and fracture of left temporal bone and these injuries were definitely caused by the fateful accident.

8. PW-7 Asgar Ali ASI has stated that on 25-9-79 Dr. Kailash Mathur of PHC Degana sent a report Ex. P/3 and then he went to the hospital where he recorded statement of Bagguram Ex. P/IO. He has stated that Bhagguram expired in the

hospital. He has stated that during the investigation Girdhari handed him over Ex. P/12 which mentions the name of Manohar Singh and the number of scooter. On the basis of this document Ex. P/12 accused petitioner was apprehended So far as Ex. P/12 is concerned, in my view it is a very material document. Wherefrom Girdhari got it? PW-7 Asgar Ali has stated that this paper was handed over to Girdhari by a passer by. It may be stated that the statement of Girdhari was recorded by this witness on the site itself as per his statement but Ex. D/1, statement of Girdhari, speaks that it was recorded on 26-9-79 which mentions that a 'fatfatia' of yellow colour came from the opposite side and which caused the accident. In the statement Ex. D/1 he named the accused petitioner and he handed over a paper mentioning the number of ' fatfatia' as well as the name of accused petitioner. So it is clear that the name of accused petitioner had come to the notice of the police during the statement of Girdhari which was recorded on 26-9-79 and Girdhari had handed over a slip mentioning the name of accused petitioner as well as number of scooter.

9. Girdhari was examined by learned Magistrate under Section 311 Cr P.C. and he has stated that the slip Ex. P/12 was handed over to him by a passer by and he handed over the same to the Investigating Officer. He was cross examined at length but he is not in a position to name the person who handed over the slip to him. It is very strange that when the Investigating Agency had come to know the name of the accused petitioner from Ex. P/12 on 26-9-79 the accused petitioner was not got identified from Girdhari before a Magistrate. This witness is not reliable because he stated in the cross-examination that when the matter was reported to the police he handed over Ex. P/1 2 to the Investigating Officer. Had it been given to the police, there appears to be no reason why the name and number of scooter would not have been written in Ex. P/10, FIR. The witness has gone to the extent of saying that Bhagguram was unconscious and could not have lodged the FIR but the Investigating Officer PW-7 Asgar Ali has stated that he recorded the statement of Bhagguram in the hospital, Ex. P/19 which is the basis of FIR. Whatever may be the situation, it is clear that Ex. P/12 was not handed over to the police by this witness on the date when the report was lodged. Even if he was true to that extent it is a fact that the accused petitioner has not been identified by him during the investigation or he was not in a position to identify the

accused appellant at the time of accident. This scooter admittedly belongs to one Gautam but Ex. P/13 mentions that the scooter was produced by the accused petitioner on 29-9-79. DW-1 Gautam has stated that he never handed over the scooter to the petitioner in September, 1979 though he knows the accused petitioner. He admitted that police seized his scooter. He has stated that he was in village Degana on 25-9-79 and the police officer had taken his scooter from his shop. But the case of the prosecution is that the vehicle was produced by the accused petitioner. Whatever may be the truth the fact is that the case of the prosecution first was that it was some 'fatfalia' (motor-cycle) which caused the accident. Even the villagers know the difference between a scooter and a motor-cycle. Therefore, there is definitely a doubt if the accident was caused by scooter. Secondly the prosecution has miserably failed to produce the person who might have seen the scooter causing the accident because the scribe of the slip Ex. P/12 has not been produced. It appears that the police wanted to connect the accused with the crime, therefore, this slip was introduced. Girdhari is a very unreliable witness and both the Courts below while believing him committed illegality in appreciation of evidence. On the basis of above discussion, it is a fit case in which the accused petitioner deserves acquittal.

10. Consequently, the revision petition is allowed and accused petitioner Manohar Singh is acquitted of the charge of Section 304A IPC.