

**Devi Singh Vs. State of H.P.**

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**Court :** Himachal Pradesh

**Decided On :** Nov-30-2012

**Judge :** Dharam Chand Chaudhary

**Appeal No. :** Criminal Revision No. 53 of 2005

**Appellant :** Devi Singh

**Respondent :** State of H.P.

**Judgement :**

Dharam Chand Chaudhary, J. (Oral)

Devi Singh alias Devu, the accused in FIR No.165/98, Police Station, Dharampur, District Solan, has filed this revision against the judgment of conviction made in criminal appeal No.20-S/10 of 2004 by Sessions Judge, Solan confirming thereby the judgment of conviction and sentence made in criminal case No.3/2 of 2002/99 by Judicial Magistrate, Kandaghat, Camp at Solan.

2. The Investigating Officer, Shri Bhim Singh, ASI, Police Station, Dharampur, PW-5 along with other police officials was on patrol duty in the area where the accident occurred. On finding a parapet at right side damaged recently raised suspicion and PW-5 made to stop the vehicle there. They heard cries Bachao-Bachao from the side of Nallah below the road. The police party went to Nallah, where found the ill-fated truck lying turtle. The police party took out the injured, who were five including the driver. Five others occupants were found dead on the spot. The

injured persons were taken to Primary Health Centre Dharampur. Four injured persons were referred to PGI Chandigarh. On the next date i.e. 17.10.1998, the statement of injured Gita Ram Ex.PW-3/A was recorded by PW-5. On the basis of which FIR Ex.PX under Section 279, 337, 304-A was registered against the accused in Police Station Dharampur, District Solan.

3. After registration of the statement Ex.PW-3/A of injured Gita Ram, PW-5 conducted the spot inspection and prepared spot map Ex.PW-5/A. All the dead bodies were taken to hospital for post mortem examination. The ill-fated truck was also taken into possession along with its documents vide memorandum Ex.PW-5/B. On 18.10.1998, the accused was arrested in the case, however, released on furnishing of bail bonds.

4. The charge against the accused is that on 16.10.1998 around 10.30 p.m., while at the wheels of Truck No.HP 51-1602, on its way from Chandigarh to Shimla and at a place little ahead from Jabli, lost his control over it due to rash and negligent driving and as a result thereof the truck rolled down 300 feet from the road leading to death of five occupants namely Ramesh S/o Shri Rama Nand, Ram Krishan S/o Shri Ram Lal, Daulat Ram S/o Shri Moti Ram, Bitoo @ Hem Chand S/o Shri Sukh Dass and Madan Lal S/o Shri Mani Ram and injuries simple as well as grievous in nature on the person of accused himself as well as the remaining four occupants namely, Amar Chand, Geeta Ram, Ranjeet Singh and Devender Singh.

5. The accused, however, pleaded not guilty and claimed that he was neither rash nor negligent while driving the truck at the time of accident.

6. Consequently, he was tried for the offence, he allegedly committed. The prosecution in order to sustain the charge had examined five witnesses in all. The accused was also examined under Section 313 Cr.P.C. He, however, opted not to lead any evidence in defence.

7. Learned Trial Magistrate after having examined the entire evidence available on record, vide judgment dated 26.10.2004, found the accused guilty under Sections 279, 337, 338 and 304-A of the Indian Penal Code and was accordingly convicted and sentenced to undergo rigorous imprisonment for two years and also to pay a

