

Haria Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-31-1994

Reported in : 1994(1)WLN565

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Revision No. 109 of 1994

Appellant : Haria

Respondent : The State of Rajasthan

Disposition : petition dismissed

Judgement :

B.R. Arora, J.

1. This revision petition is directed against the judgment dated 6.1.94, passed by the Sessions Judge, Jalore, by which the learned Sessions Judge partly allowed the appeal filed by the petitioner and while maintaining the conviction under Sections 279 and 304A IPC, he set-aside the substantive sentence and enhanced the punishment of fine under both these counts.

2. Accused-petitioner Haria was tried by the learned Judicial Magistrate, First Class, Sanchore, for the offences under Section 337, 279 and 304A IPC. The case of the prosecution is that on 6.2.83, at the about 8.30 p.m. the accused was driving

the truck bearing No. RRQ 7579 rashly and negligently. At that time one Ali Mohammed alongwith other passengers was, also, travelling in the truck. As the truck was being driven rashly and negligently by the petitioner, it, therefore, clashed against a board and on the sudden application of the brakes, Ali Mohammed fell down from the truck and died. The prosecution, in support of its case, examined PW 1 Sher Khan, PW 2 Haji Khan, PW 3 Kasam, PW 4 Arbab, PW 5 Haji Khan, PW 6 Rehman, PW 7 Sher Khan- Investigating Officer - and PW 8 Jog Singh - the Mechanical Inspector. PW 2 Haji Khan, PW 3 Kasam, PW 4 Arbab, PW 5 Haji Khan and PW 6 Rehman were the passengers who were travelling in the truck. They have stated that they boarded the truck. No. RRQ 7579, which was driven by accused-petitioner Haria. According to them, the truck was driven rashly and negligently by him. They asked the petitioner to drive the truck with care and caution but the driver never acceded to their requests and continued to drive the truck rashly and negligently and, therefore, it hit against the board near village Charni. As the truck clashed against the board, on account of that jerk and jolt, Ali Mohammed fell down from the truck and died. The learned Magistrate, after trial, came to the conclusion that the offences under Sections 337, 279 and 304A IPC stand proved against the petitioner, but in view of the conviction of the petitioner for the offence under Section 304A IPC it was not found necessary to pass an order of conviction for the offence under Section 337 IPC. He, therefore, convicted the accused-petitioner for the offences under Section 279 and 304A IPC and considering the age of the petitioner and the fact that it was his first offence, he passed the sentence of three months' rigorous imprisonment for the offence under Section 279 IPC and one year's rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine further to undergo two months' rigorous imprisonment for the offence under Section 304A IPC. The learned Magistrate, also, ordered that if the amount of Rs. 1000/- is deposited by the accused then the same may be given to the legal representatives of the deceased. Dissatisfied with the conviction and sentence passed by the learned Magistrate against the accused- petitioner, the petitioner preferred an appeal before the learned Sessions Judge, Jalore, which was partly allowed by the learned Sessions Judge. The conviction under Section 279 and 304A IPC were maintained but, however, the substantive sentence, imposed by the learned Magistrate, was set-

aside and the amount of fine was enhanced to Rs. 500/- for the offence under Section 279 IPC. and to Rs. 3000/- for the offence under Section 304A IPC and in default of payment of fine to undergo fifteen days imprisonment for the offence under Section 279 IPC and three months' rigorous imprisonment for the offence under Section 304A IPC. The court further observed that in case the amount of fine is recovered from the accused or deposited by him then out of the amount of fine, Rs. 3000/- may be paid to the legal representatives of deceased Ali Mohammed. It is against this judgment/order that the petitioner has preferred this revision petit

3. I have gone through the judgment passed by the Courts below. Both the Courts below have appreciate the evidence, produced by the prosecution, in the right perspective and no illegality or impropriety in the appreciation of the evidence has been committed by the courts below. From the statements of PW 2 Haji Khan, PW 3 Kasam, PW 4 Arbab, PW 5 Haji Khan and PW 6 Rehman, it has clearly been established that the truck in question was being driven rashly and negligently by the accused- petitioner on 6.2.83, and it is only on account of the rash and negligent driving of the truck by the petitioner that the truck dashed against the board near village Charnia and on account of that jerk and the application of the brakes suddenly that Ali Mohammed, who was one of the passengers in the truck, fell down from the truck and met with his untimely death. The learned Courts below have considered the case in the right perspective and rightly convicted the petitioner for the offences under Sections 279 and 304A IPC. No case for interference is made- out. The learned Sessions Judge has passed the sentence of fine of Rs. 500/- for the offence under Section 279 IPC and Rs. 3000/- for the offence under Section 304A IPC. The fine imposed by the learned Sessions Judge cannot be said to be, in any way, excessive, rather it is on the lower side.

4. In this view of the matter, I do not find any merit in this revision petition and the same is hereby dismissed.