

Surendra Mohapatra Vs. State

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Court : Orissa

Decided On : Aug-08-1984

Reported in : 1984(II)OLR1031

Judge : B.K. Behera, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 384; [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 337

Appeal No. : Criminal Revision No. 201 of 1984

Appellant : Surendra Mohapatra

Respondent : State

Advocate for Def. : A. Rath, Additional Standing Counsel

Advocate for Pet/Ap. : J. Patnaik, Adv.

Disposition : Petition allowed

Judgement :

B.K. Behera, J.

1. The petitioner stood his trial in the Court of Mr. A. B. Das, Additional Chief Judicial Magistrate, Puri, and was convicted under Sections 279 and 337 of the Indian Penal Code (for short, the 'Code') and sentenced under Section 337 of the

Code to pay a fine of Rs. 500/- (the maximum fine prescribed under the law) and in default of payment thereof, to suffer simple imprisonment for a month, without any separate sentence having been passed under Section 279 of the Code. The trial Court held it established, as alleged by the prosecution, that on October 1, 1978, while the petitioner, a Government servant, had been driving the jeep bearing registration No. ORG 2130 of the Public Health Department on the Pipli-Puri Road, an accident occurred owing to his rash and negligent driving by the sudden application of brakes.

2. The petitioner appealed against the order of conviction and sentence to the Court of Session. After the appeal suffered some adjournments for hearing on the question of admission, the following order was passed by Mr. A.P. Guru, the then Sessions Judge, Puri, on April 4, 1984:

'None appears for the appellant for moving for admission. Perused the judgment of the lower Court. The appeal does not merit admission. Hence the appeal is rejected. The stay order passed on 6. 3. 1984 is vacated. Intimate the lower Court accordingly.'

By the time of dismissal of the appeal in limine, the record from the trial Court had not been called for. The learned Sessions Judge could not, therefore, be in a position to find out as to whether the appeal did merit consideration only from the copy of the impugned judgment and order which he had with him. The learned Judge arbitrarily and without any justification supported by reasons, rejected the appeal.

3. In AIR 1983 S.C. 1014:1983 Cr.L.J.: 1497 (Shivaji Narayan Bachhar v. State of Maharashtra), the Supreme Court has observed and held:

'The appeal of the accused to the High Court was dismissed summarily with the one word 'dismissed', placing this Court in a most embarrassing position in dealing with the special leave petition under Article 136 of the Constitution. Such summary rejection of appeals by the High Court has been disapproved by this Court more than thirty years ago in *Mushtaq Hossain v. State of Bombay*, 1953 SCR 809: (AIR 1953 SC 282) and thereafter, over the years in a series of cases from the same

High Court: Ramayya v. State of Bombay, AIR 1955 SC 287, Vishwanath Shankar Belde v. State of Maharashtra, (1969)3 SCC 883, Siddanna Appa Rao v. State of Maharashtra, AIR 1970 SC 977, Narayan Nathu Naik v. State of Maharashtra, AIR 1971 SC 1656, Govinda Kadtuji Kadam v. State of Maharashtra, AIR 1970 SC 1033, Shaik Mohamed Ali v. State of Maharashtra, AIR 1973 SC 43, K.K. Jain v. State of Maharashtra, AIR 1973 SC 243, Jeewan Prakash v. State of Maharashtra, AIR 1973 SC 278, Mushtaq Ahmed v. State of Gujarat, AIR 1973 SC 1222, Krishna Vithu Suroshe v. State of Maharashtra, AIR 1974 SC 274, Sampat Tatyada Shinde v. State of Maharashtra, AIR 1974 SC 791, Dagadu v. State of Maharashtra, 1981 Cr.L.J. 724: (AIR 1981 SC 1218).'

It was further observed:

'...Except in certain cases when an accused person has pleaded guilty and in petty cases, every person convicted of an offence has a right of appeal under the Cr.P.C. An appeal may be both against conviction and sentence and on facts and law. A convicted person is entitled to ask an appellate Court to reappraise the evidence and come to its own conclusion. An appellant Court has the undoubted power to dismiss an appeal in limine. Section 964 of the Cr.P.C. provides for it. But, it is a power which must be exercised sparingly and with great circumspection.....'

It has been observed by the Supreme Court in 1982 SCC (Criminal) 143 (Khaili and Ors. v. State of U.P.) that when a criminal appeal has been fixed for hearing and an Advocate refuses to argue for the appellant, the Court must, instead of summarily dismissing the appeal, an Advocate amicus curiae and then proceed to dispose of the appeal on merits.

A Court of Session must keep these principles in mind while acting as the first Court of Appeal against an order of conviction,

4. Regard being had to the paucity of evidence indicating rashness or negligence, the learned counsel for both the sides have submitted and in my view, rightly so, that this Court should finally dispose of the matter instead of remitting the appeal to the Court of the Session Judge disposal on merits.

5. A rash act is primarily an overhasty act and is thus opposed to a deliberate act. Negligence as a breach of duty caused by the omission to do something which a reasonable man guided by the considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not and often with the belief that the actor has taken sufficient precaution to prevent their happening. Culpable negligence is acting without the consciousness that the illegal and misbehaves effect will follow, in the circumstances which show that the actor has not exercised the caution incumbent upon him and if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. [See 1983 Cuttack Law Reports (Criminal) 53-Padama Charan Naik v. State].

6. Judged in the light of the aforesaid principles of law, it would be seen that the evidence against the petitioner was far short of the mark. The petitioner had been driving the jeep on duty slowly at the relevant time. A bus was coming from the front and there was a curve on the road. It was drizzling and the road was slippery. While negotiating the turn with the bus coming from the front, the petitioner applied the brakes on a slippery road for which the vehicle went out of control and met with an accident causing injuries to him. The petitioner was certainly not rash and his conduct would not exhibit negligence on his part. It could at best be said that there had been an error of judgment. An error of judgment is not to be equated with rashness or negligence. The order of conviction in respect of both the offences had been illegal and misconceived.

7. I would allow the revision and set aside the order of conviction of the petitioner in respect of the two offences and the sentence passed against him under Section 337 of the Indian Penal Code recorded by the trial Court and maintained by the appellate Court.