

State of Karnataka Vs. Peter Prank

State of Karnataka Vs. Peter Prank

SooperKanoon Citation : sooperkanoon.com/383629

Court : Karnataka

Decided On : Jan-21-2000

Reported in : I(2001)ACC704; 2000CriLJ3516; ILR2000KAR2164; 2000(6)KarLJ20

Judge : M.F. Saldanha, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 184; [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304-A, 337 and 338; [Evidence Act, 1872](#) - Sections 3 and 101 to 104

Appeal No. : Criminal Appeal No. 715 of 1995

Appellant : State of Karnataka

Respondent : Peter Prank

Advocate for Def. : Sri Lokesh Malavalli, Adv.

Advocate for Pet/Ap. : Sri S.S. Koti, Additional State Public Prosecutor

Judgement :

1. The respondent to this appeal Peter Prank, driver of K.S.R.T.C. Bus No. 8559 which was operating between Mangalore and Davangere. On 23-1-1993 at about 5.30 p.m. while the bus was passing Pundanahalli Gate it was involved in a collision with a bus coming from the opposite direction after which the bus

ultimately dashed against a tree and came to a standstill. Six of the passengers were injured and one of them by the name of Rudramma who was a relatively aged person died as a result of the accident. The police registered offences under Sections 279, 337, 338, 304A of the IPC and under Section 184 of the Motor Vehicles Act against the accused. He was tried by the learned Additional Judicial Magistrate First Class, Tarikere and the learned trial Magistrate recorded the finding that the evidence of the injured witnesses does not bring home the charges and therefore acquitted the accused. The State has assailed the correctness of the acquittal through the present appeal.

2. At the hearing of the appeal, the learned Additional State Public Prosecutor, Sri Koti and the respondent's learned Advocate Sri Lokesh Malavalli have taken me through the record of the case which consists essentially of the evidence of the eight injured witnesses, the medical evidence and the other formal evidence. There is no dispute about the fact that six of the passengers did sustain injuries and that one of them who was rather seriously injured, died in the hospital on 4-2-1993. The learned State Public Prosecutor has relied on the evidence of these witnesses for purposes of demonstrating that the bus was being driven at a high speed. None of the witnesses have been able to indicate precisely what the exact speed of the bus was but they are consistent about the fact that the bus was being driven at a high speed and P.W. 6 even states that he was getting nervous because of the high speed and manner in which the bus was being driven and that he had even spoken to the accused and told him about it. Mr. Koti's submission is that the evidence of these witnesses who are obviously adults who have travelled in buses on numerous occasions indicates that the speed was excessive and this was why it was uncomfortable and noticeable and they have referred to it. His submission is that the speed at which the bus was being driven would have a bearing on the aspect of rashness and negligence because Mr. Koti has made an important point when he submits that the legal test as regards rashness and negligence which requires that in relation to the operation of a motor vehicle and that too a public transport vehicle, the refusal or negligence to take necessary care and caution as is required to ensure the safety and well-being of other persons on the road or more importantly the passengers in that very vehicle are the important criteria which need to be assessed by the Court. His submission is that where the

witnesses are consistent about the fact that the bus was being driven at a very high speed would indicate that it was being operated not only in a rash and negligent manner but in a reckless manner.

3. Three of the witnesses whose versions are more or less identical indicate very clearly that the accused had overtaken three buses and that he did this in total defiance of the fact that there was a bus coming from the opposite direction. The incident had taken place at 5.30 in the evening i.e., in broad daylight and the evidence indicates that the accused had got on to the wrong side of the road to overtake the three buses and that he did this despite the fact that there was oncoming traffic. Mr. Koti drew my attention to the Rules of the Road and the requirements of law in relation to overtaking another vehicle and he pointed out that these require that before overtaking it must be ascertained that there is a sufficiently clear stretch of open road available while overtaking and thereafter for the vehicle that is overtaking to safely retrace its position on the left side of the road. There is a total prohibition on overtaking unless there is a clear road ahead and Mr. Koti further points out to me that if there is oncoming traffic and a driver still attempts overtaking that he will still either head for a collision with the oncoming vehicle but more importantly will cause a serious accident by cutting into the path of the vehicle that is being overtaken. He therefore submitted that this evidence which has not been dealt with at all by the Trial Court unequivocally establishes both the legal ingredients of rashness and negligence.

