

State of Rajasthan Vs. Prem Singh

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Court : Rajasthan

Decided On : Apr-25-1986

Reported in : 1986WLN(UC)612

Judge : Jas Raj Chopra, J.

Appeal No. : S.B. Cr. Appeal No. 259 of 1978

Appellant : State of Rajasthan

Respondent : Prem Singh

Disposition : Appeal dismissed

Judgement :

Jas Raj Chopra, J.

1. The State appeal is directed against the judgment of the learned Addl. Munsif and Judicial Magistrate, Partapgarh dated 3-12-1977 where by the learned lower court has acquitted the accused respondent Prem Singh of the offences under Sections 304A, 279 and 337, IPC.

2. The facts of this case briefly stated are that on 29-3-1973, accused Prem Singh was driving Bus No. RJH 800 coming from Ratlam to Partap Garh. PW 14 Mohd. Bux was its conductor. At about 5.30 p.m., when the bus reached near the village Satmudi, it was stopped by the natives of the village in order to collect some

money on the occasion of Holi. The Driver Prem Singh refused to pay them any money saying that he has no money what so. ever. It is alleged that thereafter, the accused without giving any horn and without giving any indication that he is going to start the bus was started the bus, which over-ran the deceased Jeevla and injured one Phoolji, who has been examined as PW 13. The report of the incident was lodged at Police Station, Aalamgarh by one Arjun Bheel who happens to be the nephew of the deceased. This report has been marked Ex. P 6, on the basis of which, a case under Section 304A IPC was registered. The site was inspected and inquest memo was prepared. The post-mortem examination of the dead body was got conducted and the injuries of injured Phoolji were also got examined. The post-mortem report has been marked Ex. P 15 and the injury report of Phoolji has been marked Ex. P 16.

3. After usual investigation the case against the accused was challaned in the learned lower court. The learned lower court charged the accused with offence under Sections 304A, 279 and 337. IPC. The accused did not plead guilty to the charges and claimed trial where upon the prosecution examined as many as 16 witnesses in support of its case. The statement of the accused was recorded under Section 313, Cr.PC and thereafter, two more witnesses were examined, they are PW 17 Abdul Rahman and CW 1 Mangi Lal. The statement of the accused was again recorded under Section 313, Cr.PC. He led no defence.

4. After hearing the final arguments of the parties, the learned lower court acquitted the accused respondent Prem Singh as aforesaid. Hence this appeal by the State.

5. I have heard Mr. S.K. Mathur, learned Public Prosecutor for the State and Mr. N.P. Gupta, learned Counsel for the accused-respondent.

6. Mr. S.K. Mathur, learned Public Prosecutor argued that in this case from the evidence of PW 1 Arjun, PW 2 Chunni, PW 3 Gauttama and PW 4 Rama, it is clear that the villagers stopped the bus in orders to collect some money from the driver and the conductor. They did not give any money and instead, the driver drove the bus without any warning. No horn was blown and, therefore, when the bus was started suddenly, it over ran deceased Jivla and caused injuries to Phoolji

and, therefore, the learned lower court was totally unjustified in acquitting the accused of the above said offence.

7. Mr. Gupta appearing for the accused respondent has submitted that in such case, it is to be established whether there is a close nexus between the occurrence and the rashness and negligence of the driver. The case of all these four witnesses before the learned trial court was that the bus has over ran Jeevla. The medical evidence does not support this theory which clearly shows that these witnesses have not seen the occurrence. Phoolji who was injured in this accident has not also supported the case of the prosecution and he has been declared hostile. PW1 Arjun has stated that when the driver started the bus, he blew the horn and, therefore, looking to these facts and circumstances of this case, the conclusion of the learned lower court cannot be called perverse. It is an appeal against acquittal and, therefore, such a judgment can only be interfered in very exceptional circumstances when the judgment of the learned lower court appears to be perverse.

8. I have given my most earnest consideration of the rival submissions made at the bar. PW 1 Arjun, PW 2 Chunni, PW 3 Gauttama and PW 4 Rama, all the four eye witnesses of the occurrence have categorically stated that they stopped this bus, which was driven by accused Premsingh. There is no dispute about the fact that on the relevant day, at that particular time, this particular bus which is alleged to have been involved in the accident, was driven by accused Premsingh. There is also no dispute about the fact that this bus was stopped by the villagers for collecting money on the occasion of Holi. The case as put forth by these four witnesses is that the driver refused to give any money and he all of a sudden started the bus and in this process, it over ran Jeevla and it has caused injuries to Phoolji. So far as Phoolji is concerned he has been examined as PW 13 and he has not supported the prosecution case and therefore, I need not detain myself regarding consideration of the case of Phoolji. Thus, we have only to see whether the death of Jeevla has occurred due to rash and negligen driving by the accused Premsingh, All these four eye witnesses have stated that the bus over ran Jeevla. The only available check on the record regarding this fact is the testimony of PW 16 Dr. V.K. Soni.

9. PW 16 Dr. V.K. Soni has stated that he found two lacerated wounds on the front of parietal region of the deceased. He also found certain abrasions on the right frontal tuberosity and right side of the neck 2' below the mastoid region. Multiple abrasions were also found on the right side of the iliac crest. There were multiple abrasions of various sizes over the antero fold of axilla to the posterior fold of axilla extending upto 10th rib of right side. He has nowhere stated that these injuries have been occasioned because of the over running of the injured by the wheel of the bus. No wheel marks were found on the body of the deceased. Moreover, if the wheel of the bus has over run the injured, it should have crushed his body and ruptured in any of his organs. Moreover, no rupture or crush injury in the body of Jeevla was found. It appears that his body has been hit by the side of the bus. It does not appear to be a case where the bus has actually over run the deceased and, therefore, when the evidence of these eye witnesses is not supported by the medical evidence it is difficult to hold that these injuries were the result of over running of the injured by the bus. No effort was made to ask any question to the Doctor as to how these injuries have come. It was the definite case of the prosecution that these injuries have been caused to Jeevla on account of over running of the bus but no such question was asked to the Doctor as to whether these injuries were possible by over running of a bus over the body of a man. Under these circumstances, I am persuaded to agree with Mr. N.P. Gupta, learned Counsel for the accused-respondent that the eye witnesses have not stated the whole truth.

