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Court : Orissa

Decided On : May-03-1991

Reported in : 1991(II)OLR21

Judge : S.C. Mohapatra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 71, 279 and 337; [Motor Vehicles Act, 1939](#) - Sections 87(1) and 118A

Appeal No. : Criminal Revision No. 204 of 1987

Appellant : Rabindranath Jena

Respondent : State

Advocate for Def. : D. Das, Addl. Standing Counsel

Advocate for Pet/Ap. : P. Roy and S.K. Ghose

Disposition : Petition dismissed

Judgement :

S.C. Mohapatra, J.

1. Accused is the petitioner in this Criminal Revision against his conviction and sentence affirmed in appeal.

2. Petitioner, a Government servant is a driver of a truck belonging to the State Government under the Superintending Engineer (P. W. D) Sambalpur. On 2-7-1980, PW 13 who was the Superintending Engineer was coming from Sambalpur to Bhubaneswar in official work in his own car ORP9160, engaged the accused to drive the car.

3. Prosecution case is that while petitioner was coming from Sambalpur side driving the car in high speed with PW 13 as the occupant on National High Way 'No 42 at about 5 p m. at village Bimalabeda within Jarpada Police-station, the car dashed against PW 2 a girl aged about five to six years at that time as a result of which PW 2 sustained simple injuries. Injuries were treated by the doctor (PW 10) at Angul Hospital. After causing accident, the car was driven away by accused which was detained at Dhenkanal by Sadar Police-station on basis of wireless message received. After investigation accused was charge-sheeted to face trial where he pleaded not guilty and denied the occurrence.

4. On assessment of evidence, trial Court found petitioner guilty of offence under Secs. 279 and 337, IPC, and Section 118-A of the [Motor Vehicles Act, 1939](#). Convicting petitioner offences under the aforesaid section, learned Sub Judge sentenced him to undergo R. I. for one month for each offence and directed the sentences to run consecutively. In appeal, learned Sessions Judge maintained the conviction and sentences.

5. Mr. P. Roy, learned counsel for petitioner submitted that in view of discrepancy in respect of colour of car, prosecution case that accused caused the accident, ought to have been disbelieved. PW 2 the injured stated that a black car dashed against her. PW 4 an eye-witness stated that a black Ambassador car caused the accident. PWs 7 and 8 also stated the colour of car to be black. PW 11 stated that he got wireless message that white Ambassador car caused the accident and left the spot of accident. Submission of Mr. Roy would have substance if registration number would have also varied. Since registration number is the same, both Courts are correct that the car which was driven by accused caused the accident.

6. Mr. Roy, learned counsel submitted that in the maximum the car was driven in a high speed as stated by the witnesses. What speed would be treated as high

speed varies from person to person. Besides high speed by itself may not amount to rashness or negligence in driving. It is true that high speed by itself may not amount to either rashness or negligence. In case of rash act, the criminality lies in running the risk of doing such act with recklessness or indifference as to the consequence. 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. This has been so explained in 1968 S. C. D. 198 (Balachandra Waman Patha v. State of Maharashtra). To the same effect is the decision reported in AIR 1972 SC 635 (S. N. Hussain v. State of Andhra Pradesh).

7. In this case witnesses clearly state that the car driven by the accused dashed against the child inside a village. It was coming in high speed. There is no dispute that accused was driving the car. He was the best person to explain the circumstance which led to the accident. PW 13 the occupant could have also stated about the rashness or negligence if any. Accused denied the occurrence. PW 13 stated that he did not know of the accident till car was detained at Dhenkanal Both Courts on appreciation of evidence came to conclusion that the car was driven both rashly and negligently. Even if I might have taken a different view if I would have been the appellate Court. In revision, I am not inclined to disturb an inference which is reasonable. Accordingly, I am satisfied that accused was driving the vehicle rashly as well as negligently in this case which caused accident resulting in hurt on PW 3. Ingredients of offences under Secs. 279 and 337, IPC are fully satisfied.

8. For examining whether offence Under Section 118-A of [Motor Vehicles Act, 1939](#) was committed, the provision is to be kept in mind. It reads as follows :

'118-A. Punishment for offences relating to accident--Whoever fails to comply with the provisions of Clause (c) of Sub Section (4) of Section 87 or of Section 22 or Section 89 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both

or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section; with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

When evidence is clear that after causing accident, accused sped away the car to be detained at Dhenkanaf although he was obliged to stop the car. kept it stationary to give information as provided in Section 87 (I) (c), he has committed the offence. Section 87 (I) (c) reads as follows :

'87. Duty of driver to stop in certain cases___

(1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary___

(a) & (b) xxx xxx xxx

(c) When the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage, and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it, provided such person also furnishes his name and address.'

Then, petitioner has also committed offence Under Section 118-A of [Motor Vehicles Act, 1939](#).

