

Ram Narain Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-06-1995

Reported in : 1(1996)ACC654

Judge : Kundan Singh, J.

Appellant : Ram Narain

Respondent : State of U.P.

Judgement :

Kundan Singh, J.

1. This revision is directed against the judgment and order dated 21.8.82 passed by Sri Rurimal Sessions Judge, Mainpuri, dismissing Criminal Appeal No. 78 of 1982 and confirming the conviction under Section 304-A, IPC and sentence of one year's R.I. of the applicant as passed by Mr. R.B. Lal Dhore, Chief Judicial Magistrate, Mainpuri on 29.3.82 in Case No. 924 of 1980.

2. Applicant Ram Narain was driver of U.P. Government Roadways and on 21.6.79. He was carrying Roadways Bus No. UTW-8729 from Mainpuri city to Bewar. He was driving the bus at a fast speed. At about 3.15 p.m. when he crossed the bridge of Isah River outside Mainpuri city, the bus hit a cyclist, namely Nahar Singh at a distance of about 20 paces from the Northern fringe of the bridge of the river. Fatal injuries were sustained by Nahar Singh who was coming from

the opposite direction. Nahar Singh was going on a right side i.e., on left side of the road. When the bus hit Nahar Singh it was going with a fast speed and its driver did not blow the horn as a result of which the victim sustained fatal injuries. Vishwa Kumar Saxena (PW 2), Badshah (PW 1) and Desh Raj (PW 4) had witnessed the incident. Vishwa Kumar Saxena was allegedly going on foot from Kutchery to Mainpuri city. A Fire Brigade vehicle reached there. The employees of Fire Brigade took Nahar Singh on their vehicle and got him admitted in the District Hospital, Mainpuri. V.K. Saxena lodged a report of the incident at Police Station, Kotwali, Mainpuri. Nahar Singh succumbed to his injuries at 4.45 p.m. on the same day in the Hospital. The case was converted into one under Sections 279/338/304A, IPC. The inquest report was prepared by K.P. Singh, Sub-Inspector and the investigation was made by another Sub-Inspector, namely, P.L. Gupta. After completing the investigation a charge sheet was submitted against the applicant.

3. The prosecution examined 9 witnesses in all to prove its case. Out of them, Badshah (PW 1), Vishwa Kumar Saxena (PW 2) and Desh Raj (PW 4) were the witnesses of the factum of incident. PW 9 had examined the bus, who found the condition of engine, transmission rack system and horn in order though hand brake was out of order and the right head light was damaged. Other witnesses were formal.

4. The accused-applicant stated that he had lodged a report at Police Station Bewar, District Mainpuri on the same day. He was carrying the bus at about 3.00 p.m. from Mainpuri to Kannauj. As soon as the bus reached Etah route after crossing the bridge of Isan Nadi, suddenly a cyclist appeared before him who became nervous and lost control of the cycle. The applicant tried to save him but he collided with the bus. Out of security of the bus and the passengers on board, the applicant brought the bus to Police Station where he surrendered himself and lodged a report of the incident.

5. The learned Magistrate after going through the evidence on record held the applicant guilty of the offence charged with and sentenced him as stated above. The applicant filed an appeal against that order before the learned Sessions Judge

but it was dismissed by means of the order dated 21.8.82.

6. The applicant has now come up before this Court in the above Revision. The main contention of the learned Counsel for the applicant is that every act of the driver when a bus met with an accident does not come within the purview of rash and negligent driving. The driving is a skill and the expertise of a driver depends on his experience. Mere driving of the vehicle with a high speed is no ground at all for concluding that the driver was driving the bus rashly and negligently. There are cases also where the accidents are due to mistake of others and not of the drivers. The learned Counsel for the applicant further pointed out the circumstances to show that in the present case the accident was not due to negligence of the applicant as the bus was stopped within few steps after the incident, which according to him was possible if the bus was being driven at a normal speed after crossing the bridge of the river. He further urged that mere high speed is no ground to hold that the driver was driving the bus rashly and negligently. The applicant himself lodged a report at Police Station and surrendered himself. The conduct of the applicant was, therefore, bonafide and he was not a guilty mind. The cyclist suddenly came before the bus and he lost his balance. His cycle trembled and collided with the bus and the right head light of the bus was damaged in the collision and hence the applicant was not responsible for the accident.

7. The learned Counsel for the applicant also relied on the case *Chatnan Lal v. State of U.P.*, reported in : AIR1954 All186 in support of the contention that before recording conviction and awarding sentence under Section 304A, IPC a very high degree of negligence must be found and that negligence must amount to recklessness of utter indifference to consequences and not merely negligence of tor fesor Rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness of criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which

having regard to the circumstances it was the imperative duty of the individual to take culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. Mere carelessness is not sufficient for sustaining a conviction under Section 304A, IPC.

8. I have given my anxious thought to the above submission made by the learned Counsel for the applicant. It is true that driving a vehicle with a high speed is not sufficient for holding a driver guilty of rashness and negligence. It is a case in which the deceased was coming on a cycle from the opposite direction. The applicant was driving his bus and he could avoid the collision or accident had he taken the precaution of blowing horn, giving signal to the other side to take precaution himself. It could not be said that the applicant was vigilant and avoided the accident. It is true, had the cyclist suddenly emerged from a place which was invisible, the driver would not have been liable for the accident. But in the present case, the deceased was very well visible while coming from the opposite side. The applicant did not blow horn to alert the cyclist nor did he take precaution of avoiding the accident. It was not sufficient that he stopped the bus within few steps and he surrendered himself before the police. In my opinion, the Court below has not committed any error in confirming the conviction and sentence of the applicant. The action of the applicant of stopping the bus within few paces away and then taking it to the Police Station and then lodging report and surrendering himself is hardly a ground for acquitting him.

9. The learned Counsel for the applicant then contended that the applicant has 25 years unblemished record of service to his credit and hence his sentence be reduced to the period already undergone. It is true that the applicant has unblemished service career to 25 years. It is a case of 1979. The applicant took precaution for the safety and security of the bus and the passengers sitting therein. He also took precaution of lodging the report and surrendered himself and in my opinion the sentence of six months in the given circumstances would meet the ends of justice.

10. Accordingly the revision succeeds in part. While maintaining the conviction of the applicant under Section 304 A, IPC as affirmed in appeal, his sentence of imprisonment of one year's R.I. is reduced to a period of six months' R.I. He is on bail. He shall surrender to his bail forthwith and be taken into custody to serve out his sentence.

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