

State of Rajasthan Vs. Niranjn Singh

State of Rajasthan Vs. Niranjn Singh

SooperKanoon Citation : sooperkanoon.com/756794

Court : Rajasthan

Decided On : Apr-02-1971

Reported in : 1971WLN235

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Appeal No. 319 of 1970

Appellant : State of Rajasthan

Respondent : Niranjn Singh

Judgement :

L.S. Mehta, J.

1. On May 24, 1968, at about 7 a.m. the injured Kewalram, P.W. 1, was riding on his bicycle, carrying a certain quantity of milk He was proceeding from the village Kola to Hanumangarh town. The prosecution story is that the accused Niranjn Singh happened to pass that way. He was driving truck No. RJK 5445, rashly and negligently. It struck down Kewalram on the left side of the road The left front wheel of the truck ran over the left, hand of Kewalram. Thereafter the accused Niranjn Singh stopped his vehicle. He put Kewalram into it and took him to the Medical Officer, Hanumangarh. As the result of the injuries sustained by Kewalram, his condition got deteriorated. A dying declaration, therefore, was recorded by the Sub-Divisional Magistrate, Hanumangarh. It is marked Ex. P.1.

Kewalram was examined, at 6 50 p.m. on May 24, 1968, by Dr. Ramesh Chandra, PW4. Following injuries were found on his person.

1. A lacerated wound extending along the entire length of left forearm from elbow joint to thumb 5' x 6' in dimension and covering the anterior, the medical and lateral as also the part of the posterior aspect of the left fore-arm. Both the bones of the left fore-arm were fractured at lower ends and shafts and were projecting outside the wound.
2. Three rounded abrasions 3/4' in diameter attite posterior aspect of the right hand.
3. Two rounded abrasions 1/4' in diameter at posterior aspect of the right wrist joint.
4. An abrasion 1' x 1/4' on the posterior aspect of the right arm just above the right elbow joint.
5. An abrasion 1' in diameter on the anterior aspect of the left knee joint.
6. An abrasion 1 inch x 3/4' just below the left knee on anterior lateral aspect of the leg.
7. An abrasion 1' x 1/2' in the anterior medial aspect of the right leg just below the right knee joint.
8. An abrasion 1' x ' on the right lateral malleolus.
9. An abrasion 2' x 2' on the right trochanteric region.

In the opinion of the Doctor injury No. 1 was grievous and was caused by a blunt object. Injuries Nos. 2 to 9 were simple in nature and were caused by a blunt device. They were less than 8 hours' old. Injury No. 1, the Doctor adds, could have been caused by running over the wheel of a truck. After necessary investigation, the police put up a challan against the accused Niranjana Singh in the court of the Munsiff - Magistrate, Hanumangarh. On November 19, 1968, charges under Sections 279 and 337, I.P.C, were read and explained to the accused, to which he

pleaded not guilty. In support of it the prosecution examined PW1, injured Kewalram, PW 2 Goverdhan Singh, M.T.O., PW 3 Dhila Singh, Incharge Police Station, Hanumangarh, and P.W. 4 Ramesh Chander, Medical Officer, Hanumangarh. In his statement, recorded under Section 342, Cr. P. C. the accused admitted that he was going from R.3watsar to Hanumangarh in a truck. His vehicle was being driven by another Niranjn Singh. He found Kewalram lying on the road in an injured condition. He stopped his truck and took the injured to Hanumangarh Hospital for treatment. His truck did not collide with him. In his defense he examined Niranjn Singh son of Ram Singh, P.W. 1. The trial court by its judgment, dated January 31st 1970, acquitted the accused Nirajan Singh of the offences under Section 279, 337 and 338, I.P.C, on the following grounds:

1. That Kewalram was driving his bicycle on the wrong side of the road;
2. that in the first information report it is not mentioned that the accused was driving his truck with a fast speed; and
3. that the injured could not have recognized the driver of the truck RJK 5445.

