

(1995) 05 AHC CK 0102
In the Allahabad High Court
Case No : Criminal Revision No. 1929 of 1982

Surendra Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-05-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1996) CriLJ 94

Hon'ble Judges : C.A. Rahim, J

Bench : Single Bench

Advocate : Pratap Narain Misra, for the Appellant; A.G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

C.A. Rahim, J.—This revision has been preferred against the judgment dated 22-9-1982 passed by the learned 1st Additional Sessions Judge, Aligarh in Criminal Appeal No. 125 of 1981 affirming the judgment of the learned III Additional Judicial Magistrate, Aligarh dated 13-4-1981 in case No. 668 of 1979. By that judgment the learned Magistrate convicted the revisionist u/s 304-A, I.P.C. and sentenced him to suffer R.I. for six months and to pay a fine of Rs. 500/- in default to suffer R.I. for two months.

2. The sole consideration is whether the statement of the accused made u/s 313, Cr.P.C. can be used against him. In this case the accused has stated that the child ran across the road and came under the tractor and he could not avoid the accident. In all four prosecution witnesses including the mother of the victim boy aged 6 years were examined. All of them have been declared hostile. Both the courts below relied on the evidence of PW 2 Smt. Kamla Devi, the mother of the victim and PW 3 Phool Singh. PW 2 has stated that the tractor was proceeding at high speed and blow no born. She and her deceased son were proceeding on the left side of the road when the tractor hit him. She did not tell anything about the accused Driving the vehicle. She was not cross-examined.

3. PW 3 Phool Singh has stated in examination-in-chief that the tractor was coming at high speed and did not give any horn. In cross-examination he has stated that the accident did not take place before him.

4. Both the courts below have considered the evidence of PW 2 and PW 3 along with the statement of the accused u/s 313, Cr.P.C. are of the opinion that the case against the accused u/s 304-A, IPC has been established and have convicted the accused-revisionist thereby.

5. Learned counsel for the revisionist has submitted that no conviction can be based on the statement of the accused made u/s 313, Cr.P.C. and the said statement should be taken as a whole.

6. In the evidence of PW 2 and PW 3 it has not been established that the accused was driving the tractor at the relevant time. The lower appellate court has affirmed the conviction on the ground that since no cross-examination with regard to rash and negligent driving was made in the trial Court that part of evidence of PW 2 remains unchallenged. Relying on a decision of the Supreme Court reported in *Sat Paul Vs. Delhi Administration*, the learned Judge has accepted that part of the evidence of PW2 concerning the negligent driving of the tractor at the time of the accident. He has also relied on the statement of the accused that he was driving the tractor at that time. Mr. P. N. Misra, appearing for the revisionist has stressed much on this point that the statement of the accused should not be bifurcated and a portion of it should not be considered against him. He has submitted that the learned Judge did not consider the circumstances of the accident narrated by the accused in the same statement to the effect that the child ran across the road and came under the tractor and he could not avoid the accident. He has also submitted that if the later part of the statement is taken into consideration it offers sufficient explanation as to the circumstances for which he should have been given benefit of it.

7. Learned A.G.A. has submitted that if the statement of the accused is considered as a whole it will appear that the accused did not say anything about the speed of the vehicle and that he had applied brake to save the child. He has submitted that while driving was not denied there is nothing in evidence to disbelieve P.W. 2 the mother of the victim boy and P.W. 3 in respect of rash and negligent driving.

8. Mr. Misra has referred the case of *Narayan v. State of Punjab* reported in 1963 ALT 330 (SC), wherein it has been held that the statement of the accused must be considered as a whole. The said finding has been supported by two other subsequent decisions reported in 1976 All Cri Cases 395 and 1977 Cri LJ (NOC) 62. So the law on this point is now settled that the statement of an accused made u/s 313, Cr.P.C. should not be bifurcated and should be taken as a whole. In *Sima v. State of Orissa* reported in (1974) 40 CLT 159 it has been decided that if a plea is raised for the first time in answer to examination u/s 313, Cr.P.C. and the said plea is not suggested to PW's nor it has any support in evidence it

cannot be sustained. No cross-examination has been made to PW 2 and no suggestion was given to her that the boy while crossing the road suddenly came under the tractor and the driver could not avoid the accident.

9. In *Gola Bag v. State of Orissa* reported in 1983 Cri LJ(NOC) 211, it has been held that when the Court act upon the statement of the accused and there is no other evidence available which disproves any portion of the statement the whole of the statement and not only a part of it which may go against him should be considered. In other words if any part of the statement is not disproved by prosecution evidence that part too should be considered. In the instant case what I find is that exculpatory part of the statement of the accused was not put forward to any of the witnesses during cross examination. Rather it was contradicted by the unchallenged evidence of P.W. 2 and P.W. 3 about rash and negligent driving. Learned A.G.A. has rightly pointed out that on this score the statement of the accused is silent. In view of the decision of *Gola Bagh's* case if I lay side the uncorroborated and disapproved part of the statement of the accused what remains in his admission that he was driving the vehicle at the relevant time. So it has been proved from evidence and admission that the revisionist was driving the tractor rashly and negligently. If his explanation is taken into consideration that the child ran across the road and came under the tractor and he could not avoid accident, two factors are necessary to assess it. Firstly he never disclosed this fact during trial. Secondly, he did not tell in his statement whether he applied brake and tried to save boy. Even if that benefit is given he cannot escape the liability of rash and negligent driving. Taking that part of the statement of the accused along with the evidence of P.W. 2 and P.W. 3 I find that both the courts below should have found the accused guilty u/s 279, I.P.C. instead of Section 304A, I.P.C. to which he is entitled to benefit of doubt.

10. With regard to the sentence Mr. Mishra has submitted that the dispute might have been settled outside the Court for which the witnesses were evasive. He has also submitted that this matter is pending since 1979 and the revisionist has suffered pain and agony for the last 15 years. Considering this circumstances I feel that imposition of sentence to pay fine of Rs. 1000/- will meet the ends of justice.

11. The revision is, therefore, allowed in part. The conviction is altered to Section 279, I.P.C. and sentenced to fine of Rs. 1000/- in default two month's R.I. Bail bond is discharged. The revisionist shall pay the fine within one month from this date otherwise due process be issued for realisation of fine. He is acquitted to the charge u/s 304A, I.P.C.