

Chamker Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Nov-10-1993

Reported in : 1993WLN(UC)597

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Criminal Revision Petition No. 6 of 1993

Appellant : Chamker Singh

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

Rajendra Saxena, J.

1. This revision petition has been filed against the judgment dated 6.1.1993 passed by the learned Addl. Sessions judge No. 2, Hanumangarh in Cr. Appeal No. 10/91, whereby he confirmed the conviction and sentence recorded by the learned Chief Judicial Magistrate, Hanumangarh by his judgment dated 21.7.1990 for the offences under Sections 279 & 304A I.P.C. sentencing the petitioner to two months' rigorous imprisonment and a fine of Rs. 200/- in default to further under go simple imprisonment for 15days under the first count and to one year's simple imprisonment and a fine of Rs. 1000/-: in default to further under go one month's

simple imprisonment for the second count. The learned Additional Sessions Judge, however, acquitted the petitioner for the offence under Section 337 I.P.C.

2. Succinctly stated the prosecution case is that on 24.4.1983 at about 8.30 p.m. near Kishanpura Addna, tractor No. HRM 1999, which was being driven by Kalu Ram, came to a halt because the trolley of its tractor had broken down. Therefore, that trolley was left near the road and driver Kalu Ram took the said tractor to Hanumangarh for getting the spare parts. At that time Bachan Singh, owner of the tractor, Nirmal Singh and a six year old girl Jashwinder were left at the place, where that trolley was standing. It is alleged that when Bachan Singh was taking out a pin from the tool kit of the trolley, a blue coloured Ford tractor having its trolley attached to it came there. The said Ford tractor was being driven rashly, negligently and with a high speed, which struck the trolley of Bachan Singh. Thereupon the said trolley was pushed forward and hit Bachan Singh, who fell down and sustained injuries and later on expired. Kumari Jaswinder Kaur, who was sitting on the said trolley, also fell down and received injuries. Kalu Ram, driver lodged an oral report at 8.00 p.m. on the same day to the S.H.O., Police Station, Hanumangarh. The Investigation Officer inspected the site, prepared memo of the site plan and got conducted the post-mortem examination of the dead body of Bachan Singh. On 3.5.1983, the Investigation Officer seized one blue coloured Ford tractor bearing No. PUW 9791 along with its trolley from the possession of its owner Jogendra Singh vide seizure memo Ex. P. 3. It is alleged that 2-3 days after the said incident Jogendra Singh alongwith petitioner Chamker Singh came to Ranjeet Singh and offered to compromise the matter. However, no compromise was made. After investigation, the I.O. submitted the challan against the petitioner in the court. The accused was charged for the offence under Sections 279, 337 & 304A I.P.C to which he pleaded not guilty and claimed trial. After trial the learned Addl. Chief Judicial Magistrate, Hanumangarh relying on the alleged extra judicial confession of the petitioner held that the latter was driving the Ford tractor along with its trolley rashly and negligently and found him guilty for the offence under Sections 279, 337 and 304 I.P.C. and sentenced him. However, the learned Additional Sessions Judge did not place any reliance on the alleged extra judicial confession of the petitioner and discarded the same. But he held that as Jaswindra Kaur was neither medically examined nor sufficient evidence was

produced by the prosecution, the offence under Section 337 I.P.C. was not proved. He, accordingly, set aside the conviction and sentence of the petitioner for the offence under Section 337 I.P.C. and acquitted him for the said offence. He, however, by his impugned judgment confirmed the conviction and sentence of the petitioner for the offences under Section 279 & 304A I.P.C. Hence this revision petition.

3. I have heard Shri Sandeep Mehta, the learned Counsel for the petitioner and Shri C.R. Jakhar, the learned Public Prosecutor and perused the record of the lower court in extenso.

4. Shri Sandeep Mehta has emphatically contended that admittedly the petitioner was not known to any of the prosecution witnesses previously, that Bachan Singh and other witnesses have also not identified the driver of the offending tractor and trolley in the court and no test parade was conducted. The learned Session Judge has disbelieved the story of extra judicial confession alleged to have been made by the petitioner and discarded the same. In such circumstances the statements of the alleged eye-witnesses that the petitioner was driving the offending tractor is worthless and unreliable. According to him, there is no legal evidence to connect the petitioner with the crime and as such the Additional Sessions Judge has committed a grave illegality in convicting and sentencing the petitioner.

5. On the other hand, the learned Public Prosecutor, has reiterated the reasonings given by the learned lower court and supported the impugned judgment.

6. I have bestowed my most anxious and earnest consideration to the rival contentions placed before me.

7. The alleged eye-witnesses PW 1 Kalu Ram, PW 2 Nirmal Singh and PW 5 Ranjeet Singh have stated that at the time of the alleged incident petitioner Chamker Singh was driving the offending blue coloured tractor. However, they have clearly admitted that they did not know the petitioner previously. In the FIR Ex. P. 1 lodged by Kalu Ram, the name of petitioner does not find mention. Kalu Ram and Nirmal Singh in their statements recorded under Section 161 Cr.P.C. Ex. D.-1 & Ex. D.-2 respectively have also not named the petitioner. It was only on

26.4.1983 that Ranjeet Singh in his police statement for the first time stated that he had come to know that the driver of the offending tractor was Chamker Singh and that the letter along with his father had come to him for compromising the matter. On the basis of Ranjeet Singh's statement the petitioner was apprehended and his driving licence as also the blue Ford tractor bearing No. PUW 9791 were seized. It may be mentioned here that the Investigation Officer did not take any step to get the test identification parade conducted of the petitioner. The learned Additional Sessions Judge has in most specific terms held that the statements of the prosecution witnesses in respect of the alleged extra judicial confession of the petitioner were evidently false and unreliable. He has, thus disbelieved the factum of the alleged extra judicial confession. Thus, if the extra judicial confession is excluded then there remains no legal evidence worth the name to connect the petitioner with the alleged crime.

8. There is another glaring discrepancy in the prosecution story. In the FIR, it has been mentioned that the trolley of the offending tractor was bearing No. RRK 9791, while the Investigation Officer has seized the Ford Tractor and trolley bearing No. PUW 9791. This material discrepancy has also not been reconciled and explained satisfactorily.

9. In such circumstances, I am of the considered opinion that the learned lower courts have not correctly discussed, analysed, scanned and evaluated the prosecution evidence and committed an illegality of fact in holding that the petitioner was driving the offending tractor & trolley at the time of the alleged incident rashly and negligently causing the death of Bachan Singh.

10. I accordingly allow this revision petition and set aside the conviction and sentence of petitioner Chamker Singh for the offences under Sections 279 & 304A I.P.C. passed by the learned Addl. Sessions Judge No. 2, Hanumangarh and acquit him of the said offences. The petitioner is already on bail. He need not surrender and his bail bonds stand discharged.