

S.B. CRIMINAL LEAVE TO APPEAL NO.291/04.

DATE OF ORDER : 29.10.2004.

HON'BLE MR. JUSTICE N.K. JAIN

Mr. B.L. Bhati Public Prosecutor.

The State has filed this criminal leave to appeal under Section 378 of the Code of Criminal Procedure against the judgment and decree dated 24.03.2004 passed by Civil Judge (Jr. Division)& Judicial Magistrate, Jaisalmer in Criminal Case No.02/2003, whereby the accused respondent has been acquitted from the charges levelled against him for the offence under Sections 279, 337 and 338 IPC.

A first information report was lodged on 06.12.2002 by complainant Nimba Ram, wherein it was alleged that he and one another person Sahi Ram were going in Tractor No.RJ-19/R-3139 and when they reached near Navodaya School, a

Bus No.RRN-5924 which was being driven by accused Hathi Singh hit the tractor negligently, resulting in an accident and due to this, the persons sitting in the tractor sustained injuries. After investigation, charge sheet was filed against the accused under Section 279, 337 and 338 IPC. After framing the charge, the accused denied the charge and claimed to be tried.

In support of the case, the prosecution examined PW-1 to PW-14 and produced documentary evidence. Learned trial court after hearing both the parties and after perusing the record, acquitted the accused respondent vide its impugned judgment and order dated 24th March, 2004.

I have examined the impugned judgment passed by the learned trial court and heard the learned Public Prosecutor.

The learned trial court has

considered the statements of the prosecution witnesses and has come to a conclusion that it is doubtful as to whether the accused was plying the Bus or not. The learned trial court has relied upon statement of PW-1 Nimba Ram, who stated before the Court that he could not see the driver who was plying the bus. He also stated in his statement that report could not be lodged for 3-4 hours because they were not knowing the name of the driver. The name of the accused was written in the FIR as some of the passengers told him. PW-3 Jusuf Khan has also stated in his statement that he named the accused only for the reason that some of the passengers were calling him in his name. PW-10 Shravan Kumar has stated in his statement that he did not see the driver. PW-11 Hajari has also stated that he does not know the driver. The statement of PW-12 was also considered, who had given the reply of the notice given to him under Section 133 of the Motor Vehicle Act. However, he was declared hostile.

After going through the impugned judgment and hearing the learned Public Prosecutor, I do not find any illegality or perversity in the impugned judgment so as to interfere in the order of acquittal passed by the lower court. The leave to appeal is, therefore, rejected.

(N.K. JAIN)J.

Anil/-