

Tajesh Srivastava Vs. State

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Court : Delhi

Decided On : Feb-18-1991

Reported in : I(1991)ACC507

Judge : Malik Sharief-Ud-Din, J.

Appellant : Tajesh Srivastava

Respondent : State

Judgement :

Malik Sharief-Ud-Din, J.

1. The petitioner was found guilty of an offence under Section 279/337 I.P.C. as also under Section 304-A I.P.C. and was imposed a penalty of Rs. 5000/-. I may note that the trial Court by its order dated 23rd of March, 1979 accepted the proposition that the petitioner is entitled to probation but did not grant it as it felt that it will amount to subjecting him to a restraint for some years. In appeal the learned Additional Sessions Judge confirmed this order by its order dated 24th of August, 1979.

2. The petitioner is challenging the legality and the propriety of the sentence as according to him any fair evaluation of the evidence recorded in this case would prove that the petitioner is not responsible for any rash and negligent driving resulting in the death of Nihal Chand deceased who was involved in this accident.

In fact, Mr. Lai's attempt throughout his arguments was that the prosecution evidence particularly of P.W.1. Mr. Bhatia who is the star witness is consistent only with the stand of the accused to show that the petitioner cannot be held guilty of any rash and negligent act resulting in this accident.

3.To begin with I may briefly notice the facts which are that on 19th of February 1977 at about 9.30 P.M. the petitioner was driving his motorcycle DHU 5294. His sister was sitting on the pillion seat and he knocked down the deceased Nihal Chand on the Ring Road. According to the prosecution, the accident occurred because of the reckless and negligent driving by the petitioner who was driving the motorcycle at a high speed.

4. Before proceeding further, I may make a reference to the stand taken by the accused in his statement under Section 313 Cr.P.C. His stand is that he was proceeding on a normal speed and he found the deceased stopping near the verge of the road and then he suddenly started running fast to cross the road. According to him, in spite of his best efforts the deceased was hit and thereby resulting in this accident. In the light of this stand of the petitioner, the matter falls within a short compass inasmuch as one has only to evaluate the evidence particularly of P.W.1, and to find out whether this accident occurred as a result of the reckless and negligent act of the petitioner or whether it was unavoidable because of the manner in which the deceased conducted himself. Here, I may note that according to the testimony of P.W.2 Pradeep Sharma who is the son of the deceased, he along with his father was coming towards the Mess with a view to have something to eat. I may also note that having reached the verge together the son crossed the road successfully while the deceased paused a while and then suddenly decided to cross. This, in fact, is clear from the evidence of P.W.1. Mr. Bhatia who was posted on security duty at the gate of All India Institute of Medical Sciences near which the accident took place. I am making a reference to this fact particularly to indicate that having decided to cross the road the son crossed it while the father decided to pause a while and this could not have been without reason. In all probability he must have seen the motorcycle coming and for that reason decided to pause but then suddenly fell into an error of judgment and decided to cross the road with the result that there was hardly any time for the

motor-cyclist to avoid the accident. Mr. Lai rightly pointed out that having found the deceased stopping at the verge and pausing for a while, the petitioner must naturally have felt that the road was clear for him and it would have been clear but for the erroneous judgment made by the deceased who suddenly changed his mind to cross the road. This factual position is also admitted by the accused. There is no doubt that all the four eyewitnesses P.W.1. K.C. Bhatia, P.W.2 Pradeep Sharma son of the deceased, P.W.3 Vinod Kumar and P.W.4 Angad Singh have said in one voice that the accused/petitioner was driving fast resulting in this accident and if their testimony is to be taken at its face value that will be the end of the road for the petitioner/accused. However, the duty of the Court is not to accept the mechanical versions tendered by witnesses but to assess and evaluate the testimony of the witnesses in the light of the admitted facts and circumstances of the case and then to find out where the criminality lies. According to Mr. K.C. Bhatia, the star witness of the prosecution, after this accident occurred the motor-cycle together with the petitioner and his sister fell at a distance of 10 to 15 paces resulting in injuries to both of them as well. He has seen the incident with his own eyes. According to him also the two boys accompanying the deceased succeeded in crossing the road while the deceased who first decided to wait and then suddenly started crossing was caught in this accident half way. In his cross-examination Mr. Bhatia has very unambiguously made a reference to this fact.

5. The grievance of the petitioner is that having placed reliance on the testimony of P.W. 1 the learned Additional Sessions Judge should have applied his mind to this aspect of the case to find out where the criminality lies and this has become particularly essential in view of the stand of the petitioner which was consistent with the testimony of P.W.1 Mr. K.C. Bhatia. But what the learned Additional Sessions Judge has done is to ignore this aspect and what has further been not noticed is that the motor-cycle according to the substantive evidence of P.W.1 Mr. K.C. Bhatia fell at a distance of 10 to 15 paces. The reference to this fact is being made particularly on the ground that the learned Addl. Sessions Judge used the site plan as a substantive evidence to arrive at a conclusion that the motor-cycle after the accident fell at a distance of 40 paces and this was in all probability done to derive an inference that the motor-cycle was being driven rashly and negligently. In my view, Mr. Lal has rightly urged that the distance indicated in the

site plan after the admission of the investigating officer that it was prepared at the instance of P. Ws 1 and 2 could not be used as a substantive evidence as it is hit by Section 162 of the Code of Criminal Procedure. I am of the view that there is no cogent evidence in respect of the fact that the motor cycle was being driven by the petitioner either recklessly or negligently. The prosecution witnesses 1 to 4 who are supposed to have witnessed this incident say that it was being driven fast. Whether a vehicle is being driven fast or not depends upon the notion of a person. No witness has been asked to clarify as to what according to them could be the speed at which the motor-cycle was being driven at the time of the incident. The fact that the witnesses say that it was being driven fast is also not supported by the facts and circumstances of this case because according to the witnesses after this incident it fell at 10 to 15 paces which is not something abnormal for a vehicle of this type involved into accident with a pedestrian. That apart, one has to bear in mind that the petitioner was carrying his sister on the pillion seat and in the normal course he would not be driving the motor-cycle recklessly for his and for the safety of his sister. In this case these facts in particular assume importance in view of the fact that the stand of the accused is consistent with the prosecution evidence inasmuch as the petitioner saw the deceased stopping at the verge creating an impression that he has decided 'not to cross the road till the motor-cycle passes but then suddenly started crossing the road leaving hardly any time for the motor-cyclist to avoid this accident. I agree with Mr. Bhatia that the plea of contributory negligence is no defense in the case of this nature but then while deciding the criminality one has to bear in mind the peculiar facts and circumstances of the case and the eye witnesses testimony cannot be accepted mechanically unless it fits in with the facts and circumstances of the case leading to the conclusion that the act of the accused was really a vicious act of recklessness which alone resulted in the accident. With these observations. I find that on the facts and circumstances of this case the least that can be said is that in view of the consistency of the prosecution evidence with the stand of the accused petitioner the criminality of the petitioner is doubtful. The petition, therefore, is allowed and the judgment under revision is set aside. The petitioner is acquitted of the offences of which he has been found guilty. The fine, if any, deposited shall be returned to the petitioner.

