

Vijay Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-16-2002

Reported in : RLW2003(1)Raj235; 2002(4)WLN223

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 279 and 304A

Appeal No. : S.B. Criminal Revision Petition No. 639 of 2001

Appellant : Vijay Kumar

Respondent : State of Rajasthan

Advocate for Def. : Panne Singh, Public Prosecutor

Advocate for Pet/Ap. : H.M. Saraswat, Adv.

Disposition : Revision allowed

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the judgment and order dated 12.9.2001 passed by the learned Sessions Judge, Rajsamand in Criminal Appeal No. 84/2001 by which he maintained conviction of the accused petitioner for the offence under Section 304-A IPC

recorded by the learned Addl. Chief Judicial Magistrate, Rajsamand vide judgment dated 11.12.1998 passed in Criminal Case No. 49/98, but reduced the sentence of the accused petitioner for the said offence in the following manner :-

Sentence awarded by

learned ACJM

Sentence reduced by the

learned Sessions Judge

Two years SI and to pay a fine of Rs. 5000/-, in default of payment of fine, to further undergo SI for six months.

One year SI and to pay a fine of Rs. 5000/-, in default of payment of fine, to further undergo SI for three months.

2. The facts giving rise to this revision petition, short, are as follows :-

On 20.6.1990 at about 10.45 AM, PW5 Bhagha lodged an oral report Ex.P/9 with the Police Station Rajnagar stating inter-alia that on that day at about 10.15 AM, he along with PW2 Kalu, PW-4 Nathu Singh and some other persons were taking tea in a hotel near Maxon Marbles. It was further stated in the report that Geeta (hereinafter referred to as deceased), daughter of PW3 Jawana, aged about five years was, standing near the main road on one side and at that time, a Truck bearing No. DEG/5856 came from the side of Rajnagar and that Truck was being driven by the accused petitioner rashly and negligently and the said Truck dashed against deceased and crossed over her left leg, as a result of which, her left leg was broken totally and then, she was taken to the hospital where she died on 22.6.1990.

On this report, police registered the case initially for the offence under Sections 279, 338 IPC and later on, Section 304-A IPC was added.

During investigation, the post mortem of the dead body of the deceased was got conducted and the post mortem report is Ex.P/7 and the same has been admitted

by the learned counsel appearing for the accused petitioner during trial. The accused petitioner was arrested through arrest memo Ex.P/4.

After usual investigation, police submitted challan for the offence under Sections 279, 304-A IPC against the accused petitioner in the Court of Magistrate, Rajsamand.

On 27.6.1991, the learned Judicial Magistrate, First Class, Rajsamand framed the charges for the offence under Sections 279 and 304-A IPC against the accused petitioner. The charges were read over and explained to the accused petitioner, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined as many as 5 witnesses and got exhibited some documents. Thereafter, statement of the accused petitioner under Section 313 Cr.P.C. was recorded. No evidence was produced in defence by the accused petitioner.

After conclusion of trial, the learned Addl. Chief Judicial Magistrate, Rajsamand through his judgment and order 11.12.1998 convicted the accused petitioner for the offence under Section 304-A IPC and sentenced him in the manner as indicated above holding inter-alia that the prosecution has proved its case beyond all reasonable doubts against the accused petitioner for the said offence and he has placed reliance on the statement of PW-2 Kalu.

Aggrieved from the said judgment and order dt. 11.12.1998 passed by the learned Addl. Chief Judicial Magistrate, Rajsamand, the accused petitioner preferred appeal before the learned Sessions Judge, Rajsamand. The learned Sessions Judge, Rajsamand through his judgment and order dt.12.9.2001 decided that appeal and confirmed the conviction of the accused petitioner for the offence under Section 304-A IPC recorded by the learned Addl. Chief Judicial Magistrate vide judgment dated 11.12.98, but reduced the sentence for the said offence in the manner as indicated above.

Aggrieved from the said judgment and order dated 12.9.2001 passed by the learned Sessions Judge, Rajsamand, the accused petitioner has preferred the

present revision petition before this Court.

3. In this revision petition, the main contention of the learned counsel for the accused petitioner is that from the statements of the prosecution witnesses, namely, PW-2 Kalu and PW-5 Bhagha, it is clear that the deceased was coming towards hotel after crossing the road and she rushed while crossing the road and at that time, a Truck came and she dashed against the Truck and in these circumstances, the accused petitioner cannot be said to have driven the Truck rashly and negligently. Hence, the findings of the courts below convicting the accused petitioner for the offence under Section 304-A IPC be set aside and this appeal be allowed and the accused petitioner be acquitted for the said offence.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the courts below.

5. I have heard the learned counsel for the accused petitioner and the learned Public Prosecutor and perused the record of the case.

6. To prove the charge for the offence under Section 304-A IPC, the prosecution has to prove that the death of the deceased was caused by the fact of the accused and such act of the accused was rash or negligent.

7. What Section 304-A IPC requires is causing of death by doing any rash or negligent act and that means that death must be the direct or proximate result of the rash or negligent act. I may in this connection refer to *Emperor v. Omkar Rampratap*, 4 Bom. Law Reporter 679 in which Sir Lawrence Jenkins interpreted Section 304-A IPC as under :-

'To impose criminal liability under Section 304-A IPC, it is necessary that death should have been the direct result of a rash or negligent act of the accused and that act must be the proximate and efficient cause without the intervention of author's negligence. It must be the causa causans: it is not enough that it may have been the causa sine qua non.'

