

HIGH COURT OF MADHYA PRADESH JABALPUR

Criminal Revision No.1193/2002

Durga Das Nawit

Vs.

State of Madhya Pradesh and others

Present : Hon'ble Smt. Justice Anjali Palo

Shri Santosh Rai, learned counsel for the applicant.

Shri Amit Pandey, learned Panel Lawyer for the respondent/State.

O R D E R
(22.05.2017)

The applicant has preferred this revision against the judgment dated 18.9.2002 passed by Additional Sessions Judge, Umariya in Criminal Appeal No.93/2002 arising out of judgment dated 21.6.2002 passed by the J.M.F.C. Umariya in Criminal Case No.657/1999. The applicant was convicted for the offence punishable under Section 304-A of IPC and sentenced to one year R.I. with fine of Rs.300/- with default sentence.

2. As per the impugned judgment passed by the JMFC Umariya, the deceased was playing near the road. The applicant passed the bullock cart on her chest and abdomen. The eyewitnesses namely Deepchand (PW-1), Rajaniya Bai (PW-2) and Suresh (PW-3) were present nearby the spot. They saw the accident. Prosecution has successfully proved its case beyond all reasonable doubt, with the testimony of Deepchand (PW-1), Rajniya Bai (PW-2) and Suresh (PW-3).

3. Learned trial Court has not relied upon the defence taken by the applicant that, while playing, deceased Rakhi, swinging on the backside of bullock cart then fell down under the bullock cart. Therefore, wheel of the bullock cart ran over on her chest hence she died. The trial Court convicted the applicant for the offence under Section 304-A of the IPC and sentenced him for one year R.I. with fine of Rs.300/-.

4. Learned appellate Court confirmed the conviction and sentence of the applicant with the same findings as discussed above.

5. Being aggrieved by this, the applicant has preferred the present revision on the grounds that the findings of both the Courts below are against the evidence on record. Learned Courts below have erred in convicting and sentencing the applicant for the offence under Section 304-A of the IPC. The learned trial Court has not properly scrutinized the statements of prosecution witnesses and there are contradictions and omissions in their statements. Hence, applicant prayed for acquittal.

6. Heard learned counsel for the parties at length and perused the record.

7. Learned Panel Lawyer vehemently opposed the contention of learned counsel for the applicant.

8. It is not disputed that on 9.12.1999, the deceased child Rakhi aged about three years died in the accident caused by bullock cart driven by the applicant. Report was lodged at Police Station, Indwar, District Umariya for the offence under section 304-A of the IPC.

9. Deepchand (PW-1) has admitted in his cross-examination that while passing the bullock cart, he was bathing and his attention was not

towards the bullock cart but just after the incident, he saw that Rakhi was flat on the road. Similarly, Rajaniya Bai (PW-2) mother of the deceased has stated that her attention was drawn on the spot after the incident.

10. Deepchand (PW-1) and Rajniya Bai (PW-2) are father and mother of the deceased. They fall in the category of interested witnesses. Hence, conviction cannot be held only on the evidence of Deepchand (PW-1) and Rajniya Bai (PW-2). Suresh (PW-3) has stated that at the time of accident, the applicant came from north side along with empty bullock cart and he was moving behind the bullock cart, suddenly the deceased Rakhi came under the wheel of bullock cart. According to witness Suresh (PW-3), the applicant was responsible for that accident.

11. Learned counsel for the applicant has drawn attention on the testimony of Rameshwar Prasad (PW-8), which is contrary to the testimony of Suresh (PW-3) and Deepchand (PW-1). He deposed that after the incident, Sarpanch Dayaram Patel informed him that some children were swinging on the backside of bullock cart and deceased Rakhi fell down, and she sustained fatal injuries. Hence, the defence taken by the applicant that during driving of bullock cart, it is not expected from the applicant that he may be vigilant about the activities going on behind his bullock cart.

12. As per eyewitness Suresh (PW-3), Rakhi died due to negligence of the applicant. His presence on the spot was found natural and not rebutted by the defence counsel. He saw that deceased Rakhi fell down on the ground and thereafter, bullock cart ran over her chest. Dr. S.K. Garg (PW-6) has found that fourth ribs of the deceased was broken

and stabbed in her heart. Dr. Garg has also found that during the postmortem of deceased, some food came out over her mouth and nostril which proves that the deceased died because of crush under the wheel.

