Chintamani Sharma Vs. State

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Court : Orissa

Decided On : Aug-13-1993

Reported in : 1994ACJ357

Judge : B.N. Dash, J.

Appeal No. : Criminal Revision No. 350 of 1990

Appellant : Chintamani Sharma

Respondent : State

Advocate for Def. : C. Kasturi, Addl. S.C.

Advocate for Pet/Ap. : S.K. Sahoo, Adv.

Disposition : Revision dismissed

Judgement :

B.N. Dash, J.

1. This revision is directed against the judgment of the learned Sessions judge, Sambalpurm whereby he has upheld the judgment and order of the learned judicial Magistrate First Class, Kuchinda, convicting the accused-petitioner under Sections 279 and 337, Indian Penal Code. 1860 and sentencing him to pay a fine of Rs. 300/- in default to undergo rigorous imprisonment for three months for the

offence under Section 279, Indian Penal Code, with an observation that no separate sentence is necessary to be passed under Section 337, Indian Penal Code.

2. The prosecution case, shortly stated, is that on 13.6.1985 at about 7.00 a.m. while the jeep bearing registration No. ORS 494 was being driven by the accused-petitioner from Sambalpur towards Deogarh on the National Highway No. 6, near the village Kuruibahal, the Mining Officer of Sambalpur, PW 5 and Senior Inspector of Mines, PW 6, who were travelling in that jeep found that the jeep was being driven at more than 60 kms. per hour and being afraid of the speed, PW 5 exclaimed 'aare aare'. Healing such exclamation, the accused-petitioner having applied sudden brake, the vehicle went off the road and capsized for which not only the accused-petitioner but also PWs 5 and 6 sustained injuries on their person. Some passers-by and people of the nearby village rushed to the spot and rescued the occupants of the jeep. In the meanwhile, some police officials going in the jeep saw the accident and removed the injured persons to the nearby Jamankira Hospital. An A.F.I., Exh. 2, relating to the incident having been lodged at Jamankira Police Station investigation commenced. The jeep involved in the accident was examined by the Motor Vehicle Inspector and after completion of investigation, chargesheet having been placed, the accused-petitioner faced trial for the offence punishable under Sections 279, 337 and 338, Indian Penal Code.

3. The defence was one of denial of the prosecution case as alleged. According to the accused, although he was driving jeep with utmost care and caution, the same met with the accident because of the slippery condition of the road. No witness was, however, examined in support of the defence plea.

4. At the trial, the prosecution examined as many as 13 witnesses of whom PWs 5 and 6 were the occupants of the ill-fated jeep; PW 11 is the Motor Vehicle Inspector and Ors. are post-occurrence witnesses, seizure witnesses and the police officers who investigated into the case. On a consideration of the evidence of PWs 5, 6 and 11, the learned J.M.F.C. came to hold that the accused was rash and negligent in driving the vehicle and for such driving the accident occurred injuring the occupants of the vehicle. There being no evidence that the accused or

any other occupants received any grievous hurt as a result of the accident, the learned Magistrate, while acquitting the accused of the offence punishable under Section 338, Indian Penal Code, convicted and sentenced him, as stated above; The appeal preferred by the accused having been. dismissed, he has approached this court.

5. Mr. S.K. Sahoo, the learned counsel for the petitioner, has contended that on the facts of the case, the accused could not be convicted for the offence punishable under Section 279 or 337, Indian Penal Code. According to the learned counsel, the evidence on record shows that the accident occurred on account of error of judgment on the pail of the accused and not on account of his rash and negligent driving. The learned Addl. Standing Counsel, on the other hand, supports the impugned judgment. In order to appreciate the contention raised on behalf of the petitioner, the factual findings of the appellate court may be noted. They are:

(i) The vehicle was at the time of accident plying on a very wide road, being the National Highway No. 6;

(ii) Prior to the accident the vehicle had defective steering system and the brake system was less effective which became all the more less effective due to the tyres of the rear wheels of the vehicle which were without bits;

(iii) The vehicle was found standing after being capsized towards Sambalpur from which side it was coming; and

(iv) The vehicle was at a speed of more than 60 kms. per hour immediately prior to the accident and on exclamation being raised by PW 5 saying 'aare aare' the accused applied hard brake for which the vehicle went off the road and capsized.

6. With these findings it has to be first decided whether the accident occurred as a result of any error of judgment on the part of the accused in applying the brake or the same took place due to his rash and negligent driving. The facts as disclosed at serial Nos. 1 to 3 and also the fact that the vehicle was at a speed more than 60 kms. per hour clearly indicate that the accused was rash and negligent in driving

the vehicle and for such driving the accident occurred. Mr. Sahoo for the petitioner relies on the above 4th item of finding in support of his contention that due to error of judgment in applying the brake the accident occurred. According to the learned counsel, on healing the exclamation 'aare aare' of PW 5, it was quite natural for the accused to apply hard brake and so the manner of his applying the brake which resulted in the accident may be attributed to his error of judgment. If a mistake is bona fide one which an experienced driver can as well commit the same will be an error of judgment. When the brake system of the vehicle was less effective and the same was still more less effective on account of the condition of the tyres of the rear wheels, it was not expected of any driver much less of the accused who was driving that vehicle for a very long time being an employee under PW 5 to apply hard brake. Regard being had to the conditions of the vehicle which he was driving, he should have applied brake in such a manner that the vehicle could have been brought under a standstill position within a very short distance which he did not do. So, it cannot be said that the accident occurred on account of any error of judgment of the accused in his application of brake. Some decisions have been cited to show that where an accident occurs due to error of judgment, the driver cannot be held guilty for rash or negligent driving. There is no quarrel over such proposition of law but on the facts of the case in hand, it is clearly seen that the accident occurred due to the rash and negligent driving of the accused and not on account of his error of judgment. So the contention must fail.

7. It is next to be examined whether the accused was criminally rash or negligent in driving the vehicle inasmuch as law is well settled that in order to convict a driver under Section 279 or for that matter under Sections 337, 338 and 304-A, Indian Penal Code, it must be proved by the prosecution that the driving was criminally rash or criminally negligent. Culpable rashness is acting with the consciousness that dangerous consequences will follow, but with the hope that they will not follow and with the belief that sufficient precautions to prevent the happening of such consequences have been taken. Culpable negligence is acting without the consciousness that dangerous consequences will follow but in the circumstances which show that the actor has not exercised the caution that was incumbent upon him. Applying this test to the facts of the present case, I have absolutely no doubt in my mind that the driving of the accused which resulted in

the accident was both criminally rash and negligent.

8. Before parting I would like to state that in its judgment the appellate court has wrongly noted the sentence awarded by the trial court and also the date of the alleged occurrence. Although, as stated above, the trial court has sentenced the accused to pay a fine of Rs. 300/-, in default to undergo rigorous imprisonment for three months under Section 279, Indian Penal Code, the appellate court has written that the accused has been sentenced to undergo rigorous imprisonment for three months under Section 279, Indian Penal Code. Although the occurrence took place on 13.6.1985 as stated by the trial court, the appellate court has wrongly stated that the alleged occurrence took place on 23.6.1985. The appellate court should be extremely cautious in stating facts correctly and unless it is done, mistakes are likely to creep in the judgment of this court inasmuch as judgments are dictated with reference to the appellate court judgment. A copy of this judgment should be sent to Mr. S.K. Panda, the then learned Sessions Judge, Sambalpur, wherever he is posted, for his future guidance.

9. In the result, I find no merit in the revision which is accordingly dismissed.