Dissatisfied by the above verdict, the State Gjernmmt has taken the present appeal. The appeal was admitted by this Court on June 16, 1970, and a notice was issued to the respondent. It was served on him on December 16, 1970 Niranjn Singh, however, did not put in appearance. Consequently the appeal is heard in his absence.

The evidence of P.W. 1 Kewalram shows that he received injuries as a result of truck-collision on May 24, 1968. Kewalram was examined by Dr. Ramesh Chander, Medical Officer, Hanumangarh, P.W. 4, that very day. The Doctor found 9 injuries on his person, as set forth above. Of these injuries, injury No. 1 was grievous in nature. The fact the Kewalram sustained injuries has been admitted by the accused Niranjn Singh in statement, recorded under Section 342, Cr.P.C. It is, thus evident that on May 24. 1968, Kewalram was hit by a truck, as a result of which 9 injuries, including 1 gravies hurt, were caused to him.

2. The next question that is to be dealt with is whether it was the accused's truck which collided against Kewalram. The accident took place at a lonely place, where no other person excepting the injured and the accused were available. Kewalram the person, who has been injured and made the the complaint soon after the occurrence. He gives graphic detail as to the manner in which the accident happened. He states as to how he sustained injuries and how the accused Niranjn Singh was driving rashly and negligently the truck which knocked him down. His testimony is corroborated not only by the medical evidence, but also by the first information report filed promptly soon after the event. The plea of the accused that it was another Niranjn Singh who drove the truck on the fateful day, i.e., on May 24, 1968, has not been accepted to be correct by the court below. The reason given for its rejection is that it is not understandable why the injured should foist a crime upon a wrong person. In so far as this finding is concerned, I associate myself with the view expressed by the trial court. The subsequent conduct of the accused Niranjn Singh in taking the injured to Hanumangarh Hospital further strengthens the belief that it was the accused Niranjn Singh, who was driving the truck No. RJK 5445 and it knocked down Kewalram, causing to him as many as 9 injuries, including one grievous hurt.

3. The next question that survives for consideration is whether Niranjn Singh acted rashly or negligently so as to endanger human life.

4. What constitutes negligence has been analysed in Halsbury's Law of England, Third Edition, Vol. 28 Page 3, as follows

It (negligence) may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to person or property The degree of care required in the particular case depends, on the accompanying circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons to whom injury can reasonably be foreseen and not

necessarily to all persons in the same situation. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of the care which is on the part of the defendant due to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.

The most formally scientific analysis of negligence is that of Austin. According to him in a case of negligence the party performs not an act to which he is obliged; he breaks a positive duty. In *Heaven v. Pender* 1863 (11) Q.B.D. Brett M.R., gives his definition of negligence thus.

Actionable negligence consists in the neglect of the use of ordinary care of skill towards a person to whom the defendant owes a duty of observing ordinary care and skill, by which neglect the plaintiff, without contributory negligence on his part, has suffered injury to his person or property.

Sir James Stephons in the *General View of the Criminal Law of England* (2nd Edn.) 76, defines negligence like this:

The omission to perform a duty imposed by law.

Sir James Stephons continues.

The word (negligence) is used in criminal law principally in reference to the inclination of bodily injury by neglecting to perform one of the duties which are by law imposed on various persons for the preservation of the human life.

The correct scope of the word 'negligence' was stated by Lord Donedin in *Freud v. Hercourt Revigton* 1848 (2) All. E.R. 238, when he said:

If the possibility of the danger emerging is reasonably apparent, then to take no precaution is negligence.

In *Grant v. Sun Shipping Co. Ltd.* 1938 (146) L.T. 591, it was observed by the House of Lords:

A prudent man will guard against the possible negligence of others, when experience shows such negligence to be common.

To the same effect are the observations made by the House of Lords in *London Passenger Transport Board v. Upson and Anr.* 1949 (1) All. E.R. 60.

