

Prithvi Singh Vs. State

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Court : Rajasthan

Decided On : Feb-10-1976

Reported in : 1976WLN25

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 39 of 1976

Appellant : Prithvi Singh

Respondent : State

Disposition : Petition allowed

Judgement :

K.D. Sharma, J.

1. This is an application-in-revision filed by Prithvi Singh against the judgment of the Sessions, Judge Balotra, dated 28th October, 1975, upholding the petitioner's conviction and sentence under Section 304A, IPC Section 3/112 and 22/123 of the Motor Vehicles Act and dismissing his appeal. It will not be out of place to mention that the petitioner was convicted by the Munsiff Magistrate, Barmer, for the aforesaid offences and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 51/-, in default of payment of fine to further suffer rigorous imprisonment for fifteen days on the first count, on the second to pay a fine of Rs.

100/-, in default of payment of fine to undergo simple imprisonment for fifteen days and on the third count to pay a fine of Rs. 100/-, in default to suffer simple imprisonment for fifteen days.

2. The prosecution case against the petitioner was that on 22nd Oct. 1968, at 1 p.m. while driving a truck in a rash and negligent manner on Barmer-Jaisalmer route, he caused an accident, which resulted in the death of two persons, namely, Bhikha son of Lala Ram and Mula son of Tecka Ram. The petitioner was driving the truck without having driving licence and other necessary documents pertaining to registration, insurance and fitness of the vehicle, A report of this accident was lodged with the Station House Officer, Barmer, by the petitioner himself. On the basis of the petitioner's report, a criminal case was registered against him under Section 304A, IPC and under several sections of the Motor Vehicles Act. The Station House Officer Made the usual investigation into the case and eventually submitted a charges sheet against the petitioner in the court of the Munsiff-Magistrate Barmer, who, tried the petitioner and found him guilty in the manner stated above.

3. Aggrieved by his conviction and sentences the petitioner filed an appeal in the court of the Sessions Judge, Balotra. The Sessions Judge dismissed the appeal on 28-10-1975. The order of dismissal of the appeal reads as follows.

vihyk.V odhy us tkfgj fd;k fd vihyk.V ds ckcr mUgs dqN Hkh irk ugh yxk vkSj vihyk.V dh rjQ ls mUgs dksbZ lwpu ;k b ULVD'kUI gh gS A,slh lwjr es os viuh ekStwnk vihy dsk izsl ugh djrs gS A vr% vihy vihyk.V [kkfjt gksdj eqdn~nek Qly 'kqekj gks A

As against this judgment of the Sessions Judge, the petitioner has come-up in revision to this Court.

4. I have heard the arguments advanced by Mr Krishna Murari for the petitioner and Mr K.C. Bhandari, appearing on behalf of the State. It has been contended on behalf of the petitioner that the Sessions Judge, committed a grave error of law in dismissing the appeal on the ground that the learned Counsel for the petitioner pleaded no instructions and did not press the appeal. It was further argued that the

sessions Judge ought to have perused the record and disposed of the appeal on the merits, and as there was no perusal of the record of the case by the Sessions Judge it could not be said that there was hearing of the appeal. In support of his above contention, the, learned Counsel for the petitioner placed reliance on an authority of the Supreme Court *Shyam Deo v. State of Bihar* : 1971 CriLJ1177 wherein their Lordships of the Supreme Court were pleased to make the following observations:

A reading of Section 423 makes it clear that a criminal appeal cannot be dismissed for default of appearance of the appellants or their counsel. The Court has either to adjourn the hearing of the appeal in order to enable them to appear or it should consider the appeal on merits and pass final orders. The consideration of the appeal on merits at the stage of final hearing and to arrive at a decision on merits and to pass final orders will not be possible unless the reasoning and findings recorded in the judgment under appeal are tested in the light of the record of the case. After the records are before the court and the appeal is set down for hearing it is essential that the Appellate Court should (a) peruse such record, (b) hear the appellant or his pleader, if he appears, and (c) hear the public prosecutor, if he appears. After complying with these requirements, the Appellate Court has full power to pass any of the orders mentioned in the Section It is to be noted that if the appellant or his pleader is not present or if the public prosecutor is not present, it is not obligatory on the Appellate Court to postpone the hearing of the appeal If the appellant or his Counsel or the public prosecutor, or both, are not present, the Appellate Court has jurisdiction to proceed with the disposal of the appeal; but that disposal must be after the appellate court has considered the appeal on merits.

Mr. K.C. Bhandari appearing on behalf of the State does not support the order of the Sessions Judge, Balotra, dated 20th October, 1975, against which the revision petition has been filed. He frankly conceded that the Sessions Judge failed to write a reasoned judgment and dismissed the appeal merely on the ground that the Counsel for the appellant did not press the appeal. According to him, such a dismissal is illegal and it cannot be cured by Section 465(1) of the Code of Criminal Procedure 1973, which corresponds to Section 537 of the old Criminal Procedure Code.

5. I have considered the above contentions. In my opinion, the disposal of the appeal in this summary manner is illegal and improper. The Sessions Judge, Balotra, ought to have gone through the record of the case, heard the appellant or his counsel, if he appeared and the public prosecutor, if he put in his appearance. Thereafter he could dismiss the appeal if he considered that there was no sufficient ground for disturbing the findings of the trial court as to the guilt of the appellant. Even if the appellant was absent and his pleader pleaded no instructions, the Sessions Judge could not dismiss the appeal summarily without perusing the record without writing a proper judgment based on the merits of the case. Curiously enough, there is no assertion made in the judgment that the records were gone through by the Sessions Judge before dismissing the appeal on the ground of having not been pressed by the learned Counsel for the appellant. The failure of the appellant to prosecute his appeal is no ground for even summary dismissal thereof, because the appeal can be dismissed summarily only after consideration of the ground of appeal in addition to judgment &, if necessary, of the evidence adduced at the trial. The Sessions Judge did not even care to read Section 354 and 388, Cr.P.C. before passing the order of dismissal of the appeal. Section 354, Criminal Procedure Code, which corresponds to Section 367 of the old Code of Criminal Procedure, clearly requires that every judgment shall, except as otherwise expressly provided by this Code, contain the point or points for determination, the decision thereon and the reasons for the decision. By reason of Section 387 of the new Code the rules contained in Chapter XXVII relating to the judgment of a criminal court of original jurisdiction are applicable so far as may be practical, to the judgment in appeal of a Court of Sessions or Chief Judicial Magistrate. Section 386, Cr.P.C. further lays down that it is the duty of the appellate court to peruse the record and to dispose of the appeal on the merits irrespective of the fact whether the appellant or his pleader or the Public Prosecutor appears or does not appear. The requirement regarding perusal of the record cannot be dispensed with as it is not an empty formality. A conviction affects the life or personal liberty of a citizen. The Legislature, therefore, has imposed a duty on the appellate court to go through the record and direct its attention to every material question of fact or law involved in the case. It therefore, follows that the Sessions Judge, Balotra, was not empowered to dismiss the

appeal without writing a proper judgment based on the merits of the case. The dismissal of the appeal in this summary fashion was wholly unjustified.

6. Consequently, I accept this revision-petition, set aside the order of the Sessions Judge, Balotra, dated 28th October, 1975, and send the case back to him with a direction that the appeal be restored to its original number and then heard and disposed of according to law. The petitioner is in jail. It will be open for the petitioner to move the Sessions Judge, Balotra, for suspension of his sentence and for the Sessions Judge to decide such application on its merits.

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