

STATE OF HARYANA
v.
SHER SINGH
(Criminal Appeal No. 199 of 2004)

OCTOBER 15, 2008

[DR. ARIJIT PASAYAT, C.K. THAKKER AND D.K. JAIN,
JJ.]

Penal Code, 1860 – ss.279 and 304A – Conviction under, by Trial Court and First Appellate Court – Acquittal by High Court – Propriety of – Held: Proper – There was no specific material to show that accused was driving the vehicle at the time of accident – Name of accused not mentioned in purported dying declaration of the deceased – Evidence adduced to link accused to the alleged crime not sufficient.

The prosecution case was that Respondent was driving a bus in a rash and negligent manner, which hit a person resulting in his death. The deceased purportedly made a dying declaration before the ASI (PW-8).

The Trial Court and the First Appellate Court held Respondent guilty under ss.279 and 304A IPC and sentenced him to undergo rigorous imprisonment for one year. The conviction of Respondent was set aside by the High Court. Hence the present appeal.

Dismissing the appeal, the Court

HELD: Though there is substance in the plea of the appellant that in the statement made by deceased before PW-8 there was mention about the rash and negligent driving of the vehicle, but the evidence adduced to link Respondent to the alleged crime is scanty. There was no specific material to show that the Respondent was driving the vehicle at the time the accident took place. Name

A of Respondent was not mentioned in the dying declaration. It was duly stated by the victim that he can identify the driver. But he did not refer to the accused. Therefore, the present case is not a fit case where any interference by this Court is called for. [Para 6] (959-H; 560-A, B)

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 199 of 2004

C From the final Judgment and Order dated 29.1.2003 of the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 145 of 1995

Rajeev Gaur 'Naseem' and T.V. George for the Appellant.

Rishi Malhotra and Prem Malhotra for the Respondents.

The Judgment of the Court was delivered by

D DR. ARIJIT PASAYAT, J. 1. We have heard learned counsel for the parties.

E 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab & Haryana High Court allowing the Criminal Revision Petition No. 145 / 1995 filed by the respondent herein filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter for short the 'Code'). The learned Chief Judicial Magistrate, Bhiwani by order dated 18th March, 1994 found the respondent guilty of offence punishable under Sections 279 and 304 A of the Indian Penal Code, 1861 (hereinafter for short the 'IPC') and sentenced to undergo RI for a period of one year and to pay a fine of Rs. 1,000/- and in default to further undergo RI for a period of three months. The appeal filed before the Sessions Judge, Bhiwani did not bring any relief to the respondent. Thereafter, as noted above, the Revision Petition was filed which was allowed by the impugned order.

G 3. It is the case of the prosecution that on 13.2.1990, one Kanshi Ram (hereinafter referred to as 'the deceased') was H hit by a bus belonging to Haryana Roadways while coming from

the side of the Bus Stand. Being hit by the bus, Kan shi Ra m A
fell down and was removed to the hospital where he died. It
was alleged that respondent was driving the offending vehicle.
Accordingly, FI R was lodged and investigation was undertaken.
On completion thereof, chargesheet was filed. As accused B
pleaded innocence, trial was held. Nine witnesses were exam-
ined to further the prosecution version. Out of them, P W- 9
Narender Singh was stated to be an eyewitness. P W- 9 who
was supposed to be an eyewitness did not support the pros-
ecution version but placing reliance on the statement of the C
deceased before ASI Mahender Singh (P W- 8), which was
treated to be a dying declaration, the Trial Court found the ac-
cused guilty and sentenced him, as aforesaid. The appeal was
dismissed. In the revision, the primary stand was that the so-
called eyewitness having not supported the prosecution case D
and there being no material to show that the vehicle was being
driven in a rash and/or negligent manner, the conviction cannot
be maintained. The High Court found that the so-called eyewit-
ness did not support the prosecution version. Additionally, in
the dying declaration there was no specific mention about rash
and negligent driving. Therefore, the acquittal was directed. E

4. In support of the appeal, learned counsel for the appel-
lant submitted that the High Court ought not to have upset the
conviction, as recorded by the Trial Court and upheld by the
First Appellate Court. He pointed out that in the statement made
before P W - 8, it is categorically stated that the vehicle which F
hit him was being driven in a rash and negligent manner. He
also pointed out that the official of the Haryana Roadways (P
W- 5) clearly stated that the bus on the particular date was allot-
ted to the accused- respondent.

5. Learned counsel for the respondent supported the judg- G
ment of the High Court.

6. Though there is substance in the plea of the learned
counsel for the appellant that there was mention about the rash
and negligent driving of the vehicle, but the evidence adduced H

- A to link the accused to the alleged crime is scanty. There was no specific material to show that the respondent was driving the vehicle at the time the accident took place. Name of the respondent was not mentioned in the dying declaration. It was duly stated by the victim that he can identify the driver. But he did not refer to the accused. Therefore, we do not consider it to be a fit case where any interference is called for. The appeal fails and the same is dismissed.
- B

B.B.B.

Appeal dismissed.