

Birbal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-21-1997

Reported in : 2(1997)ACC124

Judge : M.A.A. Khan, J.

Appellant : Birbal

Respondent : State of Rajasthan

Judgement :

M.A.A. Khan, J.

1. On September 4,1993 PW.1 Nahar Singh, a tea vendor, reported to the police officials at police station Galta Gate. Jaipur that the driver of the Rajasthan State Roadways Delux Bus No. RJ-14 P 3287 had knocked down two bicycle riders on Delhi-Jaipur bye-pass road near Khola Hanuman Ji Ka Mor causing injuries to one and death of the other. A case Under Sections 279, 337 and 304, IPC was registered. On investigation it was found that the applicant was the driver of the said vehicle at the relevant time and that by driving his said vehicle rashly and negligently on the public road as endangered the safety of others the applicant had knocked down the bicycle riders causing injuries to PW. 5 Sita Ram, aged 13 years, and death of the Veer Bhadra, also aged 13 years. A report Under Section 173, Cr.P.C. was accordingly submitted by the police against the applicant before the learned Magistrate. On being read and explained the substance of accusation

for offences Under Sections 279, 337, 338 and 304A, IPC the applicant pleaded not guilty. On trial for those offences the learned Magistrate found him guilty of offences Under Sections 279 and 304A IPC. He convicted him, therefor, and sentenced him to S.I. for one month and fine of Rs. 100/- Under Section 279 and S.I. for six months and fine of Rs. 200/- for offence Under Section 304A, IPC. The applicant was acquitted of the offences Under Sections 337/338 IPC. On appeal the learned Sessions Judge confirmed the order of the conviction and sentence and dismissed applicants appeal. Hence this application in revision Under Section 397, Cr.P.C.

2. Mr. D.C. Sharma, the learned Counsel for the applicant vehemently urged that the lower Courts have mis-read and mis-appreciated the evidence on record inasmuch as there were material contradictions in the statements of PW. 1 Nahar Singh and PW. 5 Sita Ram on the point of the two boys having appeared on the road all of sudden. The learned Public Prosecutor, however, submitted that there were no good reasons for this Court to interfere with the concurrent findings of facts, as recorded by the two Courts below.

3. In exercise of powers Under Section 397, Cr.P.C. the concurrent findings of fact should not ordinarily be disturbed by the Revisional Court unless such findings are such as a man of ordinary prudence cannot arrive at on the basis of the evidence on the record of the case. If the findings recorded by the two Courts below are such as may reasonably be arrived at on the basis of evidence on record and under the facts and circumstances of the case, the Revisional Court would not be justified in disturbing such findings. On examination of the record of proceedings of the lower Courts and the evidence brought on such record I feel satisfied that the finding regarding the guilt of the applicant Under Section 279/304A, IPC is well substantiated by the evidence on the record of the learned Magistrate.

4. PW.1 Nahar Singh is the tea vendor who sells tea on his 'Thela' near the place of occurrence. He has stated that the two bicycle riders had come from the side-road of Hanuman Ji Ka Khola and when they were standing on the roadside with their bicycle the applicant brought his vehicle driving the same on wrong side and knocked down the two boys alongwith their bicycle, dragging them and their

bicycle for about 30 paces under the wheel of the bus. PW 5 Sita Ram is the boy who was with the deceased Veer Bhadra on the bicycle at the relevant time. He has stated that on the day of the incident he and Veer Bhadra deceased, had gone to Hanuman Ji Ka Khola and while returning therefrom had stopped where the Khola Road joined the bye-pass road, he further stated that at that time the bus driver brought his bus and dashed the same against him and the deceased, Mr. Sharma pointed out that there was material contradiction between the statements of these two witnesses inasmuch as that whereas Nahar Singh stated that the boys were still riding the bicycle when the bus had dashed against them, Sita Ram stated that they were standing on the roadside. In my opinion this is no material contradiction in view of the fact that Nahar Singh's attention might have been diverted when the bus had dashed against the boys. Sita Ram is a boy of about thirteen years of age and in view of such age he could have suppressed or exaggerated some facts under the advice of his elders. Under such circumstances their testimony is required to be appreciated in the totality of the circumstances of the case and other evidence on record.