5. Thus, it is clear that criminal negligence means hazarding a danger for wanton act with the knowledge that it is so. It may cause injury, but without the intention to cause injury or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. In other words, criminal negligence is a gross and culpable neglect or failure to exercise that reachable and proper care and precaution to guard against injury other to the public generally or to an individual in particular, which having regard to all the circumstances, out of which the charge has arisen, it was the imperative duty of the accused to have adopted.

6. There is distinction between a rash act and a negligent act. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and a reasonable man would not do. The immutability arises from the neglect of the civic duty of circumspection. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. It may also be noted here that, as was said by Hooke J. in *Wordsworth v. Willin* (1905) 5 Rap. (N.P.) 273 quoted by Thomas Beven in his commentarial work on negligence in Law P. 636 'The driver was not to make experiments; he should leave ample room, and if an accident happened, from want of that sufficient room, he was no doubt liable.' Chauffeur has no right by his conduct to impose on other people using the road any greater exertion of care and skill than they would have had to exert had he seen fit to conform to the general rule of traveling. The rule must be strictly observed.

7. With the above background that it is to be seen whether the accused in the present case acted negligently or rashly. A close perusal of the statement of the injured Kewalram with the site inspection memo Ex. P. 5 shows that he was riding on his bicycle from north towards south, i.e., from the village Kola to Hanumangarh town. The accused was also driving his truck towards the same. Collision took place somewhere near the point marked 2 in the site - plan where milk was found scattered. The accused also admits in his statement that he was going from the north towards the south, i.e., from Rawatsar to Hanumangarh side. From this it is clear that Kewalram was towards the left hand side of the road. Drivers of vehicles or riders should keep well to the left side of the straight way unless they are about to overtake another vehicle or to turn to the right. It has long been settled that a person who is not driving on the left side will be held negligent, if he meets suddenly and collides with another person or vehicle on the main road : (see para 65 Halsbury's Laws of England 3rd edition, Vol. 28 page 66). On a clear high-way a car need not keep to the left side of the road. But when it does not do so, the driver must keep a better look out. The mere fact that a motorist is on the right side does not mean that he is of necessity not negligent, for the law does not allow a person on his proper side of the road to run down everything in his path with impunity; vide Section 35 of the Trial of Motor Car Accident Cases by A.D. Gibbs and R. Milliner, 3rd edition page 34. Where there is ample room for the vehicle to pass the pedestrian in safety; the latter is entitled to assume that the motorist will do so : see Section 156 of the Trial of Motor Car Accident Cases (supra).

8. In the present case Kewalram was on the left hand side of the road. The truck was coming from the same direction. There was ample room for the pedestrians to pass. The collision could not have occurred had the driver of the truck turned his vehicle aside in time. He should have looked out for the cyclist ahead and have his own vehicle well in hand to avoid doing injury to the cyclist. The rule of the road does not give the driver of the rear car a right to pass the slower vehicle under all circumstances. He may be liable if a collision results while attempting to pass his vehicle in front at a time or under conditions which render such a course not reasonably prudent and if in doing this he collides, it is scarcely conceivable that he could escape being held negligent (vide Section 65 of the Trial of Motor Car

Accident Cases (supra). In this case the driver, knowing full well that Kewalram was going ahead of him on his bicycle, overtook him, under the conditions which rendered his course reasonably imprudent. Thus, the prosecution has succeeded in proving criminal negligence on the part of the accused Niranjana Singh.

