

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. Criminal Leave to appeal No.7/14
(State of Rajasthan Vs. Srawan Kumar)

Date of Order :: August 29, 2014

HON'BLE MR. JUSTICE P.K. LOHRA

Mr. A.S. Rathore, Public Prosecutor for the State.

Impugned in this Leave to Appeal is the judgment and order of acquittal dated 18th of September 2013 passed by the Judicial Magistrate, Sri Vijay Nagar, District Sri Ganganagar (for short, 'learned trial Court').

Learned trial Court, by the judgment aforesaid, extended benefit of doubt to the respondent-accused while exculpating him for the offences under Section 279 and 304A of the Indian Penal Code (IPC).

Briefly stated, the prosecution case, as unfurled in FIR lodged by PW5 Fateh Chand is that he alongwith his

three friends; namely, Suresh Kumar, Swaroop Kumar and Manoj Kumar boarded bus No. RJ-13-P-2396 of Chawla Travellers on the fateful day of 19th January 2005 for undertaking journey to his residence at Nai Dhan Mandi, Sri Vijay Nagar. It is further averred in FIR that the bus was halted near Truck Union, Sri Vijay Nagar and at that juncture complainant, Suresh Kumar and Swaroop Kumar alighted from the bus. However, when Manoj Kumar was alighting from the bus, accused-respondent restarted the bus and drove it rashly and negligently resulting in gory tragedy of crushing injuries to Manoj Kumar and on spot he succumbed to the injuries. It is also narrated in the FIR that soon after the incident, the Driver as well as Conductor of the vehicle eloped from the scene. Pursuant to FIR, Police Station Sri Vijay Nagar conducted investigation and chargesheet against the accused-respondent under Section 279 and 304A IPC was filed. To establish prosecution case, nine witnesses were examined and documents were exhibited. On completion of prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded. The learned trial Court, after conclusion of the trial, by the judgment impugned, acquitted the accused-respondent by granting him benefit of doubt.

Learned Public Prosecutor, Mr. Arjun Singh

Rathore, has argued that the learned trial Court has committed serious error in appreciation of prosecution evidence, and therefore, the impugned judgment of acquittal is liable to be interfered with.

Mr. Rathore would contend that the complainant has supported the prosecution story but the learned trial Court has grossly erred in disbelieving his version by relying on certain evidence which was wholly irrelevant to discredit his version. Mr. Rathore has strenuously urged that the learned trial Court has given undue credence to the testimony of PW4 Mahesh Kumar, PW1 Prithvi Ram, PW3 Sawai Singh for extending benefit of doubt to the accused-respondent while ignoring the version of other prosecution witnesses who have supported the prosecution story to the hilt. With these submissions learned Public Prosecutor has urged that findings and conclusions of the learned Court below are per-se vulnerable and cannot be sustained.

I have heard learned Public Prosecutor, perused the entire record of the case as well as the impugned judgment.

On a close scrutiny of the impugned judgment and on scanning the materials available on record, there

remains a contentious issue as to whether respondent-accused is guilty of causing death of Manoj Kumar by rash and negligent driving of the motor vehicle. True it is that the complainant has supported the prosecution story and some of the other witnesses have corroborated his version but the evidence of PW1 Prithvi Ram, Constable Driver, who has mechanically examined the offending vehicle, is very much important throwing light on the issue. PW1 Prithvi Ram has very candidly stated that there was no scratch or mark/impression on the bus indicating that it was involved in accident. He has further stated that all the four wheels of the offending vehicles were not blood-stained; therefore, he has completely repudiated the theory of accident caused by the offending vehicle. The learned Court below has also taken note of the fact that as per Registration Certificate, the registered owner of the vehicle was Gurjant Singh s/o Gurdhayal Singh whereas as per Ex.9 the bus was seized from Mahesh Kumar to whom Gurjant Singh has transferred the vehicle by agreement. It is also found by the learned Court below that during investigation notice under Section 133 Motor Vehicles Act 1988 was not served on Mahesh Kumar.

Adverting to the version of the prosecution witnesses PW5 Fateh Chand and PW6 Swaroop Kumar that

soon after the accident the Driver and Conductor of the vehicle eloped from the scene, the learned trial Court has rightly expressed its suspicion on their testimony on the strength of statements of PW3. PW3 I.O. Sawai Singh has stated in his deposition that on the date of accident he visited the site and found that bus was standing at the site and accordingly he has prepared the site plan. Relying on the testimony of PW3 Sawai Singh, the learned Court below thus rightly concluded that there are many pitfalls in the prosecution story sufficient to extend benefit of doubt to the accused-respondent. Besides this, the learned trial Court has also recorded its favourable finding vis-à-vis accused-respondent with cogent reasons that material witness i.e. Dr. Suresh Sharma has not appeared in the witness box to prove crushing injuries despite issuing summons and bailable warrants.

The Hon'ble Supreme Court in Bhim Singh Rup Singh Vs. State of Maharashtra [(1974) 3 SCC 762], while examining scope of interference by High Court with the order of acquittal under Section 378 Cr.P.C., has held as under:

5. The age-old controversy with regard to the width and scope of the powers of the appellate court in an appeal against an order of acquittal must be taken as settled by the decision of this Court in Sanwat Singh v State of

Rajasthan. It was held therein that the appellate court has full powers to review the evidence upon which the order of acquittal is founded and that the different phrases used in some of the judgments of this Court like "substantial and compelling reasons", "good and sufficiently cogent reasons", and "strong reasons", were not intended to curtail the undoubted power of the appellate court to review the entire evidence and to come to its own conclusion in an appeal against acquittal. It was, however, emphasised that in exercising this power the appellate court, while dealing with an order of acquittal, should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. Following this decision, this Court in *Ramabhupala Reddy v. State of Andhra Pradesh* held that to the tests laid down in *Sanwat Singh* case may be added another that the appellate court must bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. Therefore, "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court, should not disturb the findings of the trial court". If this additional test is applied to the instant case the conclusion is compulsive that the High Court has exceeded its powers in setting aside the order of acquittal recorded by the trial court.

In yet another judgment, Hon'ble Apex Court in *Sethu Madhavan Nair Vs. State of Kerala* [(1975) 3 SCC 150], has held that power of judicial review against the order of acquittal is to be exercised with great care and circumspection. The Court held as under:

14. In an appeal under Section 417 of the Code of Criminal Procedure against an order of acquittal, the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The High Court should also take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial court. It would follow as a corollary from that that if the view taken by the trial court in acquitting the accused is not unreasonable, the occasion for the reversal of that view would not arise.

Thus, viewed from any angle, on objective analysis of the factual matrix and scanning the record of the case, in my opinion, the finding of the learned Court below is neither perverse nor unreasonable. The conclusions of

the learned Court below on appreciation of evidence, appears to be just and the same is not liable to be upset in exercise of limited scope of judicial review in this leave to appeal u/s 378(3) r/w 378(1)(b).

Resultantly, prayer of the appellant for grant of leave is declined and the appeal is accordingly dismissed.

(P.K. LOHRA), J.

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