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SATNAM SINGH
v
STATE OF RAJASTHAN

DECEMBER 17, 1999

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[G.B. PATTANAİK AND M.B. SHAH, JJ.]

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Penal Code, 1860—Sections 304A and 302—Conviction under—Infirmity in the evidence of eye-witnesses—Delay in recording the statements of the witnesses—Witnesses stating to have seen the appellant intentionally crushing the deceased by his truck—Held, unreliable—Witness stating to have seen the appellant running away from the scene of occurrence—Held, does not establish the offence of murder—It establishes the offence of rash and negligent driving.

D

Appellant, a truck driver, was alleged to have crushed 'M' intentionally under his truck. A case under Section 304A IPC was registered on the basis of the FIR lodged by PW4, and later on the case was converted to one under Section 302 IPC. PWs 5, 6 and 8 were three eye-witnesses of the occurrence. PW 5 in his testimony stated that he had seen the appellant running away from the scene of occurrence after the accident. PWs 6 and 8, stated that the appellant was waiting for the deceased to come by the road and as soon as he saw the deceased coming on scooter, he crushed him under his speeding truck. The statements of the three eye-witnesses under Section 161 Cr.P.C. were recorded after three days of the occurrence. The witnesses had not disclosed the incident to any one immediately after the occurrence. PW 6 in his statement under Section 161 Cr. P.C. had not mentioned to have seen the incident. PW 8 in his statement under Section 161 Cr. P.C. had not mentioned the name of the appellant as the person driving the truck. Trial Court disbelieved the evidence of PWs 6 & 8 and relying on the evidence of PW 5 and motive, convicted the appellant under Section 302 IPC. High Court upheld the conviction under Section 302 IPC, relying on the evidence of PW 5 as well as PWs 6 and 8.

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In appeal to this Court, appellant contended that the evidence of the three eye-witnesses could not have been relied upon in view of material omission in their statement recorded under Section 161 Cr. P.C; and that no reliance can be placed on the testimony of PW 5 as his statement under Section 161 Cr. P.C. was recorded after three days of the occurrence and

he had not informed about the occurrence to anyone; and that even if the evidence of PW 5 is relied upon, the offence can be said to be one under section 304A and not under section 302 IPC. Respondent-State and the informant contended that the High Court had rightly relied upon the evidence of PWs 6 and 8, and that the motive and the circumstances under which the deceased was run over, clearly establish that appellant intentionally killed the deceased and it was not a case of rash and negligent driving.

Allowing the appeal, the Court.

HELD : 1. The prosecution has failed to establish the offence under Section 302 IPC. The conviction of the appellant under Section 302 IPC is set aside and he is convicted under Section 304A IPC. [427-F]

2. Even if the statement of PW 5 is relied upon, the said evidence would not establish the offence of murder under Section 302 IPC and at the most the offence committed would be one under Section 304A IPC. [426-C]

3. No reliance can be placed on the evidence of PWs 6 and 8. If the evidence of PWs 6 and 8 is ignored from the consideration, then on the evidence of PW 5, it is difficult to hold that a case of murder by intentionally driving the vehicle at a high speed and then crushing over the deceased by the truck can be said to have been made out beyond reasonable doubt.

[427-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 64 of 1998.

From the Judgment and Order dated 31.1.1997 of the High Court of Rajasthan, Jodhpur in D.B.crl. Appeal No. 132/95.

Sushil Kumar Jain, A.A.G., Rajasthan, Sushil Kumar, U.R. Lalit, V.J. Francis, A. Radhakrishnan, R.P. Wadhvani, Ms. Mirdula Agarwal, Mahabir Singh, A. Mishra and Ms. Anjali Doshi, for the appearing parties.

The Judgment of the Court was delivered by

PATTANAİK, J. The appellant, a truck driver was convicted under Section 302 IPC and was sentenced to imprisonment for life by the learned Additional Sessions Judge, Sri Ganganagar in Sessions Case No. 33 of 1994. On appeal, the said conviction and sentence has been upheld by the High Court of Rajasthan. The present appeal is directed against the said conviction and sentence.