5. The occurrence did take place in broad day light at the peak hours of the day on a one of the most busy bye-pass roads of the city. According to the statement of PW4 Radhey Lal Yadava, the bus conductor at the relevant time, the road was occupied by a long line of trucks. This is a wrong statement though, as if that would have been a fact, the incident could not have taken place in the manner as it is found to have taken. The deceased was dragged under the wheel upto 30 feet and his bicycle upto 120 feet, as is evident from the particulars given, in the site map. Had there been a long line of trucks on the road at that time the deceased and his bicycle could not have been dragged under the wheels so far. Instead the marks of dragging, observed on the spot, and the places where the dead body of the deceased boy Veer Bhadra and his bicycle were found lying clearly proved that the applicant was driving his vehicle on such busy road and in busy hours with not only at an excessive speed indicating rashness on his part but also quite negligently. While driving vehicle on public ways in city when a number of lanes and side roads join the public road the driver of the vehicle is required to observe much more care and caution in driving his vehicle than which he is to observe while driving the vehicle on a vacant road in non-populated place or area. In the

present case the vehicle was driven by the applicant quite rashly and negligently on the wrong side of the road and thus he committed the offence Under Section 279, IPC.

6. It is an unchallenged fact that the deceased Veer Bhadra had sustained fatal injuries as a result of striking against and being run over by the vehicle which was driven by the applicant on the public road. An offence Under Section 304A, IPC thus also stood fully proved in the present case.

7. In view of the above discussion it is held that the two Courts below have rightly held that at the relevant time and place the applicant, by driving his vehicle in a rash and negligent manner on a public road endangering the safety of others, had caused the death of Veer Bhadra, deceased. The concurrent finding on that fact in issue in the case is thus fully borne out of the evidence on record and the fact and circumstances of the case. Such concurrent findings of the facts are thus not required to be disturbed by this Court.

8. For sentence, Mr. Sharma urged that in conformity with the practice of this Court the applicant be given benefit of the provisions of the Probation of Offenders Act. In this behalf it was submitted by Mr. Sharma that the applicant was a man of about 55 years of age, having dependents to maintain and other liabilities and responsibilities to be discharged and was likely to retire in near future. It was also submitted that as a result of maintaining the sentence awarded to him the applicant was likely to lose his Government job and that the possibility of contributory negligence on the part of the deceased in bringing his bicycle on the main road from a side-road can also be not ruled out in this case.

9. I have given serious thoughts to the arguments advanced by Mr. Sharma. It is true that in the cases of protracted trials wherein the accused were found to have faced the ordeal of the trial for decades this Court has thought it proper to extend the benefits of the probationary measure to the offenders. But in the present case I find that the trial did not consume much time. The appellate Court too, appreciably, decided the appeal of the applicant as early as possible. The incident did take place on a busy bye-pass, which by now has become to be considered as a city road. The applicant is found to be driving his vehicle quite rashly and negligently

on such busy road in peak hours of the day. By his rash and negligent act he is found to have caused injuries to Sita Ram and death of Veer Bhadra, he dashed his vehicle by driving it on the wrong side and then dragging the deceased and his cycle under the wheel of the Bus for sufficiently long distance. Above all, he has been awarded simple imprisonment for six months only with no order of compensation to the victims for his rash and negligent act. Release of the applicant under such circumstances, may be on probation, is likely to send wrong message to the drivers of the vehicles on busy roads of a populous city like Jaipur. The alarming increase in road accidents in the city must also dissuade the Courts from kindly application of the probationary measures to the doers of rash and negligent acts. I, therefore, do not feel inclined to interfere with the order of the sentence as made by the two Courts below in this case.

10. In the result, I find no force in this application and dismiss it as such.

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