

Pitabash Panda Vs. the State

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Court : Orissa

Decided On : Aug-03-1960

Reported in : AIR1961Ori45; 1961CriLJ300

Judge : R.L. Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304A; ;Motor Vehicles Rules

Appeal No. : Criminal Revn. No. 355 of 1959

Appellant : Pitabash Panda

Respondent : The State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : N.V. Ramdas, Adv.

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a petition in revision against the appellate judgment of the Additional Sessions Judge of Berhampur, maintaining the conviction of the petitioner under Section 304A, Indian Penal Code and the sentence of fine of Rs. 1500/- passed by the Special First Class Magistrate, Aska. The petitioner was also convicted under Section 123/42 of the Motor Vehicles Act and sentenced to pay a fine of Rs. 50/-.

2. The petitioner was the driver of truck No. ORG No. 262 which was engaged on the 28th Dec. 1954, in carrying a load of timber from Pudamari Jo Berhampur via Taptapani Ghat. It is admitted that the truck was loaded with timber from Pudamari and reached Taptapani at about 1 p.m. There, the owner of the timber (P. W. 1) detained the truck and gave a good feast to the driver and other persons inside the truck. At about 4 p.m, the truck left Taptapani and proceeded towards Berhampur.

The road was a ghat road sloping downwards towards Berhapur side. At a place between milestone 29 and milestone 28/7, there was a bend in the road from left to right. While negotiating this bend the truck went to the extreme left of the road, knocked down 6 curve stones fixed on the left, rolled down into a ditch below and turned turtle. Six persons were killed on the spot and three persons sustained fatal injuries and died subsequently, while several other persons sustained injuries.

3. After the usual investigation the petitioner was sent up for trial for an offence under Section 304A I. P. C. read with Section 279 I. P. C. and also under Section 123 read with Section 42 of the Motor Vehicles Act. The trying Magistrate did not pass a substantive sentence of imprisonment observing that the trial was a protracted one for nearly four years. The learned Sessions Judge however while affirming the sentence remarked that the sentence was lenient. At the time of the admission of this revision petition a rule was issued for enhancement of the sentence and the petitioner was given adequate opportunities to argue the revision both on facts and on law and to show that the conviction was not justified from the facts on record.

4. The main facts are admitted. The petitioner drove the ill fated truck down the ghat road while it was heavily loaded with timber and with 16 persons travelling in it including the driver and cleaner. The road was sloping down and while negotiating a bend from left to right the truck went to the extreme left and after running over some curve stones fell down below and turned turtle killing six of the occupants on the spot and injuring three more who died subsequently. The crucial question for decision is whether the death of these persons was due to the reckless and negligent driving or else whether it was due to unavoidable accident or a mere error of judgment.

5. In his statement under Section 342 Cr. P. C. the petitioner has not put forward any specific cause as to how the accident took place. He said that he would file a written statement but no such statement was filed. But on his behalf much reliance was placed on the evidence of a labourer Subhas Chandra Patra (P. W. 9) -- who was one of the persons travelling in the truck -- to the effect that a bullock cart was going in front of the truck and that while attempting to overtake the bullock cart the truck fell down into a ditch and turned turtle.

The trial court disbelieved the evidence of this witness observing that as he was one of the labourers engaged in loading timber in the truck, his sympathy with the driver was natural. I am in entire agreement with him. The other labourer who was in the truck, namely Lakshmana Jena (P. W. 3) has not stated that the accident took place when the driver attempted to overtake the bullock cart that was proceeding in front of the truck. On the other hand he emphatically denied such a suggestion in cross-examination and further added that there were some carts at a distance of 70 yards from the turning.

Similarly, P. W. 5 Kora Padhi who was walking along the ghat road in front of the vehicle just before the accident stated that there were some cartmen near a tree taking rest. In cross-examination he further added that there were two carts at a distance of 50 to 60 yards from the truck, ahead of it. P. W. 8 Narasingha Misra, a Kabiraj (who had also taken part in the feast at Taptapani earlier and was walking ahead of the truck at the time of accident, supported the version of P. W. 5 by saying that the cart was at a distance of about 40 cubits from the truck at the time of the accident.

Hence the suggestion that the occurrence took place when he was attempting to overtake a bullock cart near the bend of the road where the accident took place, must be rejected, even though it is sought to be supported by the evidence of P. W. 9. The evidence of the other witnesses mentioned above, viz. P. Ws. 3, 5 and 8 shows clearly that the bullock carts were at a considerable distance away from the truck -- about 40 and 50 yards at the time of accident.

