

State of H.P. Vs. Dinesh Kumar

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Court : Himachal Pradesh

Decided On : Jan-11-2008

Reported in : 2008CriLJ2024

Judge : Kuldip Singh, J.

Appellant : State of H.P.

Respondent : Dinesh Kumar

Advocate for Def. : Mr. Sanjeev Kuthiala

Judgement :

Kuldip Singh, J.

1. The State has filed this appeal against the judgment dated 4-2-2000 passed by learned Chief Judicial Magistrate, Hamirpur in Criminal case No. 21-II of 1995 acquitting the respondent under Sections 279, 304-A, IPC.

2. The prosecution case, in brief, is that respondent Dinesh Kumar on 18-4-1995 at 8.20 a.m. at Doli Gharana on the public highway drove Jeep No. HP-22-1421 in rash or negligent manner and endangered human life and public safety. On account of his rash or negligent driving of the jeep he struck against Anu aged 4 years and caused her death. He was prosecuted under Sections 279, 304-A, IPC. The prosecution examined 10 witnesses. The statement of respondent was

recorded under Section 313, Cr.P.C. He has contended that he has been falsely implicated in the case, no defence evidence was led by him. The learned Chief Judicial Magistrate acquitted the respondent. Hence, the State has filed the appeal.

3. I have heard learned Additional Advocate General for the State, Mr. Sanjeev Kuthiala, learned Counsel for the respondent and gone through the record. The learned Additional Advocate General has submitted that prosecution has proved the case against the respondent beyond reasonable doubt. The evidence has not been properly appreciated by the learned Chief Judicial Magistrate. It has been wrongly observed by the Court below that no eye-witness of the accident has been examined. This is not a case where deceased suddenly came over the road. The girl was standing outside the road where respondent struck her with the jeep. The rash or negligent driving on the part of the respondent is apparent which has been proved by the prosecution. The learned Counsel for the respondent has supported the impugned judgment and has submitted that prosecution has miserably failed to prove the case against the respondent beyond reasonable doubt. The learned Chief Judicial Magistrate has taken a possible view from the evidence on record. This Court will not substitute its view while sitting in appeal if conclusion drawn by the learned Chief Judicial Magistrate is possible from the evidence on record. He has also submitted that in any case the occurrence is dated 18-4-1995, the respondent at that time was about 23 years of age, now he is settled in life and, therefore, in case this Court comes to the conclusion that prosecution has proved the case against the respondent then lenient view may be taken while imposing sentence.

4. P.W. 1 Chuni Lal is the uncle (Taya) of deceased Anu. He has stated that the girl had gone for answering the call of nature and was returning and standing on the edge of the road where she was run over by the Jeep which was going from Hamirpur to Nadaun. The number of jeep was 1421 and the jeep was being driven in high speed. The respondent struck the jeep against the girl who became unconscious. They took her to Nadaun where she was declared dead. The police recorded his statement. Ext. P.W. 1/A. In cross examination, he has stated that girl had earlier gone from left to right side of the road and was coming from right to left

side, she was to cross the road. He came to know of the accident when noise and hue and cry was raised. He reached the spot and the girl was lying on the right side of the road. He has shown his ignorance to the question of the defence that girl all of a sudden attempted to cross from right to left side by running and struck against the mudguard of the vehicle.

5. P.W. 2 Prem Sagar has stated that the girl had gone to answer the call of the nature and was standing on her side. The vehicle came from the wrong side and struck against her. The vehicle was HP-22-1421. In cross-examination, he has stated that his shop is on the road opposite to the place, of accident. He came to know the occurrence when accident had taken place. He has not seen the girl striking the jeep. He has denied the suggestion that the girl was suddenly crossing the road. He has denied that he was not at the place of accident. He has denied that the accident took place as the girl all of a sudden tried to cross the road.

6. P.W. 3 Anil Kumar has stated that he had come to open his shop. A jeep came towards Nadaun side and the girl was coming after answering the call of nature and standing and the jeep caused the accident. The jeep driver was in high speed. He, along with others, ran towards the girl, took her up but she died. The Jeep was being driven by the respondent. In cross-examination, he has stated that girl was his niece. He has stated that at the time of accident he was present on the spot. He was on one side of the road and the girl was on the opposite side of the road. He answered in affirmative that in between him and the girl jeep came.

