Shiv Singh Vs. State

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Court : Delhi

Decided On : May-19-1983

Reported in : 24(1983)DLT158

Judge : O.C. Jain, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 201, 279 and 308

Appeal No. : Criminal Appeal No. 51 of 1983

Appellant : Shiv Singh

Respondent : State

Advocate for Pet/Ap. : H.K. Gaur and; S.T. Singh, Advs

Judgement :

G.C. Jain, J.

(1) -THIS appeal is directed against the judgments, dated February 28, 1982 and March 1, 1983, passed by Shri J.D. Kapoor, Additional Sessions Judge, Delhi, convicting the appellant Shiv Singh for offences under Sections 279, 338, 303 and 201 of the Indian Penal Code (for short 'the Code') and sentencing him to rigorous imprisonment for three months and a fine of Rs. 100.00 and in default of payment of fine rigorous imprisonment for a further period of fifteen days under Section 279, rigorous imprisonment for six months and a fine of Rs. 250.00 and in default of the

payment of fine rigorous imprisonment for a further period of one month under Section 338; rigorous imprisonment for three years and a fine of Rs. 500.00 and in default of the payment of fine rigorous imprisonment for a further period of three months under Section 308; and rigorous imprisonment for six months and a fine of Rs. 250.00 and in default of payment of fine rigorous imprisonment for a further period of one month under Section 201. It was, however, directed that the sentences shall run concurrently and the entire fine, if realised, shall be paid to the injured as compensation.

(2) According to the prosecution version, Ramesh injured was going on a bicycle from Ranjit Hotel side towards Turkman Gate. When he reached Nehru Hill near Ranjit Hotel, the appellant, Shiv Singh, who was driving a Matador bearing registration No. Dhe 2124 rashly and negligently, struck the bicycle from behind. As a result, Ramesh fell down and sustained grievous injuries. The appellant stopped the vehicle at some distance and came down along with coaccused Manu Gupta who was sitting in the vehicle along with him. Both of them removed the injured and put him in the vehicle staling that they were taking him to the hospital for his treatment. On the way they changed their mind and threw the appellant behind the bushes at some deserted place near Wazirabad Bridge, Delhi.

(3) Public Witness . 5, Bhagwan Dass and Prem, uncle of the injured, on being informed about the occurrence reached the place of accident and from there they went to L.N.J.P. Hospital. They could not find Ramesh injured in the hospital and went to Police Station Kamla Market where a report was lodged about the occurrence which was recorded at Seriall No. 17-A in the daily diary (copy Exhibit Public Witness l1/A). A copy of the report was handed over to A.S.I. Ajmer Singh for investigation. The investigating officer reached the place of occurrence and from there to the hospital. The injured could not be found and, thereforee, he came back to the spot. Public Witness . 2 Gulshan, an ocular witness was present there. His statement (Exhibit PW2/A) was recorded and sent to the Police Station for registration of a case. On the basis of this statement F.I.R. (Exhibit 4A) was recorded. He took into possession various articles, vide memos and prepared the site plan, etc.

(4) On September 30, 19PO the investigating officer found from the Delhi Transport Authority that vehicle No. Dhe 2124 was owned by Imperial Theatre, Bhagirath Place, Delhi. He went there and was informed that the vehicle had gone to Moradabad. S.I. Gurmukh Singh, to whom the investigation was handed over, left for Moradabad and reached there at about 8.15 p.m. and found the vehicle and the appelldnt, driver thereof, present there. The appellant was interrogated. He made a disclosure statement (Exhibit PW5/A) that he had thrown the body of the injured behind the bushes near the road at Wazirabad bridge. In consequence, of this disclosure statement, he reached with the police party to the said place and got the injured recovered.

(5) The injured was in a semi-conscious condition and was removed to L N.J.P. Hospital. He was then referred for X-ray examinations and it was found that he had received fracture of lateral condilla tibia. The appellant was produced before the learned Metropolitan Magistrate for holding an identification parade. He, however, refused to participate in the said parade.

(6) After completing the investigation the appellant as well as Manu Gupta were challenged and were later on committed to the Court of Session.

