

Bijuli Swaln Vs. State of Orissa

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Court : Orissa

Decided On : Aug-04-1980

Reported in : 50(1980)CLT358; 1981CriLJ583

Judge : N.K. Das, J.

Appellant : Bijuli Swain

Respondent : State of Orissa

Judgement :

ORDER

N.K. Das, J.

1. The petitioner was the driver of truck No. ORG 1445. He has been convicted under Sections 279 and 304-A Indian Penal Code and has been sentenced to undergo rigorous imprisonment for six months and one month respectively, both the sentences to run concurrently. It is alleged that on 9-4-1974 at about 8-30 a. m. the petitioner caused an accident while driving rashly and negligently endangering human life, and in the accident a cyclist was knocked down with injuries. Thereafter the truck dashed against a bullock-cart driven by P. W. 2. Due to such accident the cart-man was also thrown out and was injured. The defence is denial.

2. Both the courts below have relied on the testimony of P. Ws. 1, 2 and 7 and have convicted the petitioner on the ground that as the road was wide but still such an accident took place, it should be presumed that the petitioner was driving rashly and negligently.

3. The truck was burnt by the local people at the spot. So the Motor Vehicle Inspector P. W. 7 could not examine the truck on its mechanical side. P. Ws. 1 and 9 who are said to be eye-witnesses have clearly stated that they have not seen the actual dashing of the truck against the cyclist or against the cart. P. W. 2, the other witness states that the truck dashed against his cart from behind. P. W. 1 has further stated that he was at a distance of 100 to 200 feet from the place of occurrence. A careful scrutiny of the evidence of these witnesses will clearly show that nobody has seen the actual dashing of the truck against the cyclist or against the cart. The witnesses have only seen after the cyclist was injured and the cart got damaged. Practically, there is no eye-witness to the actual dashing of the truck against the cyclist and the cart

4. It is contended by Mrs. Padhi, the learned Counsel for the petitioner, that the conviction under Section 304-A Indian Penal Code is not sustainable, inasmuch as there is no eye-witness to the actual dashing of the truck against the cyclist or cart. Also the conviction under Sections 279 and 304-A I.P.C. is not sustainable inasmuch as there is no evidence of rash and negligent driving.

5. In *Trinath Panigrahi v. State* (1975) 41 Cut LT 245, it has been held that the onus is on the prosecution to establish beyond reasonable doubt that the truck was being driven in a rash or negligent manner. What is rash or negligent driving would depend upon facts and circumstances of each case. In that very volume at page 158, (*Sachidananda Bhitria v. State of Orissa*) (1975-41 Cut LT 158) it has been held that the requirements of the section are that death of a person must have been caused by the accused doing any rash or negligent act, Prosecution must prove that rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash and negligent act of the accused. The mere fact that a pedestrian had been knocked down and has died, the driver of the motor vehicle that knocked him

down cannot be presumed to be guilty of rashness or negligence.

6. In *Ladukishore Panigrahi v. State* (1971) 37 Cut LT 1142, this Court has further held that merely from the speed of the vehicle, without other considerations of adverse surroundings, situation and circumstances existing at the time of the occurrence, about which there is nothing in the evidence on record, it cannot at all be said that the act of the accused amounted to criminal rashness or criminal negligence. This decision had taken note of several decisions of the Supreme Court as well as of this Court and other High Courts.

Also In *Penu v. State* (1980) 49 Cut LT 337 : 1980 Cri LJ NOC 132 (Ori), it has been held that to constitute either of the offences under Section 279 or 304-A, Indian Penal Code, proof of criminal rashness or criminal negligence is essential. Accident merely due to error of judgment of the driver or without anything to show that he was conscious of the risk that evil consequences will follow or that his rash driving was 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 would not make the driver criminally liable for an offence either under Section 279 or 304-A, Indian Penal Code. In the facts and circumstances of the case, criminal rashness or negligence, which is required to constitute an offence either under Section 279 or under Section 304-A, Indian Penal Code, cannot be attributed to the petitioner beyond reasonable doubt, more so on the admitted prosecution evidence that he was driving the vehicle 'slowly and carefully'. In the criminal trial, the burden of establishing the charge against the ; accused rests on the prosecution and the standard of proving the same is always beyond all reasonable doubts. Criminality is never to be presumed subject to statutory exceptions, and criminal negligence or rashness should not be presumed in such a case merely on the application of the maxim *res ipsa loquitur*.

7. If the evidence available on record in the instant case is judged on the principles laid down by this Court, as stated above, it is evident that there is no evidence on behalf of the prosecution that the petitioner was driving rashly and negligently. Due to such rash and negligent driving the accident took place. Merely because some persons have been injured, it cannot be said that the accident was deliberate or

due to rash and negligent driving. The prosecution has failed to establish the ingredients of Sections 279 and 304-A, Indian Penal Code and, as such, the conviction of the petitioner is not sustainable.

8. In the result, the revision is allowed. The conviction and sentence against the petitioner are set aside and he is acquitted of the charges levelled against him. The bail bond is discharged.

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