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Raghavan Pillai Vs. State

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Court : Kerala

Decided On : Aug-03-1951

Reported in : 1954CriLJ7

Judge : Kunhi Raman, C.J. and; Subramania Iyer, J.

Appellant : Raghavan Pillai

Respondent : State

Judgement :

Kunhi Raman, C.J.

1. The accused is the appellant. He was tried by the learned Sessions Judge of Quilon in Sessions case No, 42/1950. The charges against him were under Sections 277, 304, 337 and 338, Travancore Penal Code. He was driving motor lorry bearing Index No. M.S.T.R. 6512. The prosecution case is that on 13-10-1124 he was driving the lorry from Kallada to Quilon. The lorry was loaded with several bags of paddy. When he reached the Shencottah Quilon Road, as a result of his rash and negligent driving the lorry overturned with the result that one of the persons in the lorry was killed and three others sustained injuries. On hearing the evidence placed before him, the learned Judge held that a case was made out against the accused under the provisions of the Travancore Penal Code and therefore convicted him. The findings recorded in para 21 of the judgment are as follows : On 31-10-1124 the accused was rashly and negligently driving the lorry

along the public highway in such a manner as to endanger human safety or cause hurt. As a result, the lorry overturned and a passenger by name Ayyappan was seriously injured and died as a result of the injuries and P. Ws. 1, 4 and 5 also sustained injuries. The injuries sustained by P. Ws. 1, 4 and 5 were held to be grievous hurt. The accused has committed offences punishable under Sections 277, 304, 337 and 338, Travancore Penal Code. After a careful consideration of the evidence the learned Sessions Judge sentenced the accused to undergo rigorous imprisonment for six months and to pay a fine of Rs. 200/- and in default of payment of fine he was directed to undergo simple imprisonment for a further period of three months. On that conviction and sentence this appeal has been brought in this Court,

2. The accident is alleged to have taken place on the Shencottah-Quilon Road. The scene of occurrence was straight road running by the side of the railway line. At the time of the accident, the Trivandrum Express was running along the railway line towards Quilon. The evidence is that the driver Interested in the speed of the train and he drove in a rash and negligent manner. There were three bullock carts on the road coming from the opposite direction and they were keeping to their side of the road. Two carts in front passed without any danger. The third cart is alleged to have been loaded with long iron rods part of which protruded in front of the cart and to have suddenly turned to its right. Accordingly to the accused the lorry had to be suddenly swerved towards the right to allow the cart to pass and then to the left. In the process the lorry was overturned resulting in the disastrous consequences already adverted to.

3. Mr. Govindan Nair, the learned Counsel for the accused appellant has tried to show that this is a case of unavoidable accident. On the other hand, the case for the prosecution stressed by Mr. Balakrishna Iyer is that there was rash and negligent driving on the part of the accused. The evidence indicates that he was driving at a high speed & without observing the rules which resulted in this accident. There is the evidence of the Traffic Inspector examined as P. W. 3. He has certified that the brakes were in good condition and there was no defect with the mechanism of the lorry. On his arrival at the place of occurrence he inspected the road at the place where the accident took place and from the. marks left on the

road he found that the lorry was being driven along the centre of the road. The middle portion of the road was appropriated by the lorry.

4. In the judgment of the trial Judge in para 19 he makes mention of the testimony of P. Ws. 3, 8 and 12 whose evidence he finds no reason to disbelieve. Mr. Govindan Nair points out that if the evidence of P. Ws. 3, 8 and 12 is accepted in its entirety the prosecution case cannot be said to have been established. But in addition to this evidence the learned Judge has also referred to the evidence of P. Ws. 1 and 5, (After discussion of the evidence of these two witnesses His Lordship proceeded :) Apart from these the circumstantial evidence seems to us to be very strong. If the lorry was being driven at normal speed and if the driver was keeping to his side of the road, it is not possible to imagine that he would have moved so suddenly towards the right and mismanaged the lorry in such a way as to make it capsize and bring about the death of one of the passengers and grievous hurt to others. The evidence of the Traffic Inspector P. W. 3 also discloses that the accused was not keeping to his side of the road. As pointed out by the learned, counsel for the appellant this witness was not called specifically to speak about this matter. He has stated that he examined the lorry and the tracks after the accident. But when he was in the box he was asked the question as to how he noticed the track on the road. He stated that from the marks of the wheel on the road it was clear that the accused was keeping to the centre of the road. What is strongly against the accused is that there was no cross examination in respect of this part of the evidence. If, as a matter of fact, the accused was not keeping to the centre of the road, there is no reason why his learned Counsel did not ask questions in cross examination to show what the witnesses said cannot be accepted as true.

5. The learned Public Prosecutor invited our attention to the decision reported in - 'Deota Misir v. Emperor' AIR 1931 All 708 (A). The facts of that case seem to be similar to the facts of the present case. There also it was a motor lorry driver who was prosecuted. He had caused the death of a person by rash and negligent driving. There were too bullock carts coming along in the middle of the road. The bullock drivers took their carts one to the right and the other to the left. Being unable to pass between the carts the lorry was swerved to the right as a result of

which the lorry was overturned, causing the death of the passengers. The view taken by the Allahabad High Court was that the accused was guilty. In that case reliance was placed on the English decision reported in - 'Swadling v. Cooper' (1930) W N 204 (B). In Halsbury's Laws of England, Vol. 23 page 638 the following passage throws light on the duty of a driver like tile accused in the present case:

On a clear road with no traffic in front or behind except at a distance a driver is entitled to take any part of the road he likes. He must, however, keep a sharp look out in front and behind and when he sees a vehicle approaching he must go to the left or near side of the highway to permit the passage of the other vehicle.

We are satisfied that the driver had not observed the rules of the road just before the accident occurred. The learned Sessions Judge observes in his judgment that the attention of the driver seems to have been concentrated upon the speed of the train which was passing at the time and that his attention seems to have been concentrated on trying to keep pace with the train without noticing the traffic in front of him. The learned Judge has come to the irresistible conclusion that the accident occurred as a result of the rash and negligent manner in which the accused drove the lorry.

We are not here dealing with the question of overloading of the lorry. The learned Public Prosecutor has pointed out that the lorry was overloaded and that it was illegal to permit passengers to ride on the bags loaded in the lorry. However, apart from all those circumstances, there is sufficient material for supporting the finding of the trial Judge that the accused is liable for the death and grievous hurt caused to the passengers who were in the lorry at the time of the accident and that it was due to rash and negligent driving of the accused that the accident occurred. In these circumstances, we see no reason to interfere with the conviction and sentence passed upon the accused by the Courts below. The criminal appeal is dismissed and the bail bond shall be cancelled.

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