7. P.W. 4 Bhagwan Dass is the father of the deceased girl Anu but he is not an eyewitness to the accident. He has stated that jeep No. HP-22-1421 caused the accident. The girl was on one side and respondent was driving the jeep. He did not support the prosecution and was declared hostile. P.W. 5 Dharam Singh has proved Rapat Ext. P.W. 5/A. P.W. 6 Parshotam Chand has proved mechanical report Ext. P.W. 6/A of jeep HP-22-1421. P.W. 7 Jugal Kishore has stated that on the statement Ext. P.W. 1 /A FIR Ext. P.W. 7/1 was recorded. P.W. 8 Dr. H.S. Sekhon has proved post-mortem report Ext. P.W. 8/A of deceased Anu daughter of Bhagwan Dass. In his opinion, deceased died as a result of ante-mortem head injury which is possible in vehicular accident. In cross-examination, he has denied

the suggestion that if a child is running and struck against a hard surface the injuries are not possible. P.W. 9 Ved Parkash has proved photographs Ext. P.W. 9/H to Ext. P.W. 9/N with negatives Ext. P.W. 9/A to Ext. P.W. 9/G. P.W. 10 Krishan Gopal is the investigating Officer. He has stated that statement Ext. P.W. 1/A of Chuni Lal under Section 154, Cr.P.C. was recorded, spot map Ext. P.W. 10/A was prepared by him. In cross-examination, he has stated that in the spot map the place of accident has been shown which was identified by Anil Kumar witness. He has stated that the metalled portion of the road is 11 feet. The respondent in his statement under Section 313, Cr.P.C. has simply denied the case of the prosecution.

8. The prosecution has proved on record that respondent was driving the jeep No. HP-22-1421 at the relevant date and time and Anu aged about 4-5 years died in the accident. The question is whether respondent is responsible for causing the death of Anu due to his rash or negligent driving. The learned Chief Judicial Magistrate has observed that there is no iota of evidence to show rash or negligence on the part of the respondent. He has also observed that no independent witness has been examined by the prosecution. As per site plan Ext. P.W. 10/A the respondent applied brakes at once and skid marks were found on the road. The Court below has ultimately taken the view that girl suddenly crossed the road without taking note of approaching jeep and there is every possibility of her dashing against the jeep without the respondent becoming aware of it, the jeep driver could not save the accident.

9. The conclusion drawn by the learned Chief Judicial Magistrate does not emerge from the evidence on record. The spot map Ext. P.W. 10/A would show that at point 'A' on the right side of the road were blood stains marks and V-shape slipper of deceased Anu. The point 'E' is the place where P.W. 1 Chuni Lal was standing at the time of accident and point 'G' is the place where P.W. 3 Anil Kumar was standing. The jeep was going from Hamirpur to Nadaun. The point 'A' in spot map Ext. P.W. 10/A is almost on the extreme right side of the road. The defence version is that deceased Anu all of a sudden crossed the road and during this process she struck against the mudguard of the jeep. P.W. 1 Chuni Lal has stated that jeep was in high speed and respondent struck the jeep against the deceased.

The girl was standing on the edge of the road. P.W. 2 Prem Sagar has also stated that the girl was standing on her side, Jeep came from the wrong side and struck against her. P.W. 3 Anil Kumar has also stated that the girl was returning after answering the call of nature and standing on the side, the jeep driver came in high speed and caused the accident. These witnesses have collectively deposed that the jeep driver was driving the jeep in high speed and he caused the accident.

10. Once again reverting to spot map Ext. P.W. 10/A, the skid marks on the road were 74 feet in length. For the vehicle going from Hamirpur to Nadaun side point 'A' shown in spot map Ext. P.W. 10/A is on the extreme right side. It is not a case that the accident took place on the left side of the road for a vehicle going from Hamirpur to Nadaun or even in the middle of the road. The skid marks of 74 feet on the road are clear to show that the jeep was being driven in high speed, the respondent could not control the jeep due to his rash or negligent driving and high speed and the jeep went from left side to right side and crushed the girl at point 'A'. The photographs Ext. P.9/K to Ext. P-9/N would show that accident took place almost on the edge of the road which was the wrong side for the jeep. The defence of the respondent that the accident took place all of a sudden when the girl was in the process of crossing the road has not at all been established from the evidence on record. On the contrary, it has been proved from the spot map and other evidence that respondent rashly or negligently took the vehicle from almost left side of the road to the right side of the road which was wrong side for him and struck against the girl as a result of which she died. In *Thakur Singh v. State of Punjab* : (2003)9SCC208 , the Hon'ble Supreme Court was considering a case under Section 304-A, IPC and in para 4 has held as follows:

It is admitted that the petitioner himself was driving the vehicle at the relevant time. It is also admitted that bus was driven over a bridge and then it fell into canal. In such a situation the doctrine of *res ipsa loquitur* comes into play and the burden shifts on to the man who was in control of the automobile to establish that the accident did not happen on account of any negligence on his part. He did not succeed in showing that the accident happened due to causes other than negligence on his part.

11. In the present case, the respondent has not at all explained under what circumstances he struck the deceased girl almost on the edge of the wrong side of the road after leaving skid marks of 74 feet in length on the road. The explanation of the respondent that deceased all of a sudden tried to cross the road and in that process she struck with the mudguard of the jeep does not emerge from the evidence, rather it is false. The prosecution has proved rash or negligent driving on the part of the respondent which caused the death of Anu. Thus, offence under Sections 279, 304-A, IPC is proