

Modi Ram Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-23-1994

Reported in : 1994(1)WLN612

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Revision Petition No. 99 of 1984

Appellant : Modi Ram

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

B.R. Arora, J.

1. The petitioner, by this revision petition, has challenged the order dated 7.3.84, passed by the Additional Sessions Judge, Rajasamand, by which the learned Additional Sessions Judge dismissed the appeal filed by the petitioner challenging the judgment dated 8.11.82, passed by the Munsif and Judicial Magistrate, First Class, Kumbhalgarh, by which the petitioner was convicted and sentenced for the offences under Section 279 and 304A of the Indian Penal Code.

2. The petitioner was tried by the learned Munsif and Judicial Magistrate, Kumbhalgarh, for the offence under Section 304A and 279 IPC. The prosecution,

in support of its case, examined ten witnesses, viz., PW 1 Bhim Raj. PW 2 Ratan Lal, PW 3 Nawal Ram, PW 4 Bhanwar Nath, PW 5 Kishan Lal, PW 6 Radha Kishan, PW 7 Madan Lal, PW 8 Mitha Das, PW 9 Kalu Lal and PW 10 Dr. Ajay Kumar. The accused, in his defence, examined DW 1 Gaffar Khan - the Cleaner (Khalasi) on the truck. The case of the prosecution is that on 27.10.77, at about 6.30 p.m., the accused-petitioner was driving truck No. RJY 9066 rashly and negligently, due to which Miss Deoli and Miss Ganga (Daughters of Pratapa), who were carrying water from the well, met with the accident and succumbed to the injuries received by them in the accident. The learned Magistrate, after considering the evidence on record, convicted the petitioner for the offences under Section 279 and 304A IPC and sentenced the accused-petitioner to undergo two years' rigorous imprisonment and a fine of Rs. 300/- and in default of payment of fine further to undergo two months rigorous imprisonment for the offence under Section 304A IPC and three months' rigorous imprisonment for the offence under Section 279 IPC. Both the substantive sentences were directed to run concurrently. Dissatisfied with the conviction and sentenced, passed by the learned Munsif and Judicial Magistrate. Kumbhalgarh, the petitioner preferred an appeal before the learned Additional Sessions Judge, Rajsamand, which was decided by its judgment dated 7.3.84. The appeal, filed by the petitioner, was dismissed and the conviction and the sentence passed by the learned trial court were affirmed by the learned Additional Sessions Judge.

3. It is contended by the learned Counsel for the petitioner that from the evidence produced by the prosecution, no case of rash and negligent driving of the truck by the petitioner is made-out and the place where the accident took place makes it clear that the vehicle cannot be driven at a fast speed as has been alleged by the prosecution. It is, also, contended by the learned Counsel for the petitioner that the findings of both the courts below that the accused-petitioner was driving the truck rashly and negligently and it was only on account of his rash and negligent act that the two girls met with the death, are erroneous and contrary to the facts on record. It is, also, contended by the learned Counsel for the petitioner that at the time of the accident, the accused- petitioner was below the age of twenty years and, therefore, he should have been given the benefit of probation under the Probation of offenders Act, 1958. Lastly, it is contended by the learned Counsel for the

petitioner that the incident took-place in the year 1977 and more than seventeen years have elapsed thereafter and the petitioner has suffered the mental agony of prosecution for such a long time and, therefore, a lenient view may be taken and the sentences passed by the Courts below may be reduced. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the Courts below.

4. I have considered the submissions made by the learned Counsel for the parties.

5. From the evidence, produced by the prosecution, the rash and negligent driving of the truck in question by the petitioner, is proved and it was only on account of the rash and negligent driving of the truck by the petitioner that the two minor daughters of the complainant Pratap, viz., Deoli and Ganga, met with an untimely death. Both the courts below have considered the evidence, produced by the prosecution, in right perspective and rightly convicted the petitioner of the offences under Sections 304A and 279 IPC. The judgments passed by the courts below, therefore, cannot be said to be, in any way, illegal, improper or incorrect. The findings arrived-at by both the courts below do not suffer from any infirmity.

6. The next question, which requires consideration, is: what sentence should be imposed upon the petitioner. Though in the facts and circumstances of the case the sentence awarded by the Courts below cannot be said to be, in any way, excessive, but since the incident took place in the year 1977 and after admission of the revision petition the sentence, passed by the lower Courts against the petitioner, have been suspended and the petitioner was ordered to be released on bail, therefore, it will not be just and proper to send the accused-petitioner again to the jail after a lapse of about seventeen years. He has already suffered the mental agony of prosecution for these seventeen years and at the time when the accident took-place, he was a young-chap of twenty years. I, therefore, think it proper to reduce the substantive sentence awarded to the petitioner by the Courts below to the period of imprisonment already undergone by him, but enhance the amount of fine from Rs. 300/- to Rs. 10,000/- (Rs. ten thousand), which will be paid as compensation to Pratap - the father of the deceased girls, viz., Deoli and Ganga.

7. In the result, the revision petition, filed by the petitioner, is partly allowed. The conviction of the petitioner passed under Sections 304A and 279, IPC is maintained. However, the substantive sentence is reduced to the period of imprisonment already undergone by him and the amount of fine is increased from Rs. 300/- to Rs. 10,000/- and in default of payment of the fine the petitioner shall undergo two years' rigorous imprisonment. The fine, if so deposited, may be paid to Pratap - the father of deceased Deoli and Ganga. The petitioner is allowed three months' time to deposit the amount of fine.

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