

Jai Bhagwan Vs. State

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Court : Delhi

Decided On : Nov-17-1998

Reported in : 1999ACJ1185; 1999(48)DRJ697

Judge : J.B. Goel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304-A and 337

Appeal No. : Crl. R. No. 359/98

Appellant : Jai Bhagwan

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. K.S. Sehrawat, Adv

Judgement :

J.B. Goel, J.

1. Petitioner was convicted by learned Metropolitan Magistrate (M.M.) for offences under Sections 279/337/304A (wrongly mentioned as 338) of the IPC on 3.6.1995 and has been sentenced under Section 304-A IPC only to RI of six months and a fine of Rs.1,000/-. His appeal was dismissed by learned Addl. Session Judge (ASJ) on 7.9.1998. Petitioner challenges the legality, correctness and validity of

this conviction and the sentence.

2. Learned counsel for the petitioner has contended that the identity of the petitioner as the driver of the offending vehicle has not been established and no TIP was held. Secondly, the finding that the accident took place due to rash and negligent driving of the petitioner is not reasonable and justified; relevant material and circumstances have not been considered; site plan has been wrongly relied to support the prosecution case and it rather proves that the accident had taken place due to rash and negligent act of the deceased driver of the car. This evidence has been misread. Testimony of PW. 3 is neither sufficient nor reliable and should not have been believed and conviction based on his testimony. Mere denting and damage to the bus in itself is not sufficient to establish the act of rashness or negligent driving.

3. Whereas learned counsel for the respondent has disputed these contentions and supported the conviction and sentence. He has also contended that the findings are based on material on record including the statement of PW. 3, site plan and other relevant considerations/circumstances. PW. 10, Shri Bhagwan, ATI, DTC has deposed that Driver Jai Bhagwan, Badge No. 15260 present in Court was on duty as Driver on Bus No. DLP-1662 on 17.12.1985 from 2.30 p.m. to 10.5 p.m. He has proved his duty slip as Ex. P-1. He was not cross-examined. In his statement under Section 313 of the Code of Criminal Procedure, the petitioner has not denied that he was driving the bus at the time of the incident though he has denied his negligence. From this material, it has been rightly held that the petitioner was the driver of the vehicle at the time of the accident. Moreover, in the Judgment of the learned Trial Court, it has been noticed that the counsel for the accused had submitted that the accused did not dispute the identity and the fact of accident. The contention about the identity of the driver thus has no merit.

4. PW. 3 had accompanied the deceased sitting with him on the front side seat and the deceased was driving the car; and he has stated that when they reached near Kalkaji Mandir, Punj Sons, the DTC bus hit against their car from front side; the deceased was driving the car at a slow speed and had made best efforts to

save it by turning towards the Patri. In cross-examination, he has admitted that the other lane, i.e., half of the road was closed as some other accident had taken place somewhere and all the traffic from opposite direction was coming on the same lane on which the accident had taken place. Ex. PW-8/F is the site plan of the scene of occurrence. The road where the accident took place is in two lanes. In the site plan the relative positions of the running of the two vehicles involved is shown. The bus was going from South to North whereas the car was coming from North to South side. The width of the lane is shown as 10+5 kadams. In the mechanical inspection report Ex. PW6-A, the bus was found having the following damages:-

1. Ft. Rt. corner damaged.
2. Ft. Rt. head light glass broken.
3. Ft. bumper bend.
4. Ft. Rt. corner panel with mudguard damage.
5. Brake OK.
6. Brake Oil.
7. Clutch Padel OK.
8. Brake pressure OK.
9. Ft. Both Driver Mirror OK.
10. Horn OK.
11. Steering OK.
12. All lights OK.

5. And the damages in the car as per Ex.PW-8/1 were as follows:-

1. Ft. Show all damaged.

2. Ft. roof and Hud and bonnet and doors ft. both damaged.

3. Radiator and fan assy damaged.

4. Steering wheel and all lisbage damaged.

5. All light damage with accident.

6. No opinion can given be about brakes and clutch etc. due to accident, as the vehicle is not road worthy.

6. These two inspection reports show that the front right side of the bus had hit the car from its front. The relative positions of the two vehicles at the time of accident and after the accident are shown in the site plan. Point 'A' is the place of accident. The positions of the two vehicles after accident are also shown. The bus at the time of accident as well as after accident is well on its left side from the centre of the lane. Whereas the car at the time of accident was very much beyond the centre of the lane towards its right and apparently the car had gone about 2/3rd distance of the lane towards right. He was testing the brakes of the car after repair. It was night time. In that case, he was expected to be more careful and should have kept his car towards his left and the width of the road also so permitted.

7. It is the duty of every motorist while driving on a public road to keep a lookout of other motorists coming from front to avoid collision with the on coming vehicle. Where a driver has not exercised this much care and caution incumbent upon him and if his conduct occasions an accident, he is guilty of culpable negligence as immutability of criminality arises from the neglect of civic duty of circumspection and running the risk or doing such an act with recklessness and indifference to the consequences. A person driving a motor vehicle is also under a duty to be in a position to control it on seeing the peril in front which could normally be expected on the road.

8. As observed in Bala Chandra Vs . State of Maharashtra, : 1968 CriLJ1501 rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury and running the risk of doing such an act with recklessness or indifference as to the consequences. And criminal negligence is

the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injuring others 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.

9. The deceased driver of the car involved in this case is obviously guilty of rashness and also negligence and it was his rashness and negligence that is responsible for this accident and not that of the bus driver.

10. The two courts below have not only not considered the material on record properly but have also misread the same and have drawn wrong conclusions. The conviction and sentence thus are not legal, proper and valid and the same are not sustainable.

11. This revision petition is accordingly allowed and the impugned judgment and order of sentence passed by the trial court and the judgment of the appellate court are set aside.

12. The petitioner is acquitted of the offences for which he has been charged. He shall be set free forthwith if not required in any other case. The amount of fine, if any, paid by him shall be refunded to him. Superintendent Jail be informed for compliance.