fine of Rs.5,000/- under Section 304-A IPC i.e. the maximum sentence provided thereunder. Since the accused has been sentenced under Section 304-A IPC to undergo rigorous imprisonment for two years and to pay fine of Rs.5,000/- and keeping in view that the maximum sentence provided under Section 279 IPC is six months and fine of Rs.1,000/-, under Section 337 IPC the same is six months and fine of Rs.500/- and under Section 338 IPC it is two years with fine of Rs.1,000/- i.e. on lesser side/equal as compared to the sentence awarded against the accused under Section 304-A IPC, both the courts below have not deemed it proper to sentence the accused under Sections 279, 337 and 338 IPC separately. Such an approach though is not legal for the reason that Section 304-A IPC takes care of a situation where due to rash and negligent act on the part of the accused death of someone has caused, whereas Section 279 IPC takes care of a situation where the accused is found to have driven a vehicle on any public way in a manner so rash or negligent as to endanger human life or likely to cause hurt or injury to any person whereas Sections 337 and 338 IPC to a situation where hurt/grievous hurt is found to have been caused to any person by the accused due to the act of rashness or negligence attributed to him so as to endanger human life or personal safety of others.

8. The situation that five persons had lost their lives in this accident is well taken care of while sentencing the accused under Section 304-A IPC, however, since it is on account of rash and negligent driving on the part of the accused, four other persons suffered injuries on their persons including grievous in nature, therefore, in order to do justice to them the accused is required to be sentenced under Sections 279, 337 and 338 IPC separately. True it is that sentence awarded under the sections ibid should have run concurrently along with that awarded for commission of offence under Sections 304-A IPC, however, had the fine, if any, been imposed for the commission of such offence, the same would have been ordered to be awarded as compensation to the injured in order to minimize their injuries to some extent. The approach in not sentencing the accused for commission of the offence under Section 279, 337 and 338 has no legal sanctity attached to it, however, in view of no appeal having been preferred against this part of the judgment by the respondent State, it is not deemed proper to reopen this issue, save and except the above observations for future guidance of the

learned trial magistrate and also the lower appellate Court.

9. In an appeal registered as criminal appeal No.20-S/10 of 2004, learned Sessions Judge, Solan vide judgment dated 14.3.2005 has affirmed the findings of conviction recorded by learned trial Magistrate and dismissed the appeal.

10. Aggrieved by the judgment dated 14.3.2005 passed by learned Sessions Judge, Solan in aforesaid criminal appeal, the accused preferred this criminal revision petition in this Court questioning the legality thereof on the grounds inter alia that learned Sessions Judge and for that matter the trial Magistrate both have gone wrong in convicting the appellant as prosecution has failed to prove that the cause of accident was rash and negligent driving on the part of the accused alone and none-else. The injured witnesses did not support the prosecution case at all and rather it was proved on record that the accident occurred at such a time when the accused was overtaking another truck being driven ahead of the ill fated truck and in this process rolled down from the road.

11. The cause of accident viz failure of break being not found to be proved by the trial Court may not be the cause of accident yet it was very probable that truck left the road due to error of judgment while overtaking the truck being driven ahead of it, which did not leave sufficient space for the ill-fated truck being driven by the accused and during that process both vehicles came closure just to avoid the accident and the accused may have swerved the truck being driven by him in right side and in that process due to error of judgment this accident occurred. The accused may himself not be knowing the cause of accident as at the time of accident a person at the wheels of vehicle loses his equilibrium due to shock etc. The accused allegedly is 28 years of age, the only earning member in his family consisting of old parents especially his mother, who is bed ridden for the last so many years besides, his wife very young married to him about five months prior to the accident. The present is thus stated to be not a case of imprisonment of the accused and rather to conveniently give him the benefit of the provisions under Probation of Offenders Act and release on probation. The principle of *res ipsa Loquitur* in a situation when the prosecution had failed to prove its case against the accused had no application.

12. Before coming to the merits of the case, it is desirable to note that the interference by this Court with the impugned judgment in exercise of its revisional jurisdiction is only to limited extent that it will be on the basis of the evidence available on record, this Court has to satisfy itself qua the correctness, legality or propriety of findings of conviction and sentence recorded by both the courts below against the accused.

