

State Vs. Mohammed Yusuf

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Court : Karnataka

Decided On : Sep-14-2000

Reported in : 2001CriLJ5

Judge : M.F. Saldanha, J.

Acts : Indian Motor Vehicle Act - Sections 3(1), 112, 279 and 304A

Appeal No. : Criminal Appeal No. 650 of 1996

Appellant : State

Respondent : Mohammed Yusuf

Advocate for Def. : C.V. Nagesh, Adv.

Advocate for Pet/Ap. : N.Y. Prakash, Addl. S.P.P.

Disposition : Appeal dismissed

Judgement :

M.F. Saldanha, J.

1. The State of Karnataka has assailed the correctness of an order of acquittal recorded in favour of the respondent-accused by the Munsiff and J.M.F.C., Channapatna in Criminal Case No. 971/ 1989. The allegation against the accused was to the effect that he was riding a motor cycle No. MEY 1696 at 7.30 p.m. on

27-4-1989 on the Mysore-Bangalore Highway. A jeep coming in the opposite direction had stopped in front of the Kengal Anjaneya temple and the deceased Umesh who was the driver of the jeep was crossing the highway in order to get to the opposite side for purposes of easing himself. A collision occurred in which Umesh got injured and so did the accused and his companion who was the pillion rider. The injured was taken to hospital and Umesh died two or three days later. The accused was arrested and charged with having committed an offence punishable under Sections 279, 304-A and Section 3 Clause (1) read with 112 of the Indian Motor Vehicles Act. The evidence in this case consisted mainly of the depositions of the two persons from the jeep and two other witnesses and the trial Court took the view that the evidence did not bring home the charges and consequently acquitted the accused persons. The present appeal assails the order of acquittal.

2. At the hearing, the learned Addl. S.P.P. has taken me through the evidence on record and what he points out from the evidence of the persons who claimed to have witnessed the incident is that the accused was driving the motor cycle at a relatively fast speed and it is their consistent evidence that it was the accused who knocked down the deceased and the submission canvassed is to the effect that where the evidence is by and large consistent merely because there were some minor infirmities inter se that the trial Court was wrong in having acquitted the accused. The submission canvassed was that if the driver of the motorcycle namely the accused did not exercise due care and caution and he was driving the vehicle in such a manner that he could not avoid a single person who was crossing the road that ipso facto he was guilty of the offences with which he was charged. The learned counsel has pointed out to me that there are really no valid reasons why the evidence has been discarded by the trial Court as the witnesses have been cross-examined and their credibility has hardly been shattered. His further submission is that the Court will have to take judicial notice of several factors including the fact that the motorcycle must have been driven in an overall manner regardless of the velocity, whereby the accused did not have sufficient control over the vehicle and that was the reason why he was unable to avoid the incident. The principal thrust of the argument is that the rashness and negligence will have to be inferred from the facts on record and that all the three heads of

charge has been established.

3. The respondent's learned Counsel has pointed out to me that some of the finer points of the evidence will have to be appreciated by the Court. First of all, his submission is that since the jeep had been stopped for purposes of the driver and passengers easing themselves that on their own admissions PWs. 2 and 3 had gone to their side of the road and consequently they had their backs to the incident. Reliance is placed on their admission which is to the effect that it was only when the impact took place, that their attention was really drawn towards what had happened. Learned Counsel submitted that this coupled with the fact that the incident had taken place during the night and that the motorcycle had fallen at a very close point to the spot of impact would support the theory that it had not been driven at very fast and uncontrollable speed. His further submission is that the Court has to take into account that this was a remote spot on the highway, that it was at about 7.30 p.m. when it was dark and that consequently, the evidence though it may indicate that as a result of the impact Umesh sustained injuries, still fall short of positively establishing that it was due to any specific negligence or fault on the part of the accused that the incident took place. Also, what the learned counsel submits is that the case put forward by the defence to the witnesses is to the effect that the fault really lay with the pedestrian namely Umesh who was crossing the road and that it was his negligence that ultimately resulted in the incident.

4. I have carefully evaluated the evidence on the record in the light of the submissions that have been canvassed. One or two factors stand out very prominently, the first of them being that the incident has taken place on the highway. The situation that prevails on the open highway is slightly different to one that the Court would take into account had the incident taken place within the city limits. One needs to take into account the factors that on the highway, vehicles would legitimately be moving at a relatively high speed. The more important aspect is that on the highway the vehicles have right of way and if a person desires to cross the highway, the rules of the road require that the person would have to wait until the traffic has passed and only then embark on crossing the highway. It is a very familiar error committed by pedestrians even on the national

highway that they saunter on to the road regardless of the movement of the traffic and if a person does a suicidal act of this type, then it would be impermissible for a Court in situation of this type to hold the driver of the vehicle responsible for the consequences of the Act. I need to take into account one or two aspects submitted by the defence, the first of them being that the incident has taken place at night and we have no indications on the record as to what the light conditions were like. One may presume therefore that the light conditions were relatively poor and in this background if the deceased, as often happens, alighted from the jeep and was impatient to get to the other side of the road and made his way across the highway regardless of the oncoming vehicles, there is every possibility that he was the main contributory to the incident in question. We do have generalised evidence to the effect that the impact took place between Umesh and the motorcycle but we do not have a really specialised description from which the Court can 100% hold that it was the driver who was responsible and it was because of his rashness and negligence that the incident took place. It is true that in motor accident cases that the principle that the facts speak for themselves is applicable but in the present instance even those facts are not free from doubt. Having regard to this position, I am of the view that this Court must bear in mind one fact, that this is an appeal against acquittal and unless the Court is satisfied that the acquittal order is not only wrong but has also resulted in miscarriage of justice, it would not be permissible for this Court to interfere with the order of acquittal. Having regard to this position, no interference is called for. The appeal accordingly fails and stands disposed of. The bail bond if executed by the respondent, to stand cancelled.