8. This view has been approved by their Lordships of the Hon'ble Supreme Court in *Mohd. Rangawalla v. Maharashtra State*, AIR 1965 SC 1616.

9. The mere fact that the accident would not have taken place if the accused would have been still more cautious would not be enough to make him liable under Section 304-A.

10. Keeping the above principles in mind, the evidence of the present case is being examined.

11. PW-2 Kalu is the main witness, upon which reliance was placed by the learned trial Magistrate and this witness has admitted the following facts in his cross-examination :-

(1) That deceased was coming towards the hotel from the side of dera.

(It may be stated here that on one side of the road, there were deras of some caste and on other side of that road, there was hotel, where PW5 Bhagha and others were sitting.)

(2) That the place where accident took place, there was ascent on the road.

(3) That when Truck came there, deceased started keeping steps with fast speed and then accident took place.

12. PW3 Jawana is the father of the deceased and he has stated in his statement that he reached on the spot after the accident. Thus, his evidence is of no value.

13. PW4 Nathu Singh has been declared hostile.

14. Another witness is PW5 Bhagha, who lodged the report Ex.P/9. He has admitted the following facts in his cross-examination :-

(1) That on one side of the road, there was hotel and on other side of that road, there were deras belonging to PW-5 Bhagha and other members.

(2) That deceased was coming from the side of dera towards the side of hotel, after crossing the road.

(There is no dispute in this case that PW5 Bhagha and some other persons were sitting in the hotel at the time of alleged accident.)

(3) That deceased was crossing the road lonely.

(4) That he was told by the people that deceased suddenly came on the road and, thereafter, Truck came and alleged accident took place.

(5) That the sister of the deceased had crossed the road earlier to the deceased.

(6) That in case sister of the deceased, namely, Prem would have not left the deceased alone and would not have crossed the road alone and would have taken the deceased alongwith her, the alleged accident would not have taken place.

15. From the above evidence, it has come into picture that deceased was crossing the road and before her, her sister Prem had crossed the road and seeing the Truck, deceased accelerated her speed in crossing the road and in the meanwhile, the alleged accident took place.

16. The question that arises for consideration is whether in a case where pedestrian crossed the road suddenly, the driver of the vehicle by which accident took place can be said to have driven the vehicle rashly and negligently or not.

17. The Hon'ble Supreme Court in Mahadeo Hari Lokre v. The State of Maharashtra, AIR 1972 SC 221 has held that if a pedestrian suddenly crosses a road without taking note of the approaching bus there is every possibility of his dashing against the bus without the driver becoming aware of it. The bus driver cannot save accident however slowly he may be driving and therefore he cannot be held to be negligent in such a case.

18. Similar view was expressed by this Court in Bhanwarlal v. State of Rajasthan, 1970 RLW 68, and in Om Prakash v. The State of Rajasthan, 1991 Cr.L.R. (Raj.) 21.

19. In the present case, deceased was crossing the road unmindful of the fact whether a Truck was coming from the opposite direction or not and if in such a situation, accident took place, it cannot be said that the death of the deceased in this case was the directly result of a rash or negligent act of the accused petitioner. The mere fact that the accident would not have taken place if the accused

petitioner would have been still more cautious would not be enough to make him liable Under Section 304-A IPC.

20. The Court is also aware that while hearing a revision petition, the Court of revision is not entitled to re-assess and re-appraise the evidence unless it finds that the judgment to be revised suffers from some illegality or perversity or when there is glaring defect in the procedure.

21. It may be stated here that where conclusions of the courts below are grossly erroneous and great injustice has resulted therefrom, in such cases, Revisional Court may re-assess the evidence.

22. In the present case, from the evidence on record, it cannot be said that the death of the deceased was directly the result of rash or negligent act on the part of the accused petitioner. In these circumstances, the findings of conviction recorded by the courts below cannot be sustained and they are to be interfered with by this Court as they suffer from basic infirmity.

Theory of principle of moral conviction

23. Apart from this, from perusing the judgments of both the courts below, it appears that both courts below were swayed by the principle of moral conviction.

24. In *Haricharan Kurmi Jogia Hajam v. State of Bihar*, AIR 1964 SC 1184 the Hon'ble Supreme Court has held that in criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

25. Since in criminal trial, the conviction can take place on legal proof and not on moral conviction, therefore, from this point of view also, the findings of conviction recorded by the courts below against the accused petitioner cannot be sustained.

26. For the reasons stated above, the findings of conviction recorded by both the courts below against the accused petitioner for the offence under Section 304-A IPC cannot be sustained and the same are liable to be set aside and this revision petition deserves to be allowed and the accused petitioner is entitled to acquittal.

Accordingly, this revision petition filed by the accused petitioner Vijay Kumar is allowed and the impugned judgments and orders dated 12.9.2001 passed by the learned Sessions Judge, Rajsamand and dated 11.12.1998 passed by the learned Addl. Chief Judicial Magistrate, Rajsamand are set aside and the accused petitioner is acquitted of the charge for the offence under Section 304-A IPC

Since the accused petitioner is in jail, he be released forthwith, if not required in any other case.

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