(7) Shri J.D. Kapoor, Additional Sessions Judge, Delhi, charged the appellant for offences under Sections 308 read with Section 34, 201 read with 34, 279 and 338 of the Indian Penal Code. Manu Gupta was charged only for a offences under Section 308 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code. Ultimately, the appellant was convicted and sentenced for the said offences as mentioned earlier. Manu Gupta was acquitted by the learned Additional Sessions Judge.

(8) Learned counsel for the appellant has raised four contentions, namely, (i) the prosecution lies failed to prove beyond reasonable doubt that the vehicle at the time of occurrence was being driven by the appellant, (ii) no case under Section 308 of the Code has been made out on the facts alleged by the prosecution, (iii) no case under Section 201 of the Code has been established because the act of causing the evidence of the commission of the offence to disappear was not complete and was not achieved, and (iv) the appellant could not be sentenced for

the offence under Section 279 as well as under Section 338 in view of the provisions Contained in Section 71 of the Code.

(9) To prove an offence under Section 279 of the Code the prosecution is required to establish (a) that the accused was driving a vehicle or was riding on a public way and (b) such driving of a vehicle or riding was in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. To prove an offence under Section 338 it must be proved that the accused caused grievous hurt to any person by his rash or negligent act.

(10) That the bicycle being driven by Ramesh injured was knocked down by vehicle bearing registration No. Dhe 2124 has not been disputed before me by the learned counsel for the appellant. In any case, it stands proved beyond reasonable doubt from the evidence on record. Public Witness . 2 Shri Gulshan has deposed that at the time of occurrence he was washing clothes at the Dhobi Ghat nearby and saw the accident in question. He noted down the number of the vehicle which was Dhe 2124. The formal first information report (Exhibit PW4-A) is based on his statement recorded by the investigating officer, Ajmer Singh (P.W. 13) the same evening. In this F.I.R. the registration number of the vehicle has been given. This evidence was accepted by the learned Additional Sessions Judge and I find no reason to differ with him.

(11) Ramesh injured as Public Witness . I has stated in clear terms that he wai going on his bicycle from Connaught Place side and when he reached near Ranjit Hotel he was hit by this vehicle from behind. The impact was so forceful that he fell down and received injuries. Statement of Public Witness . 2 Gulshan shows that the bicycle was going from Ranjit Hotel side towards Turkman Gate and the vehicle was also going in the same direction and the impact caused loud sound. The investigating officer who reached the place of occurrence on receipt of information about the accident found the bicycle in broken condition and rim of the headlight and rim rubber of the vehicle lying there. The vehicle was examined by Inspector Satbir Singh (P.W. 12). His report Exhibit PW12/B shows that the left side head mid-glass was different from the right side glass of the vehicle. Its rim was also dislocated and nearby body of the vehicle has also been freshly repaired

as there were fresh rubbing marks. This evidence proves beyond reasonable doubt that the front left portion of the vehicle hit the bicycle from behind.

(12) According to the statement of Ramesh Pwi, he was going on his left side when he was knocked down. There is no reason to disbelieve his statement especially when there is no suggestion that he came on the road suddenly from some side lane or swerved to his right for taking a turn or otherwise. The circumstances that the cyclist was going on his left hand side and was knocked from behind coupled with the circumstances that the impact was with such force that the bicycle was badly damaged and the left side headlight and the rubber rim of the vehicle were also damaged shows that the vehicle was being driven rashly and negligently at the time of the occurrence. As a matter of fact, all these facts have not been disputed by the learned counsel for the appellant.

