

Jogendra Singh Vs. the State

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Court : Rajasthan

Decided On : Jan-20-1999

Reported in : II(2000)ACC254; 1999CriLJ994; 1999(2)WLC354; 1998WLC(Raj)UC766; 1999(1)WLN83

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304A, 337 and 338; Motor Vehicles Act - Sections 118A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Revn. No. 31 of 1990

Appellant : Jogendra Singh

Respondent : The State

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

Advocate for Pet/Ap. : N.K. Bohra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G.L. Gupta, J.

1. This revision is directed against the appellate judgment dated 14-2-90 whereby the learned Addl. Sessions Judge, Rajasmand upholding the conviction of the petitioner under Sections 279, 337, 338, 304-A, I.P.C. and 118-A Motor Vehicles Act, reduced the sentenced of imprisonment and sentenced him as follows :-

Under Section 279, I.P.C. 6 months S.I. & fine Rs. 100
Under Section 337, I.P.C. 3 months S.I. & fine Rs. 100
Under Section 338, I.P.C. 6 months S.I. & fine Rs. 500
Under Section 304A, I.P.C. 1 year R.I. & fine Rs. 500
Under Section 118-A, 1 month S.I. & fine Rs. 100 M.V. Act

2. The short facts of the case are that on 29-5-87 Mahendra, P.W. 11 lodged a report at P.S. Bhim that he and his family members were travelling in Jeep S.R.T. No. 7254 and when they were some 20 Kms. away from Bhim Truck No. D.E.L. 4172 came from opposite direction with excessive speed and collided with their vehicle resulting into the death of Rafique, driver of the Jeep and Smt. Lata, sister-in-law of first informant and injuries to various persons. The police after investigation submitted a challan against the accused-petitioner.

3. To the accusations read over to the accused he pleaded not guilty and claimed a trial. The prosecution examined P.W.1 Ajuba, P.W.2 Heeralal, P.W.3 Dr. Rajendra Gorvara, P.W.4 Laxman Singh, P.W.5 Bhim Singh, P.W.6 Chandan Singh, P.W.7 Mithu Singh, P.W.8 H. C. Sharma, P.W.9 Daulal, P.W. 10 Narayan Das, P.W. 11 Mahendra Kumar, P.W. 12 Nemichand, P.W. 13 Nenu Ram, P.W. 14 Pratap' Singh and P.W. 15 Smt. Baya Devi. Accused in his statement Under Section 313, Cr. P.C. denied accusations. He came out with the case that he had driven the truck only up to Bhim and the driver of the other vehicle of the same company took away the truck from Bhim. He examined one witness in defence.

4. The learned Magistrate held that by the evidence produced in the case, it was proved that the accused was the driver of the truck at the time of accident and the truck was being driven rashly and negligently. He, therefore, convicted him. The learned Addl. Sessions Judge agreeing with the finding of the trial Court upheld the conviction of the petitioner.

5. Mr. Bohra, learned Counsel for the petitioner, vehemently contended that there is not an iota of evidence on record on which it could be held that at the time of accident the petitioner was the driver of the truck. He submitted that on the basis of the name of the accused as driver in the 'Bilti', it could not be found that at the time of the accident the accused was driving the vehicle. Relying on the case of State of Karnataka v. Satish 1998 SCC (Cri) 1508, Mr. Bohra contended that the burden of proving the charge rested heavily on the prosecution and the accused could not be convicted on the mere surmises.

6. The learned Public Prosecutor, on the other hand, tried to support the judgments of the Courts below.

7. I have gone through the evidence produced in the case. None of the prosecution witnesses deposes that he had seen the driver of the truck and the accused was driving the truck at the time of accident. The prosecution case rests solely on the 'Bilti' Ex. P-25 which was issued by M/s. Singhal Carrying Corporation in which the name of Joginder Singh is recorded as the driver of the Truck No. DEL-4172. The prosecution has not led any oral evidence with regard to this document. It is further noticed that no question has been asked to the accused in his statement Under Section 313, Cr. P.C. regarding the 'Bilti' Ex. P-25. Needless to state, without putting the circumstances to the accused in his statement Under Section 313, Cr. P.C. it cannot be used to convict him.

8. Moreover, the accused in his statement Under Section 313, Cr. P.C. only states that he had driven the vehicle from Delhi to Bhim. His case is that at Bhim he was taking his food, and the driver of the other vehicle of the same Company, took away the truck. On the basis of the statement of the accused, and the entry in the 'Bilti' Ex/ P-25 that Joginder Singh was the driver of the vehicle, it cannot be found with certainty that at the time of accident, the accused was driving the truck. In my considered opinion, the trial Court and the appellate Court have committed grave error in convicting the accused-petitioner on the basis of above material.

9. It is well-settled that the accused can be convicted only on the basis of the prosecution evidence. If the prosecution fails to prove charge against the accused, he cannot be convicted on the basis of the facts coming in his statement Under

Section 313, Cr. P.C. and even in the defence evidence. The principle is that first the Court should see whether the prosecution has been able to prove the charge/s against the accused by satisfactory evidence. If the answer to this question is found in affirmative, then the facts appearing in his statement Under Section 313, Cr. P.C. and the defence evidence may also be used against the accused. In other words, the facts appearing in the statement Under Section 313, Cr. P.C. and the defence evidence can be used only to support the prosecution evidence. But if there is no prosecution evidence against the accused, it is not permissible to convict him on the basis of his statement Under Section 313, Cr. P.C. or the defence evidence. In the instant case, both the Courts below have fallen in error in convicting the accused on the basis of a fact appearing in the statement of accused and the infirmity in the defence version.

10. Consequently, the revision succeeds. The conviction and the sentence are set aside and the accused is acquitted of the offences charged with. He is on bail. He shall not surrender to the bail bonds which stand cancelled.

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