State Vs. Banshi Singh

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Court : Madhya Pradesh

Decided On : Jun-04-1959

Reported in : AIR1960MP105; 1960CriLJ482

Judge : Shiv Dayal Shrivastava, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 304A; Code of Criminal Procedure (CrPC) , 1898 - Sections 32 and 251A(5)

Appeal No. : Criminal Revn. No. 103 of 1958

Appellant : State

Respondent : Banshi Singh

Advocate for Def. : J.P. Gupta, Adv.

Advocate for Pet/Ap. : P.L. Dubey, Dy. Govt. Adv.

Judgement :
ORDER

Shiv Dayal Shrivastava, J.

1. This is a reference made by the Additional Sessions Judge, Morena, for enhancement of sentence.

2. The respondent was produced before the Magistrate First Class Jora for being tried under Section 304A of the Indian Penal Code. The Magistrate examined the accused under Section 251A(5) of the Code of Criminal Procedure 011 8-1-1958. The accused in his statement denied the allegations made against him. On 11-1-1958 the Magistrate framed a charge which was read out to the accused. Therein is recorded his plea of guilty in these words. 'Jurm kiya hai. Mera Pahla apradh hai, chhama chahta hun'. The Magistrate thereupon convicted the accused under Section 304A and sentenced him to a fine of Rs. 25/- only.

3. The Additional Sessions Judge having found the sentence to be manifestly inadequate recommends that it should be enhanced to a fine of Rs. 100/-.

4. I have heard the learned Deputy Government Advocate who supports the reference and Shri. J.P. Gupta, who not only opposes the reference but claims further that the accused should be retried.

5. There can be no doubt that in a case under Section 304A where a man is killed in consequence of rash or negligent act of an accused, a sentence of a fine of Rs. 25/- even though the accused pleads guilty, is palpably inadequate and does not meet the ends of justice. If a man is riding a bicycle and is crushed under a motor vehicle in circumstances which cause instantaneous death, there are only two possibilities : Either the victim himself is negligent or rash, while the driver is not at fault, or the driver is rash or negligent to a high degree. In the first case the accused is entitled to an acquittal. In the second, the accused is liable to an appropriate punishment.

6. In the case in hand, however, it is first of all to be seen whether there was sufficient material on the record for the conviction of the accused.

7. Shri J.P. Gupta has urged that the manner in which the plea of guilty was recorded in this casa was not sufficient to form the basis of a conviction and that this is a fit case for a retrial. In my opinion, this contention must be accepted. On going through the record I find that the accusation against the respondent as disclosed in the charge-sheet was that the accused was driving a motor bus (be ehtiyati wa laparwahi se) between Jora and Kelars when he struck against one

Roshnlal with the result that the latter died instantaneously. The bus went on the Wrong side about 26 cubits off the road. The learned Magistrate in a long and unweildy question asked the accused what he had to say with regard to the? allegations brought against him.

The answer was that he did not kill the deceased, that he was driving cautiously and carefully (savdhani wa noshyari se), that two cyclewalas were going on the wrong side, that he tried to avoid a collision, that one person successfully crossed but the other came under the bus, that he could not do anything and if he had gone further, the bus would have tumbled down and all the passengers numbering 30or 35 would have been killed, that he reported this matter in the police station and that he was not at fault, nor was he negligent (mere koi galati wa laparwahi nahi hai).

8. Three days after this statement, that is, on 11-1-1958, the learned Magistrate heard the arguments of the parties and framed a charge on the basis of the documents filed before him under Section 173 of the Code of Criminal Procedure and the above statement of the accused. The charge was that the accused was driving rashly and negligently (laparwahi wa be ehtiyati) and he struck against Roshanlal causing his death and that the act of the accused did not amount to culpable homicide. At the foot of the charge the Magistrate recorded the plea of guilty in these words 'Jurm Kiya hai mera pahla apradh hai chhama chahta hun'.

On the same day the learned Magistrate pronounced his judgment in which the plea of guilty was accepted and it was held that the death of Roshanlal was caused by the fracture of the skull and and other injuries for which the accused was responsible, but since the accused had pleaded guilty a sentence of imprisonment was not called for and a fine of Rs. 25/- was imposed. Under Section 251A(5) of the Code of Criminal Procedure the Magistrate has a discretion to convict an accused who pleads guilty or to proceed with the trial. But the plea of guilty must be clear and unambiguous. It is an admission of all the facts on which the charge is founded and also an admission of guilty in respect of them.

Such a plea must be recorded as nearly as possible in the very words of the accused so that an appellate or revisional court may determine whether they really

amount to an admission of guilty and, what is more, whether the lower court understood the accused correctly. In order that a conviction may be sustained on a plea of guilty, it must appear that the accused admitted in his pleas all the elements of the offence. It demands still greater caution when the accused on an earlier occasion denied the accusation against himself. In the present case the accused made a detailed statement before the Magistrate in which he described the circumstances in which the death occurred.

If that statement were believed the accused was entitled to be acquitted. This situation demanded caution on the part of the Magistrate, when the accused pleaded guilty. The learned counsel for the respondent told me that the police induced the respondent to plead guilty to the charge so that the case might be dropped with a nominal punishment. In the absence of any material before me to support it such an argument is worthless. At any rate, it was the duty of the Magistrate to have applied his mind cautiously and then exercised his discretion. That does not appear to have been done in this case. The recording of the plea of guilty and the judgment seem to have been mechanically done.

The learned Deputy Government Advocate could not tell me in what circumstances precisely the unfortunate occurrence took place. For instance, what was the speed at which the accused was driving, what was the condition of the road, whether a horn was blown, whether the deceased contributed to his death by his own negligence, whether the driver was driving attentively and so many things which! are to be considered for arriving at a conclusion whether the driver was rash or negligent. The plea merely says that he has committed the offence. It would have been a different matter if the accused had stated in his plea that he was driving at too fast a speed or that he was not driving with undivided attention, and so on. He did not attribute to himself anything particular which was inculpatory; he merely said that he was guilty.

9. It is not the law that the Magistrate is bound to convict the accused on such a plea.

10. Fox these reasons I am of the opinion that for the ends of justice this case must go back for a retrial.

11. Before I part with this case I must ob-j serve that the charge framed by the learned trial Magistrate was defective inasmuch as he used the words 'rashness' and 'negligence.' Criminal rashness and criminal negligence are two different things. The distinction has been very aptly pointed out by Holloway J. in these words :

'Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness. The imputability arises from the negligence of the civic duty of circumspection.'

(In re, Nidamarti Nagabhushanam 7 Mad H.C.R. 119).

The accused could be charged alternatively for rashness or negligence.

12. The result is that the conviction and sentence passed by the trial Magistrate are set aside and the case shall go back for a retrial.