(13) The main contention raised by the learned counsel for the appellant, however, is that the prosecution has failed to prove that the vehicle was being driven by the appellant at that time. I do not agree. Public Witness . Ramesh and Public Witness . 2 Gulshan have stated in clear terms that the vehicle at that time was being driven by the appellant, Shiv Singh. They were in no way inimical towards the appellant and interested in falsely implicating him. It is correct that they have not been able to identify the other occupant of the vehicle who was also a co-accused but that fact itself is not sufficient to discard their evidence. The oral evidence stands corroborated from the statement of Public Witness . 9 B.N. Gupta, partner of Messrs Imperial Theatre, Bhagirath Place, Delhi, the registered owner of the vehicle who has stated in clear terms that the appellant was their driver for this vehicle. No doubt in cross-examination he deposed that sometimes the partner of the Firm and other employees also drove the vehicle. However, no suggestion even was put to the witness that on the relevant date and time the vehicle was being driven by any other person. Again the oral evidence of Public Witness . I and Public Witness . 2 finds further corroboration from the disclosure statement of the appellant, Exhibit PW5/A, which has been duly proved, from the evidence of Public Witness . 6 Kundan Lal and Public Witness . 13 Ajmer Singh investigating officer and inconsequence of which the injured Ramesh, who had been thrown behind the bushes near Wazirabad bridge was recovered. All this evidence, in my view, is

sufficient to prove that the vehicle at that time was being driven by the appellant. The offences under Sections 279 and 338 of the Code have been duly proved.

(14) Public Witness . I, Ramesh, deposed that after the impact he fell on the road and received injuries. He was picked up by the appellant and his companion and put in the vehicle allegedly for taking him to the hospital. On the way the appellant asked his companion as to what should be done and he was advised to throw him in the jungle otherwise they would be got involved in the case. Thereafter he became unconscious. P W. 2 Gulshan has also deposed that after the occurrence the injured was picked up by the appellant and his companion and put in the vehicle. As observed earlier, the injured was recovered in consequence of a disclosure statement Exhibit PW5/A, made by the appellant, from behind the bushes on the side of the road near Wazirabad bridge at about 4 a.m. on October 1, 1982. He was semi-conscious at that time. This evidence was accepted by the learned Additional Sessions Judge. No infirmity has been pointed out to me and there is no reason to differ. It has been proved beyond reasonable doubt that after the impact the injured was picked up by the appellant and his companion and put in the vehicle allegedly for taking him to the hospital but was later on thrown by the appellant behind the bushes near the road near Wazirabad bridge.

(15) Learned counsel for the appellant did not much dispute the correctness of these facts. He, however, strenuously contended that these fact are not sufficient to constitute an offence under Section 308 of the Code.

(16) Section 308 of the Code deals with the offence of attempt to commit culpable homicide not amounting to murder. To constitute an offence under this section it must be proved (1) that the accused committed an act, (2) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (3) the act was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide.

'Intention is the purpose or design with which an act is done. It is the foreknowledge of the act coupled with the desire of it, such foreknowledge and desire being the cause of the act inasmuch as they fulfill themselves through the

operation of the will. An act is intentional if, and in so far as, it exists in idea before it exists in fact, the idea Realizing itself in the fact because of the desire by which it is accompanied.'

(Salmond's Jurisprudence 11th Edn. page 410).

(16) The intention is a question of fact which is to be gathered from the acts committed by the accused.

(17) 'KNOWLEDGE' as observed by Supreme Court in Basde v. State of Pepsu, : 1956 CriLJ919 , means awarenessevidanceof the consequences of the act. It means the knowledge that specified consequences would result or could result by doing an act.

(18) The appellant in the present case picked up the injured, put him in his vehicle and thereafter threw him behind the bushes near the road near Wazirabad bridge. On these facts, in my opinion, it cannot be said that he had intention or knowledge to commit culpable homicide not amounting to murder. The intention and the purpose for committing this act was to screen himself from the offence of rash and negligent driving resulting into injuries to the cyclist. The words 'if he by that act caused death' used in Section 308 of the Code imply that the act committed by the accused must be capable of causing death. The act must be such that, if not prevented, or interrupted, it would be sufficient to cause death of the victim. The act committed by the appellant, namely, throwing the injured behind the bushes near the road is neither intrinsically nor inherently capable of causing death. The injured was not thrown there with the intention or purpose of committing culpable homicide or with the knowledge that death would be caused. The act was committed to screen himself from the offence of rash and negligent driving resulting into the injuries to the injured.

(19) Learned counsel for the State contended that the place was a lonely place and the injured might have been bitten by snakes resulting into his death and, thereforee, the provisions contained in Section 308 were attracted. I do not agree. There is no evidence that it was a deserted or a lonely place. The place where the injured was thrown was near the road side which was a busy road. There is no

evidence that the side place wa infested with snakes, etc. An offence under Section 308 of the Code in nay view has not been made out.