13. Learned counsel for the State has placed reliance on the judgment rendered in the case of "**Indramani Jena Vs. State of Orissa 1992 Cr.L.J. 72**" wherein, the conviction of the applicant was confirmed. In Indramani Jain's case (supra) the accused was driving a bullock cart rashly and negligently dashed the bullock cart to the deceased from behind. As a result the deceased fell down on the ground and thereafter, wheel of the bullock cart ran over his chest.

Facts of the present case is similar to the case of Indramani Jain (supra). If Rakhi was swinging on the backside of bullock cart and thereafter, she fell down. In that case, such type of injury (fracture) could not have been caused to her. Broken ribs itself proves that due to some heavy pressure, ribs were broken and stabbed the heart.

14. It is not expected from a child that they may take care of themselves, while playing nearby the road. The principle of contributory negligence for children would not be applicable in such offence. It is not in dispute that deceased Rakhi was three years old and she was immature to follow the traffic rules.

15. The Court has to adopt another parameter i.e. "reasonable care" in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation on a duty upon a driver to care for the pedestrian on the road and this duty attains a higher

degree where the pedestrian happen to be a child of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life on the right users of the road. They are expected to take sufficient care to avoid danger to others.

16. Learned counsel for the applicant argued that the applicant is an innocent person. He has been falsely implicated due to enmity. This Court is not in agreement with the aforesaid arguments. Deepchand (PW-1), Rajaniya Bai (PW-2) and Suresh (PW-3) have stated that at the time of accident, the applicant was driving the bullock cart. In the examination of accused the applicant admitted that the said bullock cart was seized from his possession. He never stated that he was not driver of the offending bullock cart. Nor he explained about the reason for accident. In such circumstances, learned Courts below properly held that the applicant is guilty for offence under Section 304-A of the IPC. Hence, no interference is required in the conviction of the applicant.

17. Learned counsel for the applicant has prayed that a lenient view may be taken with regard to the punishment of the applicant. Only fine may be imposed against him. It is prayed that the incident occurred in the year 1999 and the applicant faced trial, appeal and the revision for last 18 years. He is the first offender and an old person of 58 years. He was in custody for more than 84 days.

18. Learned First Appellate Court after following the principle laid down in the case of "**Dalbeer Singh Vs. State of Haryana, (2000) 5 SCC 82**" has held that for the offence under Section 304-A of the IPC, only

fine is not adequate, as punishment.

19. In case of Dalbeer Singh (supra), it is held that rash and negligent driving resulting in death or grievous injury, deterrence ought to be the main consideration when sentencing the offender. Every driver should have fear in his psyche that, upon conviction courts will not treat him leniently.

20. In the case of "**State of Karnataka Vs. Shiranappa Basnagowda, AIR 2002 SC 1529**" it was held that the accused was found guilty of rash and negligent driving which had caused death of four persons and injuries to one person. The trial Court convicted him under Sections 279, 304-A, 337 and 338 but in revision High Court reduced sentence into fine on the ground that collision was due to bursting of front tyre whereas this possibility was not accepted by trial Court. The Supreme Court held that interference with sentence by revisional Court was not proper and it was likely to set unhealthy precedent to the subordinate Courts. The accused was hence sentenced to simple imprisonment for six months for offence under Section 304-A of IPC.

Accused had caused death by rash and negligent driving but was released on probation. It was held that benefit of probation could not be accorded to the accused held guilty under Section 304-A of IPC as it would amount to ignoring of law laid down by the Apex Court in "**Dalbeer Singh Vs. State of Haryana, (2000) 5 SCC 82**". In view of the above discussion, there is no perversity or illegality in the impugned judgment passed by the Courts below.

21. Hence, it is not just and proper that benefit of Probation of

Offenders Act be given to the applicant. After considering the age of the applicant and duration of trial sentence is reduced to six months RI. Consequently, the present revision filed is hereby partly dismissed.

22. At present, the applicant is on bail. He is directed to surrender immediately before the trial Court to undergo the remaining sentence.

23. Copy of this order be sent to both the Courts below for information and compliance alongwith its record.

(Smt. Anjali Palo)
JUDGE