4. Next, Mr. Koti drew my attention to the evidence of the witnesses which establishes two facts; the first being that the accused was unable to avoid a collision with the bus coming from the opposite direction which was because he had got on to the wrong side of the road and was unable to safely overtake and get back on to his side of the road or in other words because he insisted on overtaking when it was not either safe or possible for him to do so. The fact that the accused tried to squeeze through a huge vehicle like a bus meant that he was taking undue risks. It also indicated an error of judgment but more importantly Mr. Koti submitted that it exhibited an aggressive style of driving which is characteristic of the Corporation's driver in the course of which they try to bulldoze their way through the traffic on the road virtually pushing other vehicles and members of the

public who have to get out of the way merely because the bus is a bigger and more powerful vehicle and that in the process, not only the passengers in the bus but others on the road are exposed to serious danger. The learned Additional State Public Prosecutor submitted that this style of driving which is established from the evidence of the witnesses fully proves the prosecution charge of rash and negligent driving.

5. The other circumstance relied upon by the learned Additional State Public Prosecutor which is also borne out in the evidence emanates from the fact that not only was the accused unable to avoid a collision with the oncoming bus but that even after this, he lost control of the vehicle which ultimately hit a tree and stopped. Mr. Koti's sub-mission is that this circumstance establishes the fact that care and caution had been thrown to the winds and that the bus was being operated with a high degree of recklessness so much so that at the crucial point of time the accused was unable to control it. The submission is that the ultimate test in such situations hinges around the question as to whether the accused was in a position to control the vehicle and take emergent action that safety demanded and that the facts speak for themselves (*res ipsa loquitur*). Learned Additional State Public Prosecutor submitted that on a combination of these factors where it is established that due to the rash and negligent act of the accused six people sustained injuries and one of them died, that the accused is liable to be convicted under all the heads of charges. As regards the finding of the Trial Court that Rudramma died due to medical complications in the hospital and not as a result of the injuries, Mr. Koti's submission was that Rudramma was perfectly healthy when she boarded the bus and that the cause of death was attributable to the fact that she sustained the injuries and consequently, it is his submission that the charge under Section 304A of the IPC is established.

6. Mr. Lokesh Malavalli who represents the respondent-accused drew my attention to the fact that the remaining witnesses have not supported the prosecution case and that two of the witnesses have admitted that the accused was generally driving the bus carefully. Secondly he relies on the observation of the Trial Court that the bus had covered the last distance from Chikmagalur which was about 50 kms in a time of almost two hours and the learned Advocate submits that this itself

shows that the bus was being driven at a very modest speed. As regards the question of overtaking, his submission is that if three of the buses had bunched up, since the accused was driving a non-stop bus which is required to cover the distance much faster, that he had no option except to overtake those buses. Learned Advocate's submission is that as pointed out by the accused himself, it was the other driver who was responsible for the accident because one of the witnesses admits that the bus from the opposite direction came at such a high speed and so suddenly that the accused could not avoid the collision. The general submission is that since there is such divergent evidence on record, the view taken by the Trial Court that the accused cannot be held liable must be upheld.

7. I have very carefully appraised the material before the Court. Certain factors stand out in this case namely that it is not the question of how much distance the bus had covered in what period of time or the fact that the accused had driven the bus safely or correctly up to that stage but the Court needs to appraise exactly what happened at the time of the accident. The evidence establishes that the bus was being driven very fast in a manner that was disturbing and uncomfortable to the passengers which is an indication of the general style in which it was being operated at the time of the accident. What is self-evident is the fact that the accused decided to overtake not one but three buses and this itself is a highly dangerous act on any road because none of the Indian roads, not even the highways, are ever totally free of any traffic whereby it would be possible to overtake not one but three buses at a time. There was also a total breach of the fundamental rule of the road which required that before overtaking, it is necessary to ensure that there is no oncoming traffic and that the road is absolutely clear and the law casts a duty on the driver of the overtaking vehicle to ensure that the road is clear for that length as would be necessary for the overtaking process to be safely completed and for the vehicle to retrace its position on the left side of the road. There is no clear indication as to whether the road was straight or not but I will take into account both possibilities. If the road was straight, the accused would have seen the oncoming bus and if he overtook despite that, then he is clearly at fault. If the road was not straight or if the accused was unsuspected by anything then he should never have attempted to overtake in which case again he is totally at fault. I need to make a special observation here because it is characteristic on our

inter-city roads and highways to find buses and trucks which have diesel operated engines of which the pick up is relatively poor, yet insisting on overtaking each other and thereby virtually pushing the oncoming traffic off the road in order to avoid a collision. This is because the basic rule has not been followed namely that it is essential to assess the speed of the other vehicle the capacity of the overtaking vehicle to pick up and generate speed faster than that one, so that the overtaking process can be rapidly completed. In the absence of this, to attempt to overtake is a rash act. The fact that the accused could not avoid a collision with the oncoming vehicle which had right of way is itself another factor which indicates that he was not in a position to control the bus which again could only happen if among other things, the speed was too high. This aspect of the case is virtually clinched by the fact that not only did the accused collide with the other bus but he also lost control of his vehicle and dashed against a tree. All these factors very clearly indicate that the vehicle was being driven in a rash and negligent manner and the injuries that have occurred are directly attributable to this fact.

