

Nilesh Vs. State of Goa and Another

Nilesh Vs. State of Goa and Another

SooperKanoon Citation : sooperkanoon.com/1104831

Court : Mumbai Goa

Decided On : Apr-01-2013

Judge : The Honourable Mrs. Justice R.P. Sondurbaldota

Appeal No. : Criminal Revision Application No.39 of 2011

Appellant : Nilesh

Respondent : State of Goa and Another

Judgement :

Oral Judgment:

The revision petitioner herein has been convicted for the offence punishable under Sections 279 and 337 of Indian Penal Code and has been sentenced to suffer simple imprisonment of 15 days for both the offences with fine of Rs.1000/- and Rs.500/- respectively. He had preferred an appeal against the order of his conviction. That appeal was dismissed by the Sessions Court by its judgment and order dated 30th June, 2011.

2. Briefly, the case of the prosecution is that on 7th August, 2008, the petitioner was driving a mini bus bearing No.GA-01-Z-5614 from Ibrampur to Mapusa via Assonora and when the vehicle reached near Gasket Factory, Mapusa, it dashed against a jackfruit tree causing injuries to the passengers in the bus thereby committing the offences alleged.

3. The prosecution examined eleven witnesses to support its case. Out of that, four are formal witnesses i.e. pancha for panchanama of scene of offence (PW1), motor mechanic (PW3), who has assessed the damages to the mini bus, Medical Officer at PHC, Bicholim (PW2) and the Investigating Officer (PW11). PW4 to PW9 are passengers in the bus who sustained injuries on account of the accident. PW10 is the owner of the mini bus. The Trial Court on assessment of the evidence of the witnesses found that the petitioner was overtaking another vehicle and in the process dashed against the jackfruit tree. It reasoned that the brake marks of eleven metres in length behind the bus indicated that it was being driven at a very high speed and the fact that it was almost completely on the katcha road indicated that it was trying to overtake another vehicle from the left side which is prohibited under the Motor Vehicles Act. The Trial Court also took note of the damage was caused to the vehicle along with injuries to the passengers in the bus which it has found to be simple injuries attracting Section 337 of Indian Penal Code. The Sessions Court accepted all the findings of the Trial Court to confirm the conviction and the sentence awarded to the petitioner.

4. With the help of the learned counsel appearing for the petitioner and the learned Public Prosecutor, I have gone through the notes of evidence, scene of offence panchanama, sketch of the place of offence and the report given by PW3 the motor mechanic about the extent of damage caused to the bus.

5. Perusal of evidence of the passengers in the bus i.e. injured witnesses shows that except for PW6, nobody has even so much as whispered that the bus was being driven in a rash and negligent manner. Each of these witnesses have merely stated that the driver was overtaking another vehicle and in the process dashed against a jackfruit tree on the left side. PW6 alone stated that when the bus reached Sasoli, the petitioner drove it at a high speed and overtook one vehicle. The passengers in the bus started shouting, asking the petitioner to drive the vehicle slowly but he did not listen and continued to drive fast. On reaching Nanoda, he tried to overtake another vehicle because of which he lost control and dashed the bus to one jackfruit tree.

6. Mr. Agni, the learned Counsel for the petitioner submits that the evidence of PW6 alone which is not corroborated by any of the passengers would not be sufficient to establish that the bus was being driven in a rash and negligent manner by the petitioner. Neither overtaking nor speeding is an offence by itself. Such acts are also not prohibited under the Motor Vehicles Act. It is only when the vehicle is driven in a rash and negligent manner that the offences under Sections 279 and 337 of Indian Penal Code can be said to have taken place.

7. Mr. S.R. Rivankar, learned Public Prosecutor submits per contra, that the fact that mini bus was substantially on the katcha road and that there were brake marks to the extent of eleven metres noticed behind the bus are sufficient to indicate that the petitioner was to overtake vehicle in the front from left side i.e. wrong side and he was in such a high speed that the vehicle could not be stopped after applying the brakes even after a distance of eleven metres. Mr. G. Agni, replies that for any vehicle on a katcha road, there would not be sufficient friction available for immediate stopping of the vehicle on application of brakes and therefore, the brake marks of eleven metres on the katcha road would not be very material.

8. The fact that the vehicle was on the left side of the road would mean that it was on the correct side of the road. The petitioner had not succeeded in overtaking the vehicle in front nor the witnesses have deposed that he was attempting to overtake the vehicle from wrong side i.e. from left side of the road. Except for deposition of PW6 none of the passengers examined have deposed about the speed of the bus. In the absence of oral evidence of the witnesses on the speed of the vehicle, the only other material from which the speed could be guessed was the extent of damage to the vehicle. Perusal of the report given by PW3 motor mechanic, shows that there was hardly any damage to the vehicle. In fact his report at Exhibit 41 certifies that the vehicle was fit and in order for plying. The damage to the front left side which had dashed against the jackfruit tree has been described as "front dashboard and cabin damaged". The report of the motor mechanic and the spot panchanama of the vehicle do not indicate that the vehicle was being driven by the petitioner in a rash and negligent manner. The judgments passed by the Trial Court dated 18th February, 2011 and the Appellate Court

dated 30th June, 2011 are seen to be not supported by evidence on record. In the circumstances, the conviction of the revision petitioner cannot be sustained. Hence, the revision application is allowed. The judgments passed by the Trial Court dated 18th February, 2011 and the Appellate Court dated 30th June, 2011 are set aside. The petitioner is acquitted for the offence punishable under Sections 279 and 337 of Indian Penal Code. The bail bond stands cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com