

Bagda Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-15-2001

Reported in : RLW2003(3)Raj1815; 2002(4)WLN350

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 279, 337, 304(A) and 338; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397; [Probation of offenders Act, 1958](#)

Appeal No. : S.B. Criminal Revision Petition No. 364 of 2001

Appellant : Bagda Ram

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Shah, Adv.

Disposition : Revision dismissed

Judgement :

Sunil Kumar Garg, J.

1.This revision petition has been filed by the accused petitioner against the judgment dated 28.6.2001 passed by the learned Sessions Judge, Jalore in Criminal Appeal No. 55/99 by which he dismissed the appeal of the accused

petitioner and confirmed the judgment and order dated 16.6.1999 passed by the learned Chief Judicial Magistrate, Jalore in Criminal Case No. 187/97 whereby the learned Chief Judicial Magistrate convicted the accused petitioner for the offence under sections 279, 337, 338 and 304A IPC and sentenced in the following manner :-

Name of accused petitioner

Convictedu/Section

Sentenceawarded

Bagda Ram

2791PC

Six months SI and a fine of Rs.1000/-, in default of paymentof fine, to further undergo 15 days' Si.

337 IPC

Six months' SI and a Tine of Rs.500/-, in default of paymentof fine, to further undergo 15 days' SI.

338 IPC

One year SI and a fine of Rs.1000/-, in default of payment offline, to further undergo 30 days' SI.

304-A IPC

One year SI and a fine of Rs.5000/-, in default of paymentof fine, to further undergo 30 days SI.

All the above substantive sentences were ordered to run concurrently.

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

On 11.6.1997 at about 11.50 PM, PW4 Bhuraram gave statement in the hospital before PW9 Mohanlal stating inter-alia that there was a Jeep bearing No. RRT 4883 belonging to one Mangilal and that Jeep was being driven by Sakaram (hereinafter referred to as the deceased) and on that day at about 8.00 PM, PW4 Bhuraram and PW5 Goparam sat in that Jeep for going to Umedabad and at that time, Jeep was being driven by the deceased and at about 8.30 PM as soon as they reached near the rapat of Umedabad, from the front side, a Tractor bearing No. RJ21-R4551 attached with the trolley came with fast speed and seeing that Tractor & trolley, deceased made the speed of his Jeep slow, but the driver of the Tractor & trolley struck against the Jeep, as a result of which, Tractor pierced into the Jeep and thereafter, driver of the Tractor fled away from the scene and just after the occurrence, PW6 Phularam and PW.3 Chatraram reached there and they took out him and PW5 Goparam from the Jeep. It was further stated by PW4 Bhuraram in his statement that he himself received injuries and deceased became unconscious and deceased was brought to the hospital at Jalore, where he was declared dead and driver of the Tractor in question was accused petitioner Bagdaram and he has caused that accident by driving the Tractor rashly and negligently.

On this statement, regular FIR Ex.P/18 was chalked out at Police Station Kotwali, Jalore and investigation was started. During investigation, site plan Ex.P/8 was prepared and PW5 Goparam and PW4 Bhuraram were got medically examined and their injury reports are Ex.P/10 and Ex.P/11 respectively. The fracture report of PW4 Bhuraram is Ex.P/16. The post mortem of the dead body of the deceased was got conducted and the post mortem report is Ex.P/15. The Tractor in question was seized through seizure memo Ex.P/7. PW9 Mohanlal gave a notice under Section 133 of the Motor Vehicles Act to the owner of the Tractor and the same is Ex.P/17 where there is endorsement that at the time of accident, the Tractor was being driven by the accused petitioner.

After usual investigation, the police submitted challan in the Court of Chief Judicial Magistrate, Jalore against the accused petitioner for the offence under Sections 279, 337, 338 and 304A IPC.

On 7.9.1998, the contents of the charges for the offence under Sections 279, 337, 338 and 304A IPC were read over and explained to the accused petitioner. The accused petitioner denied the contents of the charges and claimed trial.

During trial, in support of its case, the prosecution examined as many as 9 witnesses and got exhibited some documents. Thereafter, the statement of the accused petitioner under Section 313 Cr.P.C. was recorded. No evidence was led in defence by the accused petitioner.

After recording evidence and conclusion of trial, the learned Chief Judicial Magistrate, Jalore vide his judgment and order dated 16.9.1999 convicted the accused petitioner for the offence under Sections 279, 337, 338 and 304A IPC and sentenced in the manner as indicated above, holding inter-alia :-

(1) That prosecution has proved that at the time of accident, the Tractor in question was being driven by the accused petitioner.

(2) That the Tractor in question was being driven by the accused petitioner rashly and negligently.

(3) That because of rash and negligent driving of the Tractor by the accused petitioner, the alleged accident took place in which PW-4 'Bhuraram and PW-5 Goparam received injuries and one person, namely, Sakaram died.

(4) That the prosecution has proved its case beyond all reasonable doubts against the accused petitioner for the offence under Sections 279, 337, 338 and 304A I.P.C.

