

Mahammed Saffique Vs. State

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Court : Orissa

Decided On : Mar-23-1982

Reported in : 1983CriLJ535

Judge : B.K. Behera, J.

Appellant : Mahammed Saffique

Respondent : State

Judgement :

ORDER

B.K. Behera, J.

1. Concurrent findings of fact have been recorded by the trial and appellate courts against the petitioner to the effect that by his rash and negligent driving of the bus bearing registration No. ORP 2045 on March 17, 1972, it dashed against Fakira Swain coming on the road between Pipili and Sakhigopal riding on his bicycle by observing the rules of the road keeping left for which Fakir Swain succumbed to the injuries and the bus then fell into a ditch causing injuries to some of its inmates. The petitioner was prosecuted under Sections 279, 337 and 304A of the I.P.C. and his conviction in respect of the three offences recorded by the trial court has been maintained by the learned appellate Judge who has sentenced the petitioner to undergo rigorous Imprisonment for a period of three months for each of these three offences concurrently. To establish its case, the prosecution had

examined eleven witnesses at the trial. The case of the petitioner was that he had been driving the bus properly and carefully. In other words, his case seemed to be that the accident had occurred owing to circumstances beyond his control.

2. The learned Counsel for the petitioner has submitted that the only evidence against the petitioner was that he had been driving the vehicle in speed and speedy driving, by itself, would not amount to rash and/or negligent driving. He has also submitted that adverse Inference ought to have been drawn against the prosecution for non-production of the inspection report of the Motor Vehicle Inspector which could have shown that the accident was due to some mechanical failure and not due to the rash and/or negligent act on the part of the petitioner. The learned Additional Standing Counsel has fairly submitted before me that in a case of this nature, the prosecution ought to have done well in placing on record and proving the inspection report of the Motor Vehicle Inspector, but he has contended that the evidence would clearly show that the petitioner had been driving the bus at reckless speed without blowing horn and he could be convicted as he had been.

3. P. W. 1 had not testified that the ill-fated bus of which the petitioner was admittedly the driver had been moving in great speed, P. Ws. 2, 3 and 4 as also two occupants of the bus, namely, Gangaram Chhapolia (P. W. 5) and Ban-sidhar Parida (P. W. 9), the latter being a Traffic Havildar, had testified that the bus had been going in high speed. In addition, p. W. 3 had deposed that the petitioner had not been blowing horn but there was no other evidence in this regard. The fact that, as deposed to by P. W. 9, the bus was trembling at times, might not be owing to speed only, as rightly submitted by both the sides at the Bar, but could be by improper maintenance of the bus. While it would be seen from the evidence that the driver was driving the vehicle in speed, there was absence of evidence to show that the road was not broad nor clear or that the petitioner had been driving through a village or through a crowd or that a large number of persons had been passing by. High speed itself may not in each case be sufficient to hold that a driver is rash or negligent. In this connection, reference may be made to the observations made in the case of *Judhistir Palata v. State* 1971 (2) Cut WR 673. As has been laid down in the case of *Raghunath Behere v. State* (1968) 34 Cut LT

500 : 1968 Cri LJ 851 to constitute an offence punishable under Section 279 of the I.P.C., it must be shown that the person was driving the vehicle in a rash or negligent manner. To constitute either the offence under Section 279 or 304A of the I.P.C., proof of rashness or negligence is essential. In the case of *Gulam Jilani Khan v. State* (1972) 38 Cut LT 945, reference has been made to many earlier decisions on the point with regard to the application of Sections 270 and 304A of the Penal Code including the cases reported in : [1965]2SCR622 (*Kurban Hussein Mohamedalli v. State of Maharashtra*) and : 1972 CriLJ49 (*Mahadeo Harilokre v. State of Maharashtra*) and it has been observed and held that the death caused must be the direct result Of rash and negligent act of the accused and that act must be the proximate and efficient cause without the intervention of another's negligence. In other words, it must be the cause causans; it is not enough that it must have been the cause sine qua non. Merely from high speed, rashness and negligence cannot be ascertained and there must be direct nexus between the death of the person and rash and negligent act of the accused. All that the prosecution had established in the instant case was that the petitioner had been driving the vehicle in speed. There was no other evidence or circumstance to indicate that the driver was rash or negligent,

4. The Motor Vehicle Inspector had been examined as P. W. 10 and as his evidence would show, he had prepared an inspection report which was not in the record of the case. As submitted before me on behalf of the petitioner, the inspection report could show that the accident had occurred owing to some sudden mechanical failure and not because of the rash and/or negligent driving on the part of the petitioner in which case, he could not be held responsible, by his act. for causing the death of one person and injuries to others, p. W. 10 had not deposed as to what had been found by him on the spot evidently because without referring to his inspection report, he could not have testified about, it. The prosecution took steps through the court to get the inspection report, hut (it ?) ought to have taken pains to cause production of the inspection report and if it was lost, to produce the copy thereof which might have been prepared in the same process with the original and get it admitted in evidence

5. On a consideration of the evidence, I find that none of the charges had been brought home to the petitioner. The findings recorded by the trial court and affirmed by the appellate court are unreasonable and do call for interference by this Court in revision,

6. I would allow the revision and set aside the order of conviction and sentences passed against the petitioner.

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