

SUPREME COURT OF INDIA

State of Haryana

Vs.

Sher Singh

CrI.A.No.199 of 2004

(Dr. Arijit Pasayat, C.K. Thakker and D.K. Jain JJ.)

15.10.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. We have heard learned counsel for the parties.

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 304A 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.

3. It is the case of the prosecution that on 13.2.1990, one Kanshi Ram (hereinafter referred to as 'the deceased') was hit by a bus belonging to Haryana Roadways while coming from the side of the Bus Stand. Being hit by the bus, Kanshi Ram fell down and was removed to the hospital where he died. It was alleged that respondent was driving the offending vehicle. Accordingly, FIR was lodged and investigation was undertaken. On completion thereof, chargesheet was filed. As accused pleaded innocence, trial was held. Nine witnesses were examined to further the prosecution version. Out of them, PW-9 Narender Singh was stated to be an eyewitness. PW-9 who was supposed to be an eyewitness did not support the prosecution version but placing reliance on the statement of the deceased before ASI Mahender Singh (PW-8), which was treated to be a dying declaration, the Trial Court found the accused 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 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 eyewitness 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.

4. In support of the appeal, learned counsel for the appellant 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 PW-8, it is categorically stated that the vehicle which hit him was being driven in a rash and negligent manner. He also pointed out that the official of the Haryana Roadways (PW-5) clearly stated that the bus on the particular date was allotted to the accused-respondent.

5. Learned counsel for the respondent supported the judgment 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 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.