Aggrieved from the said judgment and order dated 16.9.1999 passed by the learned Chief Judicial Magistrate, Jalore, the accused petitioner preferred an appeal before the learned Sessions Judge, Jalore, who also vide judgment dated 28.6.2001, after analysing the evidence on record critically and minutely, dismissed the appeal of the accused petitioner and maintained the conviction and sentence passed against the accused petitioner by the learned Chief Judicial Magistrate, Jalore vide judgment and order dated 16.9.1999.

Aggrieved from the said judgment dated 28.6.2001 passed by the learned Sessions Judge, Jalore, the accused petitioner has preferred this revision petition before this Court.

3. In this revision petition, the following submissions have been made by the learned counsel appearing for the accused petitioner :-

(1) That findings of both the courts below on the point that Tractor in question was being driven by the accused petitioner at the time of alleged accident are erroneous one, as there is no evidence on record to prove this fact.

(2) That if the Court comes to the conclusion that the accused petitioner has committed the offence, the accused petitioner be released under the provisions of Probation of Offenders Act or in awarding sentence, lenient view be taken.

4. On the other hand, the learned Public Prosecutor supported the impugned judgments and orders of the courts below.

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

6. Before proceeding further, it may be stated here that to impose criminal liability under Section 304A IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must be proximate and efficient cause without the intervention of another's negligence. It must be the cause causans; it is not enough that it may have been the cause sine qua non. For that the decision of the Hon'ble Supreme Court in *Kurban Hussain Mohamedalli Rangawalla v. State of Maharashtra* (1) may be referred to.

7. So far as the facts that in the alleged accident, one person, namely, Sakaram died and PW-4 Bhuraram and PW-5 Goparam received grievous & simple injuries are concerned, there is no dispute on this point.

8. The prosecution has also proved the injury report Ex.P/9 of the accused petitioner and thus, from the injury report Ex.P/9 it is also established that the accused petitioner also received one injury.

9. In coming to the conclusion that the Tractor in question was being driven by the accused by the accused petitioner at the time of alleged accident, the learned Chief Judicial Magistrate, Jalore in his impugned judgment dated 16.9.1999 has given the following reason's :-

(1) That he has placed reliance on the statement of PW-2 Motaram and the statement of PW-2 Motaram gets corroboration from the notice Ex.P/17 which was given by PW-9 Mohanlal to the owner of the Tractor.

(2) That when the statement of the accused petitioner under Section 313 Cr.P.C. was being recorded, he stated that he never drove any Tractor, but when he was shown license, then he admitted this fact and in these circumstances, the learned Chief Judicial Magistrate came to the conclusion that accused petitioner made a false statement before the Court.

(3) That since accused petitioner also received injury, therefore, his presence on the scene is established.

10. The learned Sessions Judge, Jalore in his impugned judgment, dated 28.6.2001 also came to the conclusion at the time of alleged accident, the Tractor in question was being driven by the accused petitioner and in coming to this conclusion, he has placed reliance on the findings recorded by the learned Chief Judicial Magistrate on that point and he has further placed reliance on the statements of PW-5 Goparam, who is an injured witness and PW-3 Chataram apart from the statement of PW-2 Motaram.

11. Thus, both the courts below concurrently found that at the time of alleged accident, the Tractor in question was being driven by the accused petitioner and the accused petitioner was driving the Tractor rashly and negligently and because of rash and negligent driving, of the Tractor by the accused petitioner, the alleged accident took place in which one person, namely, Sakaram died and two persons, namely, PW-4 Bhuraram and PW-5 Goparam received injuries.

12. In my considered opinion, above concurrent findings are based on correct appreciation of evidence and there is sufficient evidence on record to prove all

above facts and after examining the evidence of the injured eye witnesses and other evidence led by the prosecution in a very meticulous manner, both the courts below recorded findings of facts stated above.

13. PW-2 Motaram has clearly stated in his statement that the driver of the Tractor in question at the relevant time was accused petitioner and he has not been cross-examined on this point and, therefore, if both the courts below have placed reliance on his statement, they have not committed any mistake in doing so.

14. So far as the statement of PW-5 Goparam, who is an injured witness, is concerned, the learned Sessions Judge has rightly placed reliance on his statement as he has clearly stated that he was sitting in the Jeep near the deceased and PW-4 Bhuraram was sitting on the back seat and he has further stated that the driver of the Tractor in question was accused petitioner and he was known to him for the last 6-7 years. In these circumstances, the best evidence in this case on the point that the Tractor was being driven by the accused petitioner is the statement of PW-5 Goparam and from the statement of PW-5 Goparam, it does not appear that he has any enmity against the accused petitioner and he is implicating the accused petitioner in this case falsely.

15. There is one more point that goes against the accused petitioner and the same is that statement Ex.P/5 was given by PW- 4 Bhuraram just after the occurrence and in that statement, the name of the accused petitioner finds place as driver of the Tractor in question and when this being the position, to say that accused petitioner has been falsely implicated later on cannot be accepted.

