
(2009) 09 RAJ CK 0034

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 183 of 2009

State of Rajasthan

APPELLANT

Vs

Gulab Singh

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304, 337

Citation : (2009) 09 RAJ CK 0034

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Public Prosecutor and perused the record.

2. One Rajendra Singh submitted a written report on 7.1.2005 to the concerned police station that one person on motor cycle came from Nathdawara and was going towards Udaipur in the morning at 11-11.30AM. On Santro car came from Udaipur side and leaving its side hit the motor cycle and dragged the motor cycle to 100 feet. The victim fell down and suffered injuries. At that time, one Hari Singh also came there and thereafter, Rajendra Singh came. They found the victim injured who died on spot. The victim was taken to hospital. On this report, the case u/s 279 and 304 IPC was registered and after investigation, challan u/s 279, 337 and 304 IPC was submitted.

3. The respondent-accused denied the charges and sought trial. The prosecution produced 6 witnesses, out of which 2 witnesses are the eye witnesses.

4. The eye witness PW-1 Hari Singh and PW-4 Rajendra Singh though stated that they saw the accident but they did not see the accused driving the Santro Car, which is apparent from their statements. The trial Court convicted the accused only on the basis of the statement owner of the vehicle PW-3 Kuldeep Solanki that Gulab Singh was the driver of the vehicle. None of the witnesses stated that the accused Gulab Singh was driving the vehicle at the relevant time and even

owner of the vehicle did not state that at the relevant time the accuse was driving the vehicle.

5. The conviction of the respondent by the trial Court vide judgment dated 10th Nov., 2006 was set aside by the appellate court vide judgment dated 21.04.2007.

6. Learned Public Prosecutor submitted that the owner of the vehicle clearly stated that the respondent was driver appointed for the vehicle in question, which hit the victim, wherein victim died. It may be true that accused may be driver appointed by the owner of the vehicle but even then the prosecution witness, the owner of the vehicle has not stated that at the relevant time the vehicle was in possession of the driver and he sent the driver to somewhere from Udaipur side to the side on which the victim was coming. Mere one's being driver is not sufficient to hold that he was in possession of the vehicle and was driving the vehicle at the time of accident.

7. In view of the above reasons, I do not find any reason to grant leave to appeal, Hence, the leave to appeal is dismissed.