

**Mohan Singh Vs. State**

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**Court :** Rajasthan

**Decided On :** Apr-25-2001

**Reported in :** 2007(3)WLN246

**Judge :** B.J. Shethna, J.

**Appeal No. :** S.B. Cr. Revision Petition No. 189 of 1989

**Appellant :** Mohan Singh

**Respondent :** State

**Disposition :** Petition allowed

**Judgement :**

**B.J. Shethna, J.**

1. It is a sad case that a young girl aged about 8 died in a vehicle accident which took place on 1.3.1978, for which both the courts below found the accused petitioner guilty for the offence Under Section 304 -A I.P.C. and sentenced him to suffer R.I. for one year and pay fine of Rs. 2000/-, in default to further under go two months imprisonment. If the fine was paid then Rs. 1500/- was ordered to be paid by way of compensation to the legal representatives of the deceased.

2. In the instant case, both the courts below have clearly found that the road on which the accused was driving the bus was a very narrow one, it was over

crowded with the people, therefore, but was going at a very very slow speed. While driving the bus the accused bus driver was blowing the horn continuously. At that time, Nikky Banu--girl aged about 8 years, who was doing shopping on the shop of Raju Ram dashed on the left side of the bus and fell down. She was taken to the hospital where she died. Both the courts below have convicted the accused on the ground that there was a leakage in the vacuum brake of the bus and accused never applied brake, therefore, it is a case of negligent driving, if not rash driving. Accordingly, both the courts below convicted the accused and sentenced him as stated above.

3. In para No. 33 of the appellate court's judgment, it is clearly found that:

cl cgqr /kheh xfr ls py jgh FkhA vxj cl ds MkbZoj us cl dks vkSj fdukjs vFkkZr~ iwoZ dh rjQ dj fy;k gksrk rks yM+dh ds VDdj ugha yxrhA

4. From the above, it appears that the bus was going from south to north and the girl was standing on the shop of Raju Ram, which was in the western side. If there was any place for the bus driver to take it in the western side then something would have been said but the lower appellate court has completely lost sight of the fact that if he takes the bus on the eastern side then he will be going on the wrong side. Both the courts below have mainly relied upon the fact that at time of accident the accused-bus driver never applied brake and there was no brake marks at the place of accident and he stopped the vehicle at about 8 to 10 ft. from the place of accident. Even assuming for the sake of argument that there was a leakage in vacuum brake even then the question of applying brake would arise only if the driver would have seen someone crossing the road. It is an admitted fact that bus driver was driving the bus at a very slow speed and unfortunately after the bus passes through the shop of Raju Ram, girl Nikky, who was standing there, all of a sudden tried to cross the road and dashed on the left side of the bus. The bus driver was totally unaware of the accident. When he came to know he immediately stopped the bus at a distance of 8' to 10'.

5. Thus, on facts of this case, it cannot be said that the bus driver was either rash or negligent. It is a case of a mere accident and nothing more than that. The accused cannot be held guilty for it.

6. It appears that both the courts below were very much moved with the fact that minor girl aged about 8 years had died in an accident. Though, both the courts below clearly found that the bus was driven at a very slow speed, they lost sight of the fact that two things are required i.e. rashness and negligence for convicting the person, which is completely missing in this case.

7. In view of the above discussion, this revision petition is allowed. The impugned orders of conviction and sentence passed the courts below are hereby quashed and set aside. The accused is set at liberty, forthwith. Fine if paid shall be refunded to the accused. His bail bonds stand cancelled.

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