(20) To prove an offence under Section 201 of the Code the prosecution is required to prove (1) that an offence had been committed, (2) that the accused knew or had reason to believe the commission of the said offence and (3) that with such knowledge or belief he caused any evidence of the commission of the offence to disappear. In the present case the appellant knew the offence of causing injuries by rash and negligent act had been committed. The first two ingredients, thereforee, stand established. The contention of the learned counsel for the appellant is that the offence would be complete if the evidence completely disappears. According to the learned counsel the offence would not be made out if the evidence screened by the accused if discovered later on. I do not agree with this contention. The expression 'causes' used in Section 201 has not been defined. According to Websters's Third New International Dictionary, the word 'causes' means, inter alia, to bring into existence. By throwing the body behind the bushes the appellant brought into existence the disappearance of the evidence regarding the offence of causing injuries by rash and negligent driving. The offence under Section 201 of the Code had been proved beyond reasonable doubt against the appellant.

(21) Para 3 read with para 4 of Section 71 of the Code provides that where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, adifferent) offence the offender shall not be punished with the punishment of more than one of such offences. Relying on these provisions, learned counsel for the appellant contended that as one of the ingredients of the offences under Section 333 itself constituted an offence under Section 279 could not be awarded. He relied on the decision of a Single Bench of Kerala High Court in B.D. Vittul Shetty v. State of Karnataka 1979 Cri. L.J. 150.

(22) Section 279 requires two essentials, namely, (1) driving of a vehicle or riding on a public way, and (ii) such driving or riding must be such rash or negligent as to endanger human life or is likely to cause hurt or injury to any other person. The essentials of Section 338 are (1) that the accused caused grievous hurt to any

person, (2) that it was caused by doing any act so rashly or negligently as to endanger human life or personal safety of others. One of the ingredients, i.e. doing rash and negligent act, is common in both these sections and, thereforee, provisions contained in para three of Section 71 would be attracted.

(23) However, fourth paragraph of Section 71 of the Code does not bar separate sentences. It merely provides for title maximum aggregate sentence that can be passed in such cases. A maximum sentence for both the offences cannot exceed the maximum provided for any one of such offences. (See Puran Mal Agrwall v. State of Orissa, : 1958 CriLJ1432 .

(24) In view of the clear provisions contained in the fourth paragraph of Section 71 of the Code and the aforesaid decision of the Supreme Court, the judgment of the learned Single Judge of the Kerala High Court cited above, with respects, would be of no help to the appellant. It may be mentioned that reasons for the view taken are not contained in the said judgment as the decision is quoted in notes of cases.

(25) The maximum sentence provided under Section 338 is rigorous imprisonment for two years or with fine which may extend to one thousand rupees, or with both. In the present case the appellant has been awarded rigorous imprisonment for three months and a fine of Rs. 150.00 for an offence under Section 279, rigorous imprisonment for six months and fine of Rs. 250.00 under Section 338 of the Code. The total of these sentences does not exceed the maximum provided under Section 338 and, thereforee, the sentence is not illegal.

(26) Lastly, it was contended that the appellant was a poor man and was below 21 years of age at the time of occurrence, his wife was in family way and, thereforee, the sentence should be reduced to the sentence already undergone. Ordinarily I would have reduced the sentence but the act of the appellant in throwing the body of the injured behind the bushes near the road after causing the impact was reckless and inhuman act and, thereforee, I find no justification for reducing the sentence for offences under Sections 279, 338 and 201 of the Code which have been directed to run concurrently. As a matter of fact, at one time I was thinking of issuing notice to the appellant to show causes as to why the sentence of imprisonment be not enhanced but I did not think it proper to do so for the reason

that according to the statement of the injured, Public Witness . 1, this reckless act was committed by the appellant on the advice of his companion who was allegedly the employer.

(27) In conclusion, the appeal is partly accepted. The conviction and sentence of the appellant under Section 303 of the Code is set aside. His conviction and sentences for three other offences is maintained.