

Chandrasekar. Vs. State

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Court : Chennai

Decided On : Oct-29-1990

Reported in : 1(1992)ACC100

Judge : Arunachalam, J.

Appellant : Chandrasekar.

Respondent : State

Judgement :

ORDER

Arunachalam, J.

1. The petitioner was tried in C.C. No. 176 of 1983 on the file of the Judicial First Class Magistrate, Dharmapuri for the following offences: (1) Section 304-A Indian Penal Code (two counts); (2) Section 337 Indian Penal Code and (3) Section 279 Indian Penal Code. The trial Court found the petitioner guilty as charged and sentenced him to undergo rigorous imprisonment for one year under each count for the offence under Section 304-A, IPC and undergo rigorous imprisonment for six months of the offence under Section 337 I.P.C. No separate sentence was imposed for the offence under Section 279, I.P.C. The aggrieved petitioner preferred C.A. No. 106 of 1984 before the Court of Session, Dharampuri at Krishanagiri. The learned Appellate Judge concurring with the findings rendered by the trial magistrate dismissed the appeal.

2. In this revision, the petitioner challenges the correctness of the conviction recorded and the sentence imposed.

3. Mr., T. Munirathina Naidu, learned Counsel appearing for the petitioner contended that there was no proof that the occurrence had taken place either due to rashness or negligence on the part of the petitioner. He contended that the cleaner of the lorry examined as P.W.8, who has been cited to speak about the occurrence had been treated hostile by the prosecution. Both the Courts below have further found that the evidence of the other two witnesses, examined as P.W.s. 3 and 4 was not helpful to establish that the petitioner had driven the lorry bearing registration No. MYA-7495 rashly or negligently. Learned Counsel also pointed out that the petitioner himself was the author of the first information report, the contents of which can be taken note of if they were in favour of the petitioner, though strictly it would not be admissible in evidence.

4. I have heard Mr. R. Shanmugasundaram, learned Additional Public Prosecutor on all these contentions. To appreciate the contentions of the learned Counsel it will be necessary to set out the prosecution case in brief.

5. The petitioner admittedly was the driver of the lorry bearing registration No. MYA-7495 in which lorry, P.W.8, was working as the cleaner P.W. 3 Chinnammal lives on the old Dharmapuri Krishnagiri main road in a hut and carries on trade in eatables. She as well as her daughter examined as P.W. 4 were preparing eatables at or about 1 p.m. on 5.3.1983. Suddenly at or about 2.30 p.m. the lorry entered inside their hut resulting in both of them sustaining injuries. The house was also damaged. P.W. 2, a neighbour of P.W. 3 on hearing the noise came out of the house and found that the lorry had entered into the house of P.W.s.3 and 4. One Sarvanan and another Chettipattial, who were near the hut of P.W. 3 died on the spot due to their impact with the lorry. P.W.1 is the son of Chettipattial. Soon after the incident the petitioner proceeded to Dharmapuri police station and preferred a complaint, which was, registered as Crime No. 119/83 for offences under Sections 279, 337, 338 and 304-A, Indian Penal Code. The prosecution did not choose to exhibit the first information report since it would not be admissible in evidence. The petitioner also did not choose to bring it on record.

6. Both the Courts below, while finding that there was no proof either of rashness or negligence on the part of the petitioner, held that the doctrine of *res ipsa loquitor*, could be applied to the facts of this case. The decision of the Supreme Court in *Rattan Singh v. State of Punjab* : 1980 CriLJ11 was relied upon. In that case, the Apex Court held as hereunder.

In our current conditions, the law under Section 304-A IPC, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menances. Thus viewed, it is fair to apply the rule of *res ipsa loquitor*, of course, with care.

7. A catena of rulings on this subject positively show that the one person who could offer an explanation regarding the nature of the incident was the accused himself. The explanation of the accused could also be taken note of in the background of the prosecution evidence to find out if he had been rash or negligent while driving the lorry. Unfortunately, the petitioner had not chosen to offer any explanation when he was examined under Section 313 Cr. P.C. It is also the law that if a person is driving the vehicle he is under a duty to control it. He would be *prima facie* guilty of negligence, if the vehicle left the road and it was for the person, who was driving the vehicle, to explain the circumstances under which the vehicle had left the road. These circumstances may be beyond control of the driver and may, even, exculpate him, but in the absence of such a situation the fact that the vehicle had left the road would be evidence of negligence on the part of the driver.

8. In a number of decided cases it has been held that as a rule, mere proof that an event had happened or an accident had occurred, the cause of which was unknown, was not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in clearly and unambiguously, the negligence of same body as the cause for the event or accident. It is only to such of these cases that the maxim *res ipsa loquitor* [sic] may apply, if the cause of the accident was unknown and no reasonable explanation as to the cause was forthcoming from the accused. Further the event or accident must be a kind, which does not happen in the ordinary course of

things, if those who have management and control, use due care. It may be in such cases that the court must be further satisfied that the event which caused the incident was within the control of the accused. The reason is not far to seek, for, he would be in a better position to explain as to how the accident had occurred.

9. There cannot be any dispute that the onus remains on the prosecution and does not shift to the accused to show that he had not driven the lorry rashly or negligently. That prima facie evidence of rashness or negligence is admittedly absent in this case. We have to proceed from the fact that an accident had occurred in which two persons unfortunately lost their lives and one sustained a simple injury. The question then remains is as to whether the incident had occurred either due to rashness or negligence on the part of the petitioner who is driving his lorry. Soon after the incident the petitioner had gone to the police station situated at a distance of 3 k.m. And it is seen that approximately in or about an hour, the first information report had been registered. In the said first information report the petitioner had stated categorically that suddenly a cyclist came from west to east. To avoid impact with him he applied the brakes and the lorry got dragged to the left side and stopped after hitting a house. A perusal of the scene sketch marked as Exhibit P.8 shows that the road near about the point of impact was curved and while the petitioner was negotiating the bend in the road, according to his case made in the first information report, the cyclist suddenly crossed the road. If the case of accused in the first information report could be taken note of, it postulates that this may be a clear case of an inevitable accident. In *Mottai Thevan v. State* 1951 MWN 274 a Division Bench of this Court took the view that Section 27 of the Evidence Act was no bar to user of a confession in favour of an accused person. If that be so, the confession of the petitioner in the first information report preferred by him can be used in his favour to hold that he had been neither rash nor negligent in driving the lorry. Merely because in this unfortunate incident two people had lost their lives and one sustained simple injury the petitioner cannot be found guilty without proper proof of rashness or negligence. To my mind, this appears to be a case where the petitioner would be entitled to the benefit of doubt. In this view, this revision is allowed and the conviction and sentences imposed on the petitioner for the various offenders are set aside. The petitioner shall stand acquitted. His bail bonds shall stand cancelled.

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