13. The accused has been convicted and sentenced under Section 304-A of IPC. The Honble apex Court in **State of Punjab vs. Balwinder Singh and other, (2012) 2, SCC, 182**, while interpreting the scope of the Section ibid has explained as to what constitutes the ingredients of the commission of an offence under the Section ibid, which reads as under:-

10. Section 304 A was inserted in the Penal Code by the Indian Penal Code (Amendment) Act 27 of 1870 to cover those cases wherein a person cause the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. The case should not be covered by Sections 299 and 300 only then it will come under this section. The section provides punishment of either description for a term which may extend to two years or fine or both in case of homicide by rash or negligent act. To bring a case of homicide under Section 304A IPC, the following conditions must exist, namely,

(1) there must be death of the person in question;

(2) the accused must have caused such death; and

(3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.

14. Both the Courts below besides have relied on the evidence as has come on record by way of statement of injured witnesses PW-1 Amar Chand, PW-3 Geeta Ram as well as on that of PW-5. Besides, the documentary evidence i.e. statement of PW-3 under Section 154 Cr.P.C. Ex.PW-3/A, spot map Ex.PW-5/A and the statement of accused under Section 313 Cr.P.C., has also been pressed

into service.

15. It is seen that the case of the prosecution upto the stage of ill-fated truck having met with an accident around 10.30 p.m. at a place near Jabli leading to the death of five occupants and causing injuries to the remaining four occupants including himself, stands admitted by the accused himself. However, according to him, the cause of accident was not rash and negligent driving attributed to him and rather, it was due to failure of breaks when he applied the same while overtaking another truck being driven ahead of the ill-fated truck. The same even is the defence of the accused put to prosecution witnesses in their cross-examination.

16. The very first version qua the cause of accident as finds recorded in Ex.PW-3/A is rash and negligent driving on the part of the accused due to which the truck went in wrong side of the road and at once rolled down into Khad (rivulet). The other prosecution witness PW-3 Geeta Ram, while in the witness box had admitted his signature encircled red at point B. He, however, turned hostile and stated that statement in portion A to A on Ex. PW-3/A was not made by him before the police and accident occurred at such a stage when the accused was overtaking another truck. In his cross-examination conducted on behalf of the prosecution, he had admitted that in Ex.PW-3/A the cause of accident is not overtaking and that he did not disclose before the police that the accused was overtaking another truck. No doubt, in the same breath it is stated by him that the police did not ask anything in this behalf from him. No doubt, PW-3 turned hostile to the prosecution, however, in view of the law laid down by the apex Court in **Satpal vs. Delhi Administration (1976) 1 SCC 727**, the evidence of a hostile witness cannot be discarded as a whole. Therefore, appreciating the statement made by PW-3 in the light of his admission that Ex.PW-3/A bears his signature at point B encircled red and he did not disclose the factum of the accident having occurred at such a stage when the accused was overtaking another truck to the police. Nothing finds recorded in Ex.PW-3/A that the accident occurred in the process when another truck was being overtaken by the accused as this witness admitted, while in the witness box. Nothing to this effect has come in the investigation conducted by PW-5 as he stated in his cross-examination. Irrespective of PW-3 having turned hostile to the prosecution, his testimony to the

above extent substantiates the prosecution case that the cause of accident was rash and negligent driving on the part of the accused.

17. Similarly, no doubt PW-1 Amar Chand, another injured witness had also stated in his examination-in-chief that the accident occurred at such time when the accused was overtaking another truck being driven ahead of the ill-fated truck and as such turned hostile to the prosecution, however, when cross-examined by learned public prosecutor he has admitted that the accused was not overtaking any other vehicle at that time and rather the speed of the truck being driven by him was very high. He also admitted that at the place of accident, it is a double lane road and that while driving a vehicle upward, its position always remains towards hillside. It is also admitted by him that due to the truck being driven by the accused in a rash and negligent manner, he failed to control the same and as a result thereof the same rolled down. In the end he has again admitted that the cause of accident was rash and negligent driving on the part of the accused.