8. As regards the charge under Section 304A of the IPC is concerned which is the most serious of the charges, Mr. Lokesh Malavalli has relied heavily on the medical evidence and the evidence of Rudramma's son both of which indicate that Rudramma was 70 years old, that she had only sustained a fracture and that her death was due to other medical complications. At the highest, the accused could be held liable for causing injuries to her but not for her death and in these circumstances, the order of acquittal recorded in favour of the accused under Section 304A of the IPC by the Trial Court stands confirmed.

9. In the light of the aforesaid finding, the order of acquittal recorded in favour of the accused for the offences under Sections 279, 337 and 338 of the IPC read with Section 184 of the Motor Vehicles Act is set aside. The accused stands convicted under these heads of charge. On the question of sentence, the learned Additional State Public Prosecutor submitted that the recklessness levels among the Corporation's drivers has been virtually life threatening to the lakhs of persons who travel in the buses but even to the lakhs of persons who do not travel in the bus who have to use the roads on which these buses are driven. The learned Additional State Public Prosecutor has requested the Court to issue very firm and

clear-cut directions to the Corporation for purposes of ensuring that incidents of this type do not recur and in the meanwhile, he has submitted that an example be made of the present accused by awarding him a deterrent sentence. Mr. Lokesh Malavalli points out that the incident is seven years old, that the accused is a family man with a clean record and his submission is that the Court should refrain from awarding a jail sentence and that he should be afforded the benefit of a fine.

10. Apart from the reasons set out by Sri Malavalli which are relevant, the main ground on which I am inclined to show leniency to the accused is because even though he has acted rashly and negligently the real cause for the accident emanates from the fact there was another like minded driver belonging to the same Corporation operating the bus that came from the opposite direction and that man who could have, even if the accused was in the wrong, slowed down and got out of the way, stood his ground and did not do so and was an equally contributory to what happened. It is in this background that it is directed that the accused shall pay a fine quantified at Rs. 1,000/- on each of the heads of charge aggregating to Rs. 4,000/-. No in default sentence is prescribed. The accused is given twelve weeks time to deposit the fine amount in the Trial Court failing which the Court shall recover the same from him.

11. Before parting with this judgment, it is necessary for this Court to take judicial notice not only of what has happened in the present case but of the submission canvassed by the learned Additional State Public Prosecutor that the manner in which the five buses involved in this proceeding were being driven requires not only strictures from the Court but a more constructive approach by way of a direction to the Corporation that specific steps be taken to improve the driving skills of its employees but more importantly to observe elementary manners by the Corporation's drivers on public roads. While I have dealt with the two buses involved in the collision, it is necessary for me to record that the main cause for the present incident was the fact that there were as many as three buses that were virtually obstructing the flow of traffic and that they were not travelling at a sufficient speed, which made it necessary for the accused to have to overtake them. Even if there is a bunching up of traffic, it is essential that all vehicles maintain a safe distance from each other and the drivers of the three buses

concerned all of which were the Corporation's vehicles, were totally oblivious of their duty not to obstruct other vehicles. It is characteristic for buses that are travelling at a slow speed to hog the centre of the road on the fast lane and worse still to refuse to move out and allow the faster moving traffic to go ahead. Also, when the buses are stopped, instead of going off the road they bring the entire flow of traffic to a standstill by stopping dead sometimes even in the centre of the road. Also, when the buses are moving there is no justification for them to form a convoy because the Rules of the Road require that since they are comparatively slower than the other traffic and may require to stop at short notice, that they must remain close to the left side of the road and maintain a sufficient separation distance between each other the obvious reason for this being that if another vehicle is to overtake, it would be able to get between the buses instead of having to overtake all of them at one go. This Court has highlighted these essential requirements of safe driving in this judgment with the objective of its having a corrective and salutary effect on the driving styles of the Corporation's drivers. This Court has earlier issued several warnings and guidelines as a result of which in the course of the last two years there has been a marked improvement in the manner in which the buses are driven, the safety levels and the accident rate has drastically come down. This requires to be further improved and it shall therefore be necessary for the Corporation to cull out from this judgment the areas that have been responsible for deaths and injuries to several persons and huge financial liabilities to the Corporation. The Corporation shall ensure that a circular is issued to everyone of its drivers bringing to their notice what has happened in this case and directing them to observe total safety norms at all times. More importantly, to observe good manners and courtesy while operating the Corporation's vehicles. The Registrar General shall forward a copy of this judgment to the Chairman of the K.S.R.T.C. and the B.M.T.C. both of whom shall acknowledge receipt of the same and confirm to the Court that the directions issued will be implemented.

12. The appeal succeeds to this extent and stands disposed of.