

Ram Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-08-1988

Reported in : 1988WLN(UC)421

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Revision Petition No. 124 of 1987

Appellant : Ram Kumar

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

J.R. Chopra, J.

1. This revision petition is directed against the judgment of the learned Sessions Judge, Churu dated 18-4-1987 whereby he has upheld the judgment of the learned Chief Judicial Magistrate, Churu dated 4-4-1982 by which the accused-petitioner Ram Kumar was held guilty of the offence under Section 304A, IPC and was sentenced to 9 months rigorous in prisonment together with a fine of Rs. 500/- and in default to undergo two months rigorous imprisonment.

2. The facts necessary to be noticed for disposal of this revision petition briefly stated are: that on 10-6-1980 at about 5 30 p.m., deceased Ganesh aged about

12-13 years was going from the side of Bhagla High School. At that time, truck No. RSK 1857 driven by accused Ramkumar came from the opposite side and it collided from its rear outer side with the cycle which was driven by Ganesh and thereby, he was crushed under the rear outer wheel of the truck. PW 1 Ramchandra, who was sitting on his shop saw the accident, reported this matter to the police on phone and later on, when the police came to the spot, his statement was recorded and then a formal FIR was drawn.

3. The Police inspected the site and prepared the site plan and site inspection memo. The truck was seized and its mechanical inspection was also got done. The post mortem examination of the dead body was got conducted and after usual investigation, the case against the accused-petitioner Ram Kumar was challaned in the Court of the learned Chief Judicial Magistrate, Churu.

4. In this case, the prosecution examined in all three eye witnesses viz., PW 1 Ramchandra, PW 2 Prem Kumar and PW 3 Norangram. The learned trial court, after trial, convicted and sentenced the accused-petitioner Ramkumar as aforesaid. On appeal, the conviction and sentence of the accused-petitioner Ram Kumar was upheld by the learned Sessions Judge, Churu. Hence this revision.

5. I have heard Mr. Mridul Jain, the learned Counsel appearing for the accused-petitioner and Miss Sumitra Sankhla, the learned Public Prosecutor for the State. I have carefully gone through the record of the case.

6. It was contended by Mr. Mridul Jain, the learned Counsel appearing for the accused-petitioner that it is a case of no evidence. Rather, it is a case of misreading and misapplication of the evidence, which has resulted in grave and substantial injustice to the accused-petitioner and, therefore, the conviction and sentence of the accused-petitioner deserve to be set aside.

7. Miss Sumitra Sankhla, the learned Public Prosecutor appearing for the State has supported the conviction and sentence recorded against the accused-petitioner Ramkumar.

8. I have carefully considered the rival submissions made at the bar. According to me, this appears to be a case of no evidence. Rather, it appears to be a case of misreading of the evidence. In this case, initially the report of the incident was lodged by PW 1 Ramchandra who has stated that at the time when this occurrence took place, he was sitting in his shop. The rear outer wheel of the truck collided with the cycle of Ganesh and, thereby he was crushed under the front wheel of the truck. When he was examined during the trial, he has stated that at that point of time, he was working in his shop which is situated opposite to the Bhagla High School. Ganesh was coming from the side of Johad and the truck was coming from the side of the Station. This boy was crushed under the rear outer wheel of the truck on its right side. In cross-examination, he has stated that he was sitting inside the shop and the incident took place in front of this shop. He saw the incident after the truck went away from the place of the occurrence. If we accept his statement to be correct, we will find that he has contradicted himself from the contents of the FIR lodged by him in which he has stated that the boy was crushed from the front wheel of the truck. As per the site plan, his shop is not situated in front of the place of the occurrence. The incident took place at point 'A' shown in the site plan whereas his shop is situated on the western end of the line of the shops, which are situated in front of the Bhagla High School. While sitting in the shop, he cannot observe this incident. Even if he was sitting outside the shop then too, the accident has not taken place from the front wheel of the truck but it has taken place from the rear outer portion of the right side of the wheel. Thus, the manner in which this incident took place could not have been observed by this witness. This particular aspect of the matter has not been taken care of by the learned lower court while appreciating the evidence, which is most unfortunate. Thus it appears that PW 1 Ram Chandra has not seen the occurrence. Whatever, he has stated is based on the hearsay evidence, which is clear from his statement in his cross-examination:

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9. PW 2 Prem Kumar who was examined as an eye witness the occurrence has stated that he has only heard that a boy was crushed by the truck from its rear outer wheel from its right side. He has not seen the occurrence with his own eyes.

10. PW 3 Norangram has also stated that after the truck went by the side of his shop, he heard cries 'that a boy has been killed'. He has not seen the occurrence. On the basis of this evidence, the learned lower courts have held that the prosecution has conclusively proved that the truck was driven rashly and negligently and the accident has taken place on account of the negligence of the driver. This conclusion of the courts below is totally unsustainable. Had the truck collided with the cycle on such a wide road from the front wheel of the truck, it could have been presumed that the driver might have been negligent but in this case, the occurrence has taken place with the rear outer wheel of the truck on its right side and. therefore, it can not be said that it was on account of rash and negligent driving of the driver that the accident has taken place. More over, in such circumstances, the eye witnesses who were on the southern side of the road could not have observed the accident taking place on the northern side of the road specially because the truck would band their view of the accident. Actually, it appears to be a case of no evidence. The accused petitioner Ramkumar has wrongly been held guilty of the offence under Section 304A, IPC.

11. In the result, I accept this revision petition, set aside the judgment of the learned Sessions Judge, Churu dated 18-4-1987 and of the learned Chief Judicial Magistrate, Churu dated 4-2-1982 and quash the conviction and sentence of the accused-petitioner Ramkumar for the offence under Section 304A, IPC. He is acquitted of the offence under Section 304A, IPC. He is on bail. He need not surrender to his bail bonds.