9. Coming now to the question of rashness, there is the evidence of Kewalram that the accused was driving his truck with a fast speed. This evidence has not been challenged by the side opposite. It is the duty of every motorist to drive at a reasonable speed at all times. What is a reasonable speed depends upon the surrounding circumstances and will, therefore, vary with each case. Where an eye-witness is to give evidence as to speed, it should appear that he was in a position where he could observe vehicle's speed and that he did in fact observe it. He need not have seen it travel any considerable distance. So held in *America Harnam v. Haight* [189] MICH 600. Kewalram is the proper person to say as to what the speed of the vehicle was. This statement is clearly admissible in evidence and unless it is controverted, court can reach the conclusion that the accused was driving his vehicle with a fast speed, unmindful of the pedestrians on the high-way. The duty of the driver of a motor car is greater, the more powerful and complicated the engine is. Here, the accused was acting with the consciousness that mischievous and illegal consequences might follow. In this context, imminence arises from acting despite the consciousness. It can, therefore, safely be concluded that his act also did amount to culpable rashness.

10. Kewalram has also said in his statement that he did not hear any sound of horn. If the witness failed to hear any sound of horn, it is evidence of the fact that the driver of the vehicle did not sound the horn. The failure of the driver to sound the horn may be a negligent act. Reasonable care a driver should take in giving warning of his approach, particularly when he wants to go ahead of the pedestrian, who is unaware of the nearness of the vehicle. In this connection reference is made to the observations made by Lord Morton in *London Passenger Transport Board v. Upson and Anr.* (supra). The relevant passage runs as under.

To my mind the failure of the driver to keep a look out on the near given side pavement coupled with his failure either to slow down or to sound his horn, afford

ample evidence to support a finding of negligence at common-law.

There is another aspect of the matter which needs clarification. The accused has been charged under Sections 279, 338 and 339, I.P.C. The question is whether the accused can be convicted and sentenced both under Sections 279 and 337 or 338, I.P.C. Section 279, I.P.C., penalizes rash driving or riding on a public way. A person who drives any vehicle or rides on a public way in a manner so rash or negligent so as to endanger human life, or to be likely to cause hurt or injury to any other person is liable to be punished under Section 279, I.P.C. This offence falls within Chapter XIV of the Indian Penal Code, which relates to offences affecting the public health, safety, convenience, decency and morals. An offence under Section 279, I.P.C., is essentially an offence against public safety. By Section 337, I.P.C., causing hurt by an act endangering life or personal safety of others is penalized. Under that Section, whoever, causes hurt to any person by doing an act so rashly or negligently as to endanger human life or the personal safety of others is liable to be punished in the manner provided there under. Under Section 338, I.P.C., whoever causes grievous hurt to any person by doing an act so rashly or negligently as to endanger human life or the personal safety of others is liable to be punished in the manner provided thereby. These Sections are covered by Chapter XVI, which deals with offences affecting human body. Undoubtedly, Section 279, I.P.C. penalizes rash or negligent driving, but on that account an offence under Section 337 or 338, I.P.C., cannot be said to be of the same nature or character. Offences under Sections 279 and 337 or 338, I.P.C., are offences of different nature and the conduct referred to therein is penalized with different object. There is no doubt that the above three Sections overlap, but that does not make these offences of the same character. Offence under Section 279, I.P.C., is non-compoundable whereas offence under Section 337, I.P.C. or 338, I.P.C. is compoundable. A reference in this connection is made to the observations of his Lordship Shah J. in *State v. Kamla Kar P. Juvekar* A.I.R. 1960 Bom. 2669. Thus, the offences under Sections 279 and 337 or 338, I.P.C., being distinct, an accused can be convicted both under Sections 279 and 337 or 338, I.P.C.

11. Viewing the case in all its aspects, I am firmly of the opinion that the accused Niranjana Singh committed the offence, punishable both under Section 279 and

338, I.P.C. I accordingly convict him under these 2 Sections. I sentence hem on the first count to pay a fine of Rs. 150/-, in default to undergo simple imprisonment for 1-1/2 months. I further sentence him under Section 338, I.P.C. for a period of two months' simple imprisonment and to pay a fine of Rs. 100/-, in default of payment of which to undergo simple imprisonment for one month. District Magistrate, Gunganagar, is directed to take necessary steps for the arrest of the accused and send him to jail to suffer the sentences awarded to him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com