

State of Madhya Pradesh Vs. Sushil Kumar

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Court : Madhya Pradesh

Decided On : Sep-26-1989

Reported in : I(1990)ACC139; 1990ACJ848

Judge : S.D. Zha, J.

Appeal No. : Crl. Appeal No. 331 of 1986

Appellant : State of Madhya Pradesh

Respondent : Sushil Kumar

Advocate for Def. : B.I. Mehta, Adv.

Advocate for Pet/Ap. : S.K. Pawanekar, Adv.

Disposition : Appeal dismissed

Judgement :

S.D. Zha, J.

1. The appellant, State of M.P., challenges acquittal of the respondent Sushil Kumar of charge under Section 304-A by Judicial Magistrate 1st Class, Mandleshwar (West Nimar) by judgment dated 2.11.1985.

2. The respondent accused was prosecuted for having on 15.10.1982 rashly or negligently driven a scooter on Badwaha-Mandleshwar public road and having

caused injuries to pillion rider Sheikh Babukhan resulting in his death on 17.10.1982 at Choithram Hospital, Indore.

3. The respondent accused pleaded not guilty to charge under Section 304-A, Indian Penal Code. Respondent in his examination stated that the scooter was being driven by deceased Sheikh Babukhan, it was running at normal speed. Suddenly scooter's piston got jammed and the scooter fell down. He did not examine any witness in defence.

4. The learned Judicial Magistrate found that the accused was driving the scooter but it was not proved that he did so rashly or negligently and he acquitted the accused.

5. Mr. Pawanekar, learned Panel Lawyer representing the State, has read out to me the evidence of prosecution witnesses Motilal, PW 1, Puransingh, PW 2 and Kalibai, PW 5 who are witnesses to the incident. Dr. J.S. Goyal, PW 3, examined deceased Babukhan, when he was alive as also the respondent accused Sushil Kumar. Rewaram mechanic, PW 4, examined the scooter as per his report, Exh. P-4. Dr. A.K. Mishra, who conducted autopsy on dead body of Sheikh Babukhan was not examined but post-mortem report, Exh. P-5, was admitted by defence.

6. From the evidence of Puransingh, PW 2, it is established that accused was driving the scooter. The point to be seen is whether he did so rashly or negligently. Motilal, PW 1, no doubt, in his examination-in-chief stated that the scooter was running at high speed but in cross-examination para 5 he admitted that in his statement he had not stated to police about scooter being driven at high speed. From the statement of witness it appears that at the material time road was lonely and there was no traffic. From the statement of Mohammad Yusuf, PW 6, it appears that the accused is an experienced driver. From the statement of Radha Krishan Tiwari, PW 7, the road where the incident took place is a tarred road about 9 steps wide with no slope or curve or pits. There is no direct evidence of any rashness or negligence on the part of the accused. From the statement of Rewaram, PW 4, who examined the scooter and gave report, Exh. P-4, it appears that the rear brakes of the scooter were in order but brake lever was broken and front wheel was jammed. Radha Krishan Tiwari, PW 7, stated that there was mark

of scratching on the road showing that brakes were applied and were effective. In this state of evidence the learned Judicial Magistrate held that the incident must have happened due to some sudden mechanical defect in the vehicle. The plea of the accused that incident took place due to piston suddenly getting jammed was not negated by the prosecution evidence. Burden to prove the rashness or negligence against the accused as also the prosecution case was on the prosecution itself and it was not for accused to prove his innocence.

7. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. There is nothing in the prosecution evidence to show criminal rashness or criminal negligence on the part of the accused. I see no reason to differ from the conclusion reached by the learned Judicial Magistrate. In any case view taken by the learned Judicial Magistrate was a plausible view.

8. Having regard to the observation of the Supreme Court in Tota Singh v. State of Punjab AIR 1987 SC 1083, the case does not appear to be one where acquittal of the respondent accused should be interfered with. The appeal, therefore, fails and is dismissed.