

Jiya Ram Vs. State of Rajasthan

Jiya Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/764714

Court : Rajasthan

Decided On : Feb-29-2000

Reported in : 2000CriLJ2502

Judge : Mohd. Yamin, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 304A; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Revision Petition No. 161 of 1991

Appellant : Jiya Ram

Respondent : State of Rajasthan

Advocate for Def. : Anees Bhurath, Public Prosecutor

Disposition : Petition dismissed

Judgement :
ORDER

Mohd. Yamin, J.

1. Jiya Ram-petitioner faced trial before Chief Judicial Magistrate, Barmer for offences under Sections 279 and 304-A, IPC and was convicted and sentenced to two months' rigorous imprisonment with a fine of Rs. 500/- and in default to

undergo two months' simple imprisonment for offence under Section 279, IPC. He was sentenced to one year's rigorous imprisonment with a fine of Rs. 1000/- and in default to undergo four months' simple imprisonment. It was ordered that both the sentences shall run concurrently. He preferred appeal which was dismissed by Additional Sessions Judge, Barmer on 9-8-1991.

2. Briefly stated, on 5-8-1986 at 4.00 p.m. Hans Raj reported to Station House Officer, Chauhtan that his mother, when was alighting from the bus at Sanau bus stand, the truck driven by the petitioner came from the side of Chauhtan. It dashed against his mother who suffered a fracture on her left leg. The truck driver wanted to run but Punma, Sanga and others made hue and cry and then truck was stopped. Mother of the complainant was taken in the same truck to hospital as she had suffered injuries on different parts of her body and who succumbed to them and expired. The truck was made to stand in front of the hospital along with driver petitioner and the matter was reported. Police investigated the matter and after investigation submitted challan before the trial Magistrate. The petitioner, when he was read over accusation, claimed trial. Prosecution examined six witnesses in support of its case. The petitioner then was examined under Section 313, Cr. P.C. He did not produce any witness in defence. Learned Chief Judicial Magistrate, Barmer after hearing both the parties convicted and sentenced the accused-petitioner as stated above. On appeal the conviction and sentences were confirmed.

3. Nobody appeared on behalf of the petitioner when the revision petition was taken up and since it is not necessary to hear the petitioner or his ceunsel in revisions because the High Court can itself call for the record of any Court and see as per the

4. The settled position of law is that the evidence once appreciated by the trial Court and reappreicated by the appellate Court cannot be further appreciated by the High Court. High Court does not sit as an appellate Court in revisions. It was so held in *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* etc 1999(1) JT(SC) 456: (1999 Cri LJ 1443). However, in the said judgment it has been pointed out that if there are some glaring features which might have caused

injustice to an accused they can be looked into and then the evidence can be reappreciated.

5. It has been canvassed in para No. 2 of the revision petition that there was not an iota of evidence against the petitioner even then the petitioner has been convicted. It has been further stated in para No. 3 that the evidence is not reliable as there are contradictions in the statements of various witnesses. It has also been canvassed that PW-2 Punma Ram has stated that he did not know the driver as the driver had run away from the spot. So it has been tried to canvass that there is no evidence as to who was driving the vehicle at the time of accident. It has also been canvassed that documentary evidence was not sufficient to connect the accused-petitioner. Relying on- *Gurcharan Singh v. State of Himachal Pradesh* 1991 Cri LJ 771, it has been canvassed that if a witness says that the driver was driving the vehicle with a high speed, the conviction of driver cannot be maintained. In the end alternatively it has been canvassed that the petitioner may be given the benefit of probation or he may be sentenced to the period already undergone.

6. Firstly I do not find that any of these arguments may lead to a glaring feature of this case which may entitle the petitioner for acquittal. However, I have found it my bounden duty in this case as nobody has appeared on behalf of the petitioner to go through the entire evidence. Ex. P/I, the first information report, was lodged by Hans Raj PW-1 who stated that his uncle Punma Ram informed him that his mother had met an accident with a truck. Then he went and found that the truck was standing outside the hospital and his mother was lying unconscious in the hospital. He then lodged the report Ex. P/1. So the admitted position is that PW-1 Hans Raj is not an eye-witness.

7. PW-2 Punma Ram is an eye-witness. He stated that he was present at the bus stand when the truck driven by the petitioner came from the side of Chauhtan, dashed against the lady who was his aunt. She was admittedly Smt. Mishra wife of Belkha Bheel who had suffered quite a good number of wounds in this accident because of which she died as per the post-mortem report Ex. P/9. Punma Ram did say that he did not know the driver and that he had escaped from the place of

accident. He in the second breath admitted in examination-in-chief itself that the accused-petitioner was the person who was the driver of the vehicle. His cross-examination speaks volumes about rash and negligent action of the accused-petitioner. He stated that the driver petitioner came and then Smt. Mishra was taken to hospital in the same truck. PW-3 Sanga does not know the accused-petitioner. It has been put to Goma Ram PW-5 in the cross-examination that the deceased suffered injuries because of accident with some other vehicle and not the vehicle driven by the petitioner and that a false case was cooked up against him. But there appears to be no such reason to frame the petitioner in this case. The petitioner's case in his statement under Section 313, Cr.P.C. is that he did not go to the hospital while driving the truck. But while replying to question No. 3 in the statement under Section 313, Cr. P.C. he admitted that he was the driver of the truck but neither did he commit the offence of rash and negligent driving nor did he go to the hospital. The first information report mentions that the truck was standing outside the hospital and the truck was seized from the possession of the accused-petitioner by police vide Ex. P/6, seizure memo. The petitioner was arrested on 5-8-1986 and released on bail by the police itself. All this happened in quick succession and I am of the view that both, the trial Court and the appellate Court, have not committed any error of law in appreciating and reappreciating the evidence on record.

8. I have also gone through Gurcharan Singh's case (supra) in which the facts were that a full loaded truck ran on State high-way. The witness stated that the truck was moving in high speed. It did not mean that there was rashness on the part of the driver. The case of the driver was that a child got frightened on blowing of horn by him and suddenly started crossing the road which could not be seen by him. This fact was found reliable and it was held that it was a case of pure accident and there was no rashness and negligence on the part of the driver. The citation does not apply to the present case. Here there is definite evidence that the track driven by the petitioner was being driven rashly and negligently and it dashed against Smt. Mishra and caused her injuries to which she succumbed. In view of above discussion no interference can be made in the conclusion arrived at by the trial Court and confirmed by the appellate Court.

9. So far as sentence is concerned, the petitioner was not entitled for probation in the facts and circumstances of this case as, Hon'ble Supreme Court in AIR 1987 SC 861 : (1987 Cri LJ 776), State of Karnataka v. Krishna alias Raju, changed the sentence of fine to jail sentence of six months in such a case. Following the same judgment Rajasthan High Court in 1987 Rajasthan Vidhi Patrika 317, Amarlal v. State of Rajasthan, took a serious view and after discussing the Supreme Court law did not interfere in jail sentence. This Court in SB Cr. Revision Petition No. 195/99, Safliya alias Safel Mohd. v. State of Rajasthan, decided on 17-5-1999 and SB Cr. Revision Petition No. 102/99, Talab Khan v. State of Rajasthan, decided on 17-5-1999 and later on followed in SB Cr. Revision Petition No. 848/1999, Bhagirath v. State of Rajasthan, decided on 5-1-2000, held that in such cases the Courts have to deal with a strong hand. The petitioner has undergone a sentence of only about I-Va months which is not sufficient in this case. Looking to all the facts and circumstances the sentence cannot be reduced.

10. There is no force in this revision petition and it is hereby dismissed.