The prosecution case in nutshell is that on 26.8.92 at 10.55 p.m.,

A deceased Munir Khan was going on his scooter and the appellant who was the truck driver, intentionally dashed against him and crushed him under the truck, as a result of which, said Munir Khan died. Initially, a case under Section 304A IPC had been registered but later on, charge-sheet was filed under Section 302 IPC and the appellant was convicted under Section 302 IPC, as already stated. PW4 gave a report at Suratgarh Police Station, Exh.P4 at 11.15 p.m., which was treated as F.I.R. and the police started investigation. On the basis of the said F.I.R., PW 10 registered a case under Section 304A IPC. The investigation was then handed over to PW15, who rushed to hospital and learnt that the injured had died and, therefore, the case was converted to one under Sec.302 IPC. PWs 5, 6 and 8 are supposed to be the eye witnesses to the occurrence. According to the prosecution case, the accused had some dispute with one Mohan Singh and in a panchayat held, it was settled that Mohan Singh will pay some compensation to the accused and victim Munir Khan guaranteed for the payment, but as no money was paid and the guarantor did not discharge his obligation, the accused took the extreme step of taking away his life. Of the three eye witnesses, examined by the prosecution, the trial judge disbelieved PWs 6 and 8 but relied upon the evidence of PW5 and the motive as already stated, and came to the conclusion that the accused committed murder of the deceased by crushing him under his truck. Though the prosecution also relied upon the extra-judicial confession alleged to have been made by the accused to PW3 but the learned Sessions Judge as well as the High Court did not rely upon the same and excluded the so-called extra-judicial confession from the purview of consideration. The High Court apart from relying upon PW5 also relied upon PWs 6 and 8 in arriving at the conclusion that the case is one of murder.

Mr. Sushil Kumar, learned senior counsel for the appellant contended before us that the evidence of the three eye-witnesses PWs 5, 6 and 8 could not have been relied upon in view of several material omissions in their statement recorded under Section 161 Cr.P.C. and the courts committed error in relying upon the same. The learned counsel further contended that even if the evidence of PW5 is relied upon, who saw the accused getting-down from the trucks and running away from the place of occurrence, then at the most the offence can be said to be one under Section 304A and not under Sec.302 inasmuch as it is difficult to hold that the accused appellant, intentionally crushed the deceased under his truck.

Mr. U.R. Lalit, learned senior counsel, appearing for the informant and Mr. S.K Jain, appearing for the State, on the other hand contended that the High Court rightly relied upon the evidence of PWs 6 and 8, who categorically

indicated that the accused was waiting for the deceased to come by the road and then as soon as he saw the deceased coming on scooter, the accused crushed him under his speeding, truck and, therefore, the offence is one of murder and conviction under Section 302 is unassailable. According to Mr. Lalit, the motive having been established namely the deceased was the guarantor and yet could not make the necessary payment to the accused and the accused having a grudge on that score and the circumstances under which the truck ran over the scooter, clearly establishes the fact that the accused intentionally killed the deceased and it is not a case of rash and negligent driving.

From the autopsy report and the evidence of the doctor, it has been established beyond reasonable doubt that the deceased while was moving on his scooter, the truck No. RSC -1313 dashed against him and run over him, as a result of which the deceased died and as such the death is homicidal in nature. In fact the conclusion of the Forums below that the deceased met a homicidal death has not been assailed in this Court. The F.I.R. was lodged by PW4, immediately after the occurrence and it gives a vivid account as to how the scooter of the deceased came under Truck No. RSC-1313, which was coming at a high speed. The truck belongs to the accused is established through the prosecution evidence. The evidence of PW5 further indicates that he saw accused getting down from the truck and running away from the place of occurrence after the accident. The fact that the truck belongs to the accused read with the evidence of PW5 that he saw the accused, getting down from the truck and running away after the accident establishes the fact that at the relevant point of time, the accused was driving the truck which dashed against the scooter on which deceased was going. The crucial question that arises for consideration however is whether the materials produced by the prosecution establishes the fact that the accused intentionally dashed against the scooter of the deceased and crushed over the deceased at the relevant point of time. It is to be noticed that though PW4 lodged the F.I.R., immediately after the occurrence but the names of the three eye-witnesses PWs 5, 6 and 8 had not been mentioned therein. But that would not by itself impeach the credibility of the three eye witnesses. The question whether the accused dashed against the deceased intentionally to cause his death would depend upon the evidence of the aforesaid three witnesses PWs 5, 6 and 8. So far as the informant PW4 is concerned, though according to his evidence, he was at a distance of 30 paas from the truck when the truck hit the scooter and he knew the accused Satnam Singh since long years and there was huge electric light on the place of incident, yet he could not identify Satnam Singh,

