

Satnam Singh

Vs

State of Rajasthan

Criminal Appeal No. 64 of 1998

(G. B. Pattanaik, M. B. Shah JJ)

17.12.1999

JUDGMENT

PATTANAIAK J.:-

1. 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.
2. The prosecution case in a nutshell is that on 26-8-1992 at 10.55 p.m., 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, the said Munir Khan died, Initially, a case under Section 304-A 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. PW 4 gave a report at Suratgarh Police Station, Exh.P-4 at 11.15 p.m., which was treated as FIR, and the police started investigation. On the basis of the said FIR, PW 10 registered a case under Section 304-A IPC. The investigation was then handed over to PW 15, who rushed to the hospital and learnt that the injured had died and, therefore, the case was converted to one under Section 302 IPC. PWs 5, 6 and 8 are supposed to be the eyewitnesses 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 would pay some compensation to the accused and the 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 eyewitnesses examined by the prosecution, the trial Judge disbelieved PWs 6 and 8 but relied upon the evidence of PW 5 and the motive as already stated, and come 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 PW 3 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 PW 5 also relied upon PWs 6 and 8 in arriving at the conclusion that the case is one of murder.
3. Mr. Sushil Kumar, learned Senior Counsel for the appellant contended before us that the evidence of the three eyewitnesses PWs. 5,6 and 8 could not have been relied upon in view of several material omissions in their statement recorded under Section 161 CrPC and the courts committed error in relying upon the same. The learned counsel further contended that even if the evidence of PW 5 is relied upon, who saw the accused getting down from the truck and running away from the place of occurrence, then at the most the offence can be said to be one under Section 304-A and not

under Section 302 inasmuch as it is difficult to hold that the accused appellant, intentionally crushed the deceased under his truck.

4. 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 indicate that the accused was waiting for the deceased to come by the road and then as soon as he saw the deceased coming on a 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 circumstance under which the truck ran over the scooter, clearly established the fact that the accused intentionally killed the deceased and it is not a case of rash and negligent driving.

5. 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 ran 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 FIR was lodged by PW 4, immediately after the occurrence and it gives a vivid account as to how the scooter of the deceased came under 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 PW 5 further indicates that he saw the 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 PW 5 that he saw the accused getting down from the truck and running away after the accident established the fact that at the relevant point of time, the accused was driving the truck which dashed against the scooter on which the deceased was going. The crucial question that arises for consideration however is whether the materials produced by the prosecution establish 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 PW 4 lodged the FIR immediately after the occurrence but the names of the three eyewitnesses PWs 5, 6 and 8 had not been mentioned therein. But that would not by itself impeach the credibility of the three eyewitnesses. 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 PW 4 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 a long time and there was a huge electric light on the place of the incident, yet he could not identify Satnam Singh driving the truck or stepping down from the truck and running away. PW 5 also knows the deceased as well as the accused and according to his evidence, while he was going on foot towards his house from the 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 the colony. Mr. Sushil Kumar contended before us that no reliance should be placed on this testimony as his statement under Section 161 CrPC was recorded after three days of the occurrence and he has not informed about the occurrence to nay person. He also referred to several omissions in his statement recorded under Section 161 but on going through those omissions, we are unable to persuade ourselves to discard the testimony altogether. But even if we rely on the statement of this witness, 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 304-A IPC. So far as the evidence of PW 6 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 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 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 consideration is whether the statement of this witness can at all be relied upon. From the cross-examination for this witness it appears that in his earlier statement recorded under Section 161 CrPC, 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 the accident had occurred. He offered the explanation that when he disclosed 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 nay other persons. But before meeting his brother when he met PW 4 at the place of the accident, even then he had not intimated PW 4 that the accused was driving the vehicle. No reason could be indicated as to why PW 4 was not intimated by PW 6 that it was 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 nay person in the hospital nor informed the name of Satnam Singh. This being the fact situation and the witness concerned having made such material omissions from his earlier statement recorded under Section 161 CrPC, it is difficult to rely upon the testimony of this witness for the purpose of coming to the 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 PW 8, who was with PW 6 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 and gone earlier on the next morning on 27-8-1992 when the site plan was being prepared by the police as would appear from the evidence of PW 4. No reasonable explanation is coming forth from the investigating officer, as to why the tow vital witnesses were not examined for three days. Then again, if the cross-examination of PW 8 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 drive but in his statement under Exh. P-5, recorded by the police under Section 161 CrPC, the same does not find place. He admits that he had not disclosed this fact to nay persons 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 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 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. 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 Section 302 IPC and the sentence passed thereunder and convict him under Section 304-A 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.

6. Criminal appeal is allowed.