10. PW 6 Mst. Jawari and PW 7 Mst. Phoolki have also been examined by the prosecution as alleged eye witnesses of the occurrence but they have stated that they have not seen the occurrence. Actually they reached the place of occurrence after it was over. Both of them have stated that PW 1 Arjun, PW 2 Chunni, PW 3 Gauttama and PW 4 Rama i.e. all the four eye witnesses accompanied these two witnesses. Although these two witnesses have turned hostile and have not supported the prosecution case but they have stated that these four alleged eye witnesses were with them and they too have not seen the occurrence. PW 9 Laduri, PW 9 Janki, PW 10 Rukmi, PW 11 Jeevna and PW 12 Hoorji have also been examined as alleged eye witnesses of the occurrence but they too have not supported the case of the prosecution, I have already stated earlier that PW 13

Phoolji who has been injured in this incident has not supported the case of the prosecution. From this discussion of the evidence, one thing becomes clear that actually Jeevla has not died because of any injuries received by him on account of this being over run by the bus and, therefore, to this extent, the evidence of these four witnesses cannot form the basis for recording conviction against the accused-respondent Premsingh under Section 304A IPC.

11. One more fact is very pertinent to be noted in this case PW 1 Arjun has stated that before the driver started the bus, he blew the horn and therefore, it is clear that he gave sufficient warning to the persons standing on the road to come to the side of the road. To the same effect is the testimony of PW 14 Mohd. Bux. He has not been declared hostile and he has stated that when the driver started the bus, he gave the horn and then started the bus and as soon as the crowd cried out that somebody has been injured, the bus was immediately stopped. The dead body has been found just near the front wheel of the bus and, therefore, it can safely be inferred that no sooner the crowd cried out the bus was stopped. Thus, it cannot be said that the bus was driven either rashly or negligently.

12. Mr. S.K. Mathur, learned Public Prosecutor has submitted that it is true that road sense of pedestrians has developed to this extent that when the horn is blown, the people move to take sides to allow the vehicle blowing the horn to pass but that does not mean that it gives a licence to the driver to over run somebody simply because he does not observe the road rules. In this respect, he drew my attention to an authority of this Court in Narsingh Lal v. State 1961 RLW 466, wherein, Bhandari, J. (as he then was) observed as under:

Usually, the road sense of pedestrians has developed to the extent that on hearing the horn, they move to a side to let the vehicle pass but this does not mean that the pedestrian lacking that road sense or a pedestrian of tender age not appreciating the significance of the blowing of the horn may be knocked down in case he does not remove himself off the road at time. It is the duty of the driver to foresee that he is stop the vehicle in time to avert the collision in case the pedestrian does not jump off the road so as to give him a clear road. The case may be different when in this jumping there is wavering in the mind of the

pedestrian.

I have carefully gone through this ruling. It was a case of over-running of a girl of 5 years, who did not leave the road even after blowing of the horn. The girl was ahead of the truck and so, the driver was able to observe her from a distance. In this case, I have already observed that the deceased was not standing in front of the bus. Had he been standing in front of the bus, the driver would have certainly observed him and would have stopped the bus or if he had not done so he would certainly have crushed him under the wheel of the bus. Under these circumstances, it appears that the deceased was standing by the side of the bus. Looking to these facts and circumstances of this case, Narsinglal's case (supra) does not help the case of the prosecution.

13. Mr. Mathur further draw any attention to a decision of the Mysore High Court in Sivappa v. State of Mysore AIR 1955 NUC 699 (Mys) wherein it was held as under:

Ordinarily speaking, the burden of proving that the vehicle was driven rashly and negligently is on the prosecution and it is particularly so when the vehicle hits against something moving which might have contributed to the accident. In a case where there has been an accident on account of the vehicle dashing against a tree or a culvert, the presumption is that the accused was driving the vehicle rashly and negligently.

I am afraid, I cannot agree with the view taken by Mysore High Court. The rashness and negligence of a driver as also the fact that the death or injury was the direct result of the rash or negligent driving has to be established by the prosecution by cogent and reliable evidence. The law does not permit a court to draw any presumption against an accused in such cases. I, therefore, respectfully disagree with the ratio of the aforesaid authority of the Mysore High Court.

14. On a critical examination of the evidence in this case, I am inclined to agree with the learned lower court that the prosecution has failed to establish that the rash and negligent act of the accused was the proximate cause of the death of Jeevla. There appears no nexus between the death of Jeevla and the alleged rash

or negligent act of the accused. Rather, 1 would go to the extent of saying that when the driver refused to pay any amount to the natives on the occasion of Holi, and he blew the horn and started the bus, it was the duty of the persons who stopped the bus to clear the road so that the bus may proceed further. After taking this precaution, it cannot be said that the driver either acted rashly or negligently in starting the bus to proceed further. When he has started the bus after blowing the horn he cannot be held negligent in driving the bus and when the bus has been stopped as soon as the crowd cried that somebody has been injured and so, it also cannot be held that the driver was rash or negligent in driving the bus. Looking to these facts and circumstances of this case, I am inclined to agree with the learned lower Court that no offence under Sections 304A, 279 and 337 IPC is made out against the accused respondent.

15. In the result, there is no force in this appeal and it is hereby dismissed.

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