6. Some adverse inference was drawn against the petitioner on the basis of the evidence of the Sub-Inspector of Police (P. W. 16) to the effect that when he

examined the petitioner soon after the accident he found him smelling of drink. The petitioner was later examined by the Medical Officer of Pudamari and his report (Ext, 39) was produced in court to show that the petitioner was slightly smelling of alcohol at that time. Again in the dying declaration of one of the victims of the accident, Kishore Das (Ext. 2) it is mentioned that the driver was under the influence of drink.

But I am not inclined to attach much importance to these pieces of evidence on the side of the prosecution. The Medical Officer of Pudamari ought to have been examined as a witness and the petitioner ought to have been given an opportunity of cross-examining him. Moreover a specific question should have been put to the petitioner during his examination under Section 342 Cr. P. C. as to whether he had taken any liquor before driving the truck.

The statement of P. W. 16 that he found the petitioner smelling of drink cannot therefore have much value. Moreover it is not unlikely that immediately after this ghastly accident in which the driver also must have received a shock, he might have taken some drink with a view to revive himself. If he had been specifically questioned on this point he would have given an explanation. I am not inclined to hold that the petitioner was under the influence of liquor, relying merely on the dying declaration of Kishore Das.

7. But the evidence of the Sub-Inspector of Police regarding the facts noticed by him at the spot and the evidence of the Motor Vehicles Expert (P. W. 11) leave no room for doubt that the petitioner was driving the vehicle, at the time of the accident in a reckless and negligent manner. This is one of those cases where the principle *res ipsa loquitur* applies with full force. The map (Ex. 32) shows that the actual width of the road was 12 feet while the kutchra portion on 'either side was 3 feet and 2 1/2 feet.

The total width of the road thus comes to 17 feet. The evidence of the Sub-Inspector of Police (P. W. 16) further shows that there had been no rain on the previous day and that the road had been thoroughly repaired due to the visit of the Governor, The truck went to the extreme left, ran over six curve stones kept there and then fell down into the ditch and turned turtle. The accident took place in

broad day light at 4 p.m. The visibility was very good and the bullock carts, if any, were more than 40 or 50 yards ahead of the truck.

If the petitioner had driven the truck with even ordinary care he could have slowed down the speed because he was coming down a ghat road with a heavily laden vehicle. Further reduction in speed was necessary because he was just negotiating a bend. He should not have taken the vehicle to the extreme left of the road and allowed it to fall into a ditch. The road was sufficiently wide for any ordinary driver to drive on the near side of the road without any difficulty.

8. As regard the speed of the vehicle at the time of the accident, the evidence of the Motor Vehicles Inspector (P. W. 11) must be taken to be decisive. After visiting the spot and carefully inspecting the same he estimated the speed at between 25 and 30 miles per hour or even more. The evidence of the Motor Vehicles Inspector was criticised on the ground that if the vehicle was actually travelling at that speed some of the occupants of the truck who jumped down from the vehicle just before the accident, could not have escaped with minor injuries. P. Ws. 6 and 7 had jumped down from the truck just before it turned turtle and escaped with light injuries.

But this would not show that the speed of the vehicle was necessarily slow. It is possible that even if a vehicle was being driven at 25 to 30 miles per hour some persons may manage to jump down and escape with light injuries. I see therefore no reason to disagree with the estimate of the Motor Vehicles Inspector that the speed of the truck at the time of the accident was excessive having regard to the other circumstances referred to above. The petitioner was guilty of callousness in driving at such a speed along a ghat road, downhill, especially at a bend.

Moreover the Inspector further stated that during his examination at the spot he found no sign of the brake having been applied. But he found the truck in a good condition, without any defect, and the brake was working with full efficiency after the accident. There was no mechanical defect in the vehicle, the steering was in perfect condition, and all other controlling components were in proper order. The evidence of the S. I. of Police also shows that the vehicle went to the extreme left of the earthen portion of the road and travelled a distance of 122 feet (more than

40 yards) on the extreme left side before capsizing.

If the truck had been driven at reasonable speed and if the driver had exercised even ordinary vigilance it would not have been difficult for him to stop the vehicle at a distance of 40 yards and turn it towards the right so as to avoid falling into a ditch. Unless the driver was grossly reckless and lost control over the vehicle, it is difficult to imagine how he could not control it over a distance of more than 40 yards, especially when on the pucca portion of the road there was no other traffic and the mechanism of the truck including brakes and steering arrangements were in perfect order.

