

Ram Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-02-1999

Reported in : 1999CriLJ2622

Judge : Mohd. Yamin, J.

Acts : Probation of Offenders Act - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304A; Code of Criminal Procedure (CrPC) - Sections 313, 360 and 361

Appeal No. : Criminal Revn. Petn. No. 354 of 1998

Appellant : Ram Singh

Respondent : State of Rajasthan

Advocate for Def. : I.S. Pareek, Public Prosecutor

Disposition : Petition dismissed

Judgement :

ORDER

Mohd. Yamin, J.

1. Petitioner Ram Singh was convicted for offences under Sections 279 and 304-A, IPC by learned Chief Judicial Magistrate, Sriganaganagar vide his judgment

dated 7-2-1994. Appeal was preferred and the same was dismissed by learned Additional Sessions Judge No. 1, Sriganaganagar by his judgment dated 20-6-1998. This revision was preferred and the sentence of petitioner was suspended. Nobody appeared on behalf of the petitioner when the revision came up for hearing on 23-3-1999. I have heard the learned Public Prosecutor and perused the record. A revision can be decided without hearing the counsel who has chosen not to appear, as in revisions Court can itself see the record without his assistance or assistance of the accused petitioner.

2. The memo of revision does not mention any ground of illegality committed by the trial Court or the appellate Court. What the revision mentions is that the petitioner has not been given benefit of probation and no special reasons have been recorded not to grant the same. It also states that the evidence on record is such by which it may be inferred that the petitioner was not driving the vehicle rashly and negligently and deceased Paramjeetkaur was sitting on the way and suddenly got struck against the back portion of the truck for which the petitioner was responsible and was unable to save her. It has been prayed that the petitioner may be acquitted. Learned PP has opposed all these averments stated in the revision.

3. I may mention the facts in brief, Malkiyat Singh lodged F.I.R on 2-10-1988 which narrates the incident as follows : Malkiyat Singh was residing in a quarter belonging to a mill with his family. He is a riksha pullar. On 2-10-1998 at about 4.30 p.m. he came to his quarter and asked his wife Smt. Paramjeetkaur to serve food to him. Thereupon Paramjeetkaur went out of the quarter to wash utensils. A cinema hall named 'Ganesh Talkies' is situated nearby and there is a turning towards the road leading to quarter. Truck No. RSC 3125 which was being driven by the petitioner came towards that side and dashed against Paramjeetkaur. After the accident took place the driver took away the truck towards old power house. In the meantime, persons residing in quarters and the informant reached there. Paramjeetkaur was also taken to hospital where she died within a period of ten minutes. Case under Section 304-A, IPC was registered and after investigation challan was submitted. Accusation was read over to the petitioner on 9-1-1989 which he denied. Thereupon prosecution examined five witnesses in support of its

case. Accused petitioner was examined under Section 313, Cr.P.C. wherein he admitted that he was driving the truck with care and caution and that he did not cause any accident as he was not at fault. He refuted the evidence of the witnesses of the prosecution. Learned Chief Judicial Magistrate, after, appreciating and scanning the evidence, convicted the accused petitioner as stated above. On appeal conviction was upheld and appeal was dismissed.

4. It is settled law that when a conviction is recorded by Magistrate and is upheld by the first appellate Court, reappreciation of evidence by High Court cannot be done unless there is miscarriage of justice. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 1 JT(SC) 456 : 1999 Cri LJ 1443, it has been held that in its revisional jurisdiction the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety, of any finding, sentence or order. In other words, the jurisdiction is one of supervisory nature exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

5. Needless to say that in the present case no such glaring feature appears on the record. Therefore, I would not like to interfere in the finding of guilt recorded by the trial Court and confirmed by the appellate Court.

6. The only prayer made in the revision is that the trial Court or the appellate Court should have given the benefit of probation to the petitioner as the case is covered under Section 360, Cr.P.C. The memo of revision mentions that as per provisions of Section 361, Cr.P.C. the Courts should have recorded in judgment the special reasons for not having followed the provisions of Section 360, Cr.P.C. There are two citations of the Hon'ble Supreme Court reported as follows in which benefit of Probation of Offenders Act was given to the accused in cases under Section 304-

A, IPC:--- (1) Aitha Chander Rao v. State of Andhra Pradesh 1981 SCC (Cri) 637, in which the peculiar facts were that the driver was a Government servant and his jail sentence could have affected his service career. (2) A.P. Raju v. State of Orissa 1995 SCC (Cri) 675, in which the facts were that the motor vehicle dashed against a boy standing on the kucha portion of the right side of the road who later succumbed to the injuries caused by accident. Though the trial Court had acquitted the accused but the High Court had reversed the judgment of acquittal and convicted and passed sentence of jail against accused A.P. Raju. When he went to Supreme Court the peculiar facts of the case were found that the occurrence had took place about 15 years ago and the appellant accused remained on bail for more than eight years. He had already remained in jail and in those peculiar circumstances it was directed that he be released on probation of good behaviour under Section 4 of the Probation of Offenders Act. Thus, it is clear that in all these citations there were peculiar facts. But in AIR 1987 SC 861 : 1987 Cri LJ 776, State of Karnataka v. Krishna, it has been held that in cases of conviction under Section 304-A IPC leniency should not be shown. In this citation the sentence of fine of Rs. 250/- under Section 304-A, IPC was found to be a shocking leniency and the Supreme Court itself sent the accused to jail to undergo sentence of six months. This citation was not considered in A.P. Raju's case 1995 SCC (Cri) 675 (supra). The earlier judgment of the Supreme Court Aitha Chander Rao v. State of Andhra Pradesh 1981 SCC (Cri) 637 (supra) is one which was passed much before the case State of Karnataka v. Krishna 1987 Cri LJ 776 (supra). This Court in Amar Lal v. State of Rajasthan 1987 Raj LW 280 : 1988 Cri LJ 1, went even to suggest change in the sentence which should provide minimum mandatory sentence for jail with a fine of Rs. 15,000/- as compensation for offence under Section 304-A, IPC and held that if the sentence is reduced, it will amount to abatement of offence by judiciary. In this judgment a catena of judgments of Supreme Court were considered and then sentence of two years imprisonment was confirmed.

7. In the case in hand the offence is said to have taken place on 2 -10-1988 and the learned Magistrate convicted and sentenced the petitioner on 7-2-1994. His appeal was dismissed on 20-6-1998. The petitioner has not suffered long trial. The deceased was a lady and her death has upset the household of her husband.

Keeping all the facts and circumstances of the case in my mind, I am not prepared to give benefit to the petitioner.

8. Consequently, the revision is hereby dismissed and it is ordered that the petitioner shall be taken in custody by trial Court and shall be sent to jail to undergo the remaining part of sentence.

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