A driving the truck or stepping down from the truck and running away. PW5 also knows the deceased as well as the accused and according to his evidence, while he was going on foot towards his house from railway station, the incident occurred. He saw a scooter being dashed by a truck from behind and went ahead. He could further see Satnam Singh stepping down from the truck and running away towards colony. Mr. Sushil Kumar contended before us

B that no reliance should be placed on his testimony as his statement under Sec. 161 Cr. P.C. was recorded after three days of the occurrence and he had not informed about the occurrence to any person, he also referred to several omissions in his statement recorded under Sec. 161 but on going through those omissions, we are unable to persuade ourselves to discard the testimony

C altogether. But even if we rely on the statement of this witness; the said evidence would not establish the offence of murder under Sec.302 IPC and at the most the offence committed would be one under Sec.304A IPC. So far as the evidence of PW6 is concerned, he is supposed to have been present at the betel leaf shop and while taking the betel leaf, he was going on the road, the truck which was parked and accused Satnam Singh was standing

D near the truck, was waiting and watching for somebody and according to his evidence as soon as the deceased Munir Khan came on a scooter, Satnam started his truck, chased the scooter and drove the truck at high speed, and hit the scooter of Munir Khan. If this evidence is accepted, then it must be held that the accused committed the offence of murder. But the question for

E consideration is whether the statement of this witness can at all be relied upon. From the cross-examination of this witness it appears that in his earlier statement recorded under Sec. 161 Cr.P.C., which is Exhibit D-3, he had not even indicated that he had seen the occurrence. It has also been elicited that he did not inform any person that the truck was being driven by Satnam Singh by which accident had occurred. He offered explanation that when he disclosed

F this fact to his brother on his way to the hospital, his brother prevailed upon him not to indulge in the dispute and it is on that score he had not disclosed it to any other person. But before meeting his brother when he met PW4 at the place of accident, even then he had not intimated PW4 that the accused was driving the vehicle. No reason could be indicated as to why PW4 was

G not intimated by PW6 that it is the accused who was driving the vehicle, even if the details might not have been stated. In his earlier statement, even if he had not stated that he met his brother at some distance away from the place of occurrence and the fact that his brother forbade him not to indulge in the dispute, even he had gone to the hospital and there also he had not disclosed the incident to any person in the hospital nor informed the name of Satnam

H Singh. This being the fact situation and the witness concerned having made

such material omissions from his earlier statement recorded under Sec. 161 Cr. P.C., it is difficult to rely upon the testimony of this witness for the purpose of coming to a conclusion that the accused was waiting by parking his truck for the arrival of the deceased and as soon as he saw the deceased coming on the scooter, then his truck dashed against the deceased. To the same effect is the evidence of PW8, who was with PW6 and after taking betel leaf was going on the road. Both PWs 6 and 8 were examined by the police after three days even though they were available in the hospital when the police had gone earlier on the next morning on 27.8.92 when the site plan was being prepared by the police as would appear from the evidence of PW4. No reasonable explanation is coming forth, from the Investigating Officer, as to why the two vital witnesses were not examined for three days. Then again, if the cross-examination of PW8 is scrutinized, it would appear that he also had not informed the name of Satnam Singh as the person driving the truck, either to Pradip Bishnoi or to any other person. According to his evidence in Court he did mention the name of the accused driver but in his statement under Exh. P5, recorded by the police under Sec. 161 Cr.P.C. the same does not find place. He admits that he had not disclosed this fact to any person in the hospital that Satnam Singh was driving the truck. He also admits that he did not disclose any information to the police even on the next day. On going through the evidence of these two witnesses, we have no hesitation to hold that the learned Sessions Judge rightly did not rely upon PWs 6 and 8 and the High Court erroneously ignored the infirmities in the evidence of these two witnesses. In our opinion, no reliance can be placed on the evidence of the aforesaid two witnesses. If we ignore the evidence of PWs 6 and 8 from the consideration, then on the evidence of PW5, it is difficult to hold that a case of murder by intentionally driving the vehicle at a high speed and then crushing over the deceased by the truck can be said to have been made out beyond reasonable doubt. In the aforesaid premises, we are of the considered opinion that the prosecution has failed to establish the offence under Section 302 IPC. We, accordingly, set aside the conviction of the appellant under Sec. 302 IPC and the sentence passed thereunder and convict him under Section 304A IPC and sentence him to undergo imprisonment for a term of two years. Since the accused appellant is in custody ever since his arrest in 1992, the accused appellant be set at liberty forthwith, unless he is required in any other case.

Criminal appeal is allowed.

K.K.T.

Appeal allowed.