9. The recklessness of the driver is apparent from the other circumstances also. He allowed 16 persons to travel in the truck though, according to the Motor Vehicles Rules (see Rule 95 (b)) only six persons in all, in addition to the driver should have been carried, (see the evidence of P. W. 6). A clever attempt was made to show that these persons got into the truck without the knowledge of the petitioner and P. W. 9 (whose sympathy for the petitioner I have referred to earlier) attempted to support this story by saying that some of the persons got into the vehicle under the instruction of the Forester Bhikary Charan Panda, and that the petitioner was unaware of the same.

This part of the evidence of P. W. 9 must also be rejected. It is impossible to accept the story that anybody could have got into the vehicle without the knowledge of the petitioner. The other witness did not say that they got into the truck without the knowledge of the petitioner. According to P. W. 3 about four persons were sitting in the front seat, some were standing on both sides of the foot board, and the 'rest were sitting on the top -- over the timber.

Even if it be assumed that the Forester asked these persons to sit in the truck in the manner, it was the look out of the petitioner as the driver in charge, to see that the permissible limit was not exceeded and that the excess passengers got down before driving the vehicle. It is true that he was separately convicted for overloading the truck, under Section 123/42 of the Motor Vehicles Act but this itself shows that he was utterly reckless.

Though, for a big truck the weight of 16 passengers may not be great, nevertheless when the truck was already heavily loaded with timber the addition to the weight caused by the 16 persons must necessarily have involved greater strain on the steering mechanism even for a cautious driver. This must have partly contributed to the driver losing all control of the vehicle while approaching the bend. He ought not to have allowed more than 4 persons to sit in the truck before leaving Taptapani.

10. I am therefore in agreement with the learned lower Court that the unfortunate incident was the direct result of reckless and negligent driving by the petitioner, in utter disregard of the safety of the passengers travelling in the truck. He took no steps to remove the excess passengers, drove the vehicle at excessive speed and when the truck went to the extreme left near the bend he lost all control and failed to apply the brake in consequence of which the incident took place involving the death of nine persons. There can be no question of any error of judgment as there was no obstruction on the road, knowing that he was driving a heavily loaded truck down-hill, on a ghat road, especially when approaching a bend.

11. On the question of enhancement of sentence, it was urged by Mr. Ramdas that a substantive sentence of imprisonment was unnecessary especially in view of the fact that the trial was a protracted one. He relied on the observation of Beaumont, C. J. in *Emperor v. Khan Mohammad*, AIR 1937 Bom 96. But in my view that judgment supports the rule for enhancement of sentence.

There the learned Chief Justice pointed out in considering the question of enhancement one has to consider whether the rash and negligent act of the accused which occasioned death shows callousness on his part, as regards the risk to which he was exposing other persons, and that the severity of the sentence should depend on the degree of callousness which was present in the conduct of the accused. Here, as I have already shown, the conduct of the petitioner was callous throughout and his inability to control the vehicle was due to his recklessness.

In the aforesaid Bombay case the driver (accused) avoided a major accident, but unfortunately one of the persons sitting in the vehicle fell down when there was a

bump and was killed. Here, however, the petitioner made no effort to avert the accident and completely lost all control. It is true that the mere number of persons killed may not in all cases-be a sufficient circumstance to justify the passing of a substantive sentence of imprisonment. But in view of all the circumstances, I think the petitioner must go to jail. The undue prolongation of the trial may be a ground for not imposing a long term sentence of imprisonment, but it will not be a ground for letting off the petitioner with a sentence of fine only.

12. While-, therefore, maintaining the conviction of the petitioner under Section 304A I. P. C., I enhance the sentence to nine months rigorous imprisonment. The sentence of fine of Rs. 1500/-passed by the trying Magistrate is also maintained; in default of payment of fine the petitioner shall undergo rigorous imprisonment for a further period of five months. The conviction under Section 123/42 of the Motor Vehicles Act is also maintained but no separate sentence seems necessary for this offence. The sentence of fine passed for that offence is set aside.

As regards the order for payment of compensation to the heirs of the deceased, I would only add that if those persons have already been compensated by the Insurance Company the order of the Magistrate under Section 545 Cr. P. C. need not be given effect to, but otherwise the order will stand. Similarly the order of the trying Magistrate suspending the petitioner's driving license for a period of three months after the expiry of the sentence is also maintained. Prompt steps should be taken to apprehend the petitioner and commit him to jail to serve out his sentence.

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