16. The argument of the learned counsel for the accused petitioner is that there is evidence in the statements of some of the witnesses that at the time of alleged accident, there was darkness on the road and therefore, it was not possible for the prosecution witnesses to identify the accused petitioner as he was not found available just after the accident and in these circumstances, benefit of doubt should be given to the accused petitioner on the point whether the Tractor was being driven by him or not. In my considered opinion, this argument does not carry any weight because of the statement of PW-5 Goparam, who has clearly stated that the accused petitioner is known to him for the last 6-7 years.

17. So far as the findings of both the courts below that Tractor in question was being driven by the accused petitioner rashly and negligently are concerned, they are based on correct appreciation of evidence and in recording these findings both the courts below have placed reliance on the statements of eye witnesses PW- 4 Bhuraram and PW-5 Goparam and on the site plan Ex.P/8, which clearly shows that the accused petitioner caused the accident after driving the Tractor on wrong side and after that, the Tractor dragged the Jeep towards another side.

18. It may be stated here that a Court of revision is not entitled to reassess and reappraise the evidence unless it finds that the judgment to be revised suffers from some illegality or perversity or when there is glaring defect in procedure. The revisional Court cannot weigh the sufficiency of evidence.

19. The High Court while sitting in revisional jurisdiction under Section 397 of the Code of Criminal Procedure shall not and cannot re-appreciate and re-appraise the evidence and the finding of fact recorded by the two courts below can only be interfered with if such findings are perverse or based on no evidence or suffered from any error of law.

20. In *State of Orissa v. Nakula Sahu (2)*, the Hon'ble Supreme Court held that although the revisional power of the High Court is as wide as the power of court of appeal, it is now well settled that normally this jurisdiction of the High Court is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. In spite of the wide language of Section 397, the High Court is not expected to act under Section 397 or Section 401 as if it is hearing an appeal.

21. In my considered opinion, in the present case, the findings of facts recorded by both the courts below that the accused petitioner was driving the Tractor in question at the time of alleged accident and he was driving the Tractor rashly and negligently and because of rash and negligent driving of the Tractor by the accused petitioner, the alleged accident took place and in that accident, one person, namely, Sakaram died and two persons, namely, PW-4 Bhuraram and PW-5 Goparam received injuries, are based on correct appreciation of evidence

and they cannot be regarded as perverse or based on no evidence or suffered from any error of law. It does not appear that there is a glaring defect in the procedure or there is a manifest error on point of law which has consequently resulted in flagrant miscarriage of justice. It also does not appear that there exists a manifest illegality in the impugned judgments of the courts below.

22. For the reasons stated above, the concurrent findings recorded by both the courts below holding the accused petitioner guilty for the offence under Sections 279, 337, 338 and 304A IPC are based on evidence, warranting no interference.

On point of sentence for the offence under Section 304A IPC

23. The argument of the learned counsel for the accused petitioner is that looking to the entire facts and circumstances of the case, either the accused petitioner be released on probation under the Probation of Offenders Act or in awarding sentence, lenient view be taken.

24. A question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere with it. Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch.

25. In *Rattan Singh v. State of Punjab* (3), the Hon'ble Supreme Court held as under :-

'Penal Code (1860) Section 304A. Rash and negligent driving. Fatal accident, Sentence. No compassion to be shown.'

26. In *State of Karnataka v. Krishna alias Raju* (4), the Hon'ble Supreme Court held as under :-

'Criminal P.C. (2 of 1974). Section 377. Enhancement of sentence. Driver convicted for killing one person and injuring another for offence under Section 304A and under other provision. Sentence of fine of Rs. 250/- Refusal of High Court to enhance sentence. Not proper.'

27. The Hon'ble Supreme Court in Dalbir Singh v. State of Haryana and Ors. (5), has held as under:

'(1) When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

(2) The conditions for applying Section 4 of the PO Act have been delineated in the commencing portion of the provision. In it parliament made it clear that only if the court forms the opinion that it is expedient to release the accused on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is 'the nature of the offence.' Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word, 'expedient' has been thoughtfully employed by Parliament in the section so as to mean it as 'apt and suitable to the end in view.'

28. Thus, from the observations made by Hon'ble Supreme Court in Dalbir Singh's case (supra), it clearly appear that benefit of probation under the Probation of Offenders Act, 1958 cannot be extended to persons convicted of offence of causing death by rash and negligent driving.

29. The Hon'ble Supreme Court in Dalbir Singh's case (supra) has made clear distinction between the professional drivers and non-professional drivers and in the cases of professional drivers, the deterrent element in sentencing such drivers should be maintained and should be kept in mind by the Judges.

30. No doubt the Hon'ble Supreme Court in Dalbir Singh's case (supra) has observed that in cases of professional drivers, no leniency be shown and there

should be no dispute on the point that driver of Tractor cannot be regarded as a professional driver, but in the present case, looking to the conduct of the accused petitioner that just after the occurrence, he fled away from the scene, he is not entitled to any leniency on point of sentence.

31. Thus, looking to the entire facts and circumstances of the present case, it cannot be said that the sentence awarded by both the courts below to the accused petitioner for the offence under Section 304A IPC is excessive. Hence, it is not a fit case for taking lenient view in awarding sentence.

For the reasons stated above, the revision petition filed by the accused petitioner fails and is hereby dismissed, after confirming the impugned judgments and orders of both the courts below.

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