9. Although conviction of petitioner for offence under Secs. 279 and 337, IPC, cannot be disturbed, question is whether two separate sentences are to be passed. Section 71, IPC provided for sentences to be imposed in such cases. Mr. P. Roy, learned counsel for petitioner relied upon the decision reported in AIR 1939 Patna 388 (Raghu Prasad v. Emperor) and submitted that one sentence ought to have been passed.

10. Under Section 71, I. P. C, where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished

with the punishment of more than one of such offences, unless it be so expressly provided. Driving on a public road either rashly or negligently so as to endanger human life as a result of which hurt is caused is an offence Under Section 337 I. P. C. Driving a vehicle rashly or negligently so as to endanger human life is a part of the offence to constitute Under Section 279 I. P. C. Hence on bare perusal of Section 71 with Secs. 279 and 337 I. P. C, it is clear that a part of the Act i. e. driving rashly or negligently to endanger human life is part of the offence Under Section 337 I. P. C. constituting a separate offence. It is true that Section 337 I. P. C, does not confine itself to act of driving only and relates to any set including driving, whereas Section 279 I. P. C relates to act of driving a vehicle only, where, however , the act of driving resulted in hurt attracting offence core Section 337 I. P. C, and part of it without any hurt is offence Under Section 279 I. P. C, accused is to be punished for one offence only. This, in short, is what has been held in A. 1 R. 1939 Pat. 388(supra). This decision has been dissented from by Gujarat High Court in A. I. R. 1969 Gujarat 62 (Panalal Harishankar v. State of Gujarat). In absence of decision of this Court, decision of Patna High Court before establishment of this Court is binding on me. Accordingly, both on independent analysis as well as being bound by precedent, i am satisfied that even though, petitioner is to be convicted for offence under both Secs. 279 and 337 I. P. C, the offences having been outcome of same act, accused is to be punished for one offence only. Section 279 I. P. C. provides for maximum sentence of six months or with fine which, extends to Rs. 1,000/- or with both. Section 337 I. P. C. provides for maximum sentence of six months or with fine of Rs. 500/- or with both. All others remaining the same maximum fine amount in Section 279 I. P. C, being higher it is a graver offence than one Under Section 337 I. P. C. Accordingly, while convicting petitioner both under Secs. 279, IPC and 337,1PC, he is to be punished Under Section 279, IPC only. In a make it clear that offence Under Section 338, IPC, if committed, accused would be convicted both under Secs. 279 and 338, IPC but is to be punished for offence Under Section 338,IPC, only as offence Under Section 338, IPC is graver providing for higher punishment. This is the effect of Section 71, IPC.

11. Coming to the question of sentence in this case, it is found from record that accused is driver of a Government truck. On direction of PW 13 his superior officer

who has control over him, accused drove his private car which caused the accident. Although PW 13 states that in absence of a driver, superior officer can give direction to another to drive a vehicle, it cannot apply to driving of personal vehicles. That would amount to utilising Government servants for personal work. It is not known whether accused would be entitled to be compensated for his travel as a driver under the Orissa T. A. Rules. When PW 13 an officer much higher in rank escapes from his irregularities, I am not inclined to impose such punishment on accused which would affect his employment itself. Accordingly, I would modify the sentence and impose fine of Rs. 100/- for offence Under Section 279, IPC, while convicting him for offence under Secs. 279 and 337 IPC, and impose fine of Rs. 100/- for offence Under Section 118-A of the [Motor Vehicles Act, 1939](#), in the peculiar circumstances of the case. In default of payment of fine, petitioner shall undergo simple imprisonment for seven days en each count.

12. A question of jurisdiction of Sub judge to exercise power of judicial Magistrate, First Class for trying the accused may arise in this case. Under the Code of Criminal Procedure. Criminal Courts are classified. Normally, a Court of judicial Magistrate, First Class is to be established by State Government Under Section 11, Cr. P C to which High Court appoints a Presiding Officer. Such Presiding Officer exercises powers of the Court established. Only special powers which normally are not to be exercised by such Courts are to be vested on officers appointed as Presiding Officers as per provision of the Code. There may not be any prohibition for an officer to be Presiding Officers of two Courts; a Civil Court established under the Orissa Civil Courts Act and a Criminal Court established under Code of Criminal Procedure. However, a Court must have been established by State Government to which High Court gets jurisdiction to appoint a Presiding Officer. I need not consider this question in the present case as investigation of some facts would be necessary and in case it is found that Subordinate judge has no Jurisdiction to try the accused as Presiding Officer in a Court of Judicial Magistrate, First Class if no such Court established by State Government at Angul is available for the Sub judge to be appointed by High Court as Presiding Officer of the Court, trial may have to continue afresh. That would be detrimental to petitioner. I may make it clear that consent or acquiescence by accused cannot confer jurisdiction. It is, however, open to petitioner to raise the question of

jurisdiction if his conviction and sentence is sought to be utilised later to his detriment.

13. In the result, Criminal Revision is dismissed subject to modification of sentence.

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