18. In his further cross-examination conducted by learned defence counsel, no doubt he turned around and came forward with the version that one vehicle was being driven ahead of the ill-fated truck for the last 10-15 minutes and when the driver of that vehicle gave signal for overtaking, the accused accelerated the speed which may be 25 k.m. per hour whereas that of another vehicle 15 k.m. per hour. According to this witness the accused though applied breaks, which did not function. The further statement, he made voluntarily, reveals that it happened on account of the vehicle being driven in a rash and negligent manner and the accused uttered the words that the break had gone out of order. The close scrutiny of the statement he made in his examination-in-chief and the cross-examination conducted on behalf of the prosecution as well as on that of the accused leads to the only conclusion that the cause of accident was rash and negligent driving alone on the part of the accused and none else.

19. The spot map Ex.PW5/A throws ample light qua the position of spot from where the truck was rolled down. This document can safely be relied upon as its authenticity has not been disputed even by the accused also. The width of road on this place is 30 feet i.e. 26 feet pucca road and 2 feet wide kutchha road on either

side. Even if it is presumed that the accused was overtaking some other vehicle, in that event also, had the truck been not driven by him in a rash and negligent manner, the same would have easily crossed through that portion of road viz as per the map the road at the spot is straight having no curve. The fact, however, remains that there was no truck being driven ahead of the ill-fated truck and rather it is the accused who was driving the same in a rash and negligent manner and due to which the accident in question taking away five valuable human lives leaving behind their grief stricken families dependant upon them and causing injuries to other four occupants, did take place because in view of the width of the road coupled with the fact that the ill fated truck was being driven upward, there could have been no other and further cause of accident except for the rash and negligent driving on the part of the accused. This Court is not thus satisfied with the grounds taken in this petition to challenge the impugned judgment.

20. If coming to the second limb of arguments that in view of the young age of the accused, his wife and his parents including his bed ridden ailing mother depend upon him, he may be released under the Probation of Offenders Act, again there is no substance for the reason that the Honble apex Court while taking into consideration the rising trend in road accidents has taken a serious view of such cases and rather in various judicial pronouncements has held that if an offender booked in the commission of an offence of this nature is held guilty after holding the full trial should be dealt with sternly in the matter of sentence and the approach should not be lenient. The law so laid down by the apex Court in **Dalbir Singh vs. State of Haryana (2000) 5 SCC 82** noted below para 12 of the report in **Balwinder Singhs** case cited supra, reads as follows:-

12. The following principles laid down in that decision are very relevant:

"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to

maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

The same principles have been reiterated in *B. Nagabhushanam vs. State of Karnataka*, 2008 (5) SCC 730.

21. The accident of ill-fated truck has resulted in taking away five valuable human lives besides causing injuries including grievous in nature on the person of four other occupants. I am in agreement with the findings of conviction recorded against the accused by both the courts below.

22. In the matter of sentence also the accused cannot be dealt with leniently and rather is rightly sentenced. The maximum sentence of two years awarded against the accused person when he is of very young age and the only earning hand in the family comprising his young wife, old and ailing parents, in my opinion, however, is

on higher side. In **Balwinder Singhs** case cited supra also in the accident five persons had died due to the contributory negligence on the part of drivers of offending vehicles. The apex Court having taken note of the fact that five persons died in the accident has sentenced the accused to undergo rigorous imprisonment for six months with fine of Rs.5,000/-. Thus for the purpose of sentence this case can not be distinguished from that before the apex Court and in the matter of sentence no other opinion can be formed. Consequently, the sentence awarded to the accused is reduced to six months rigorous imprisonment from two years and to pay a sum of Rs.5000/- as fine. The impugned judgment is modified only to this extent.

23. The accused is on bail. His bail bonds are cancelled. The trial court is directed to take appropriate steps for surrender of the accused to certify the period of sentence. The petition is allowed to the extent mentioned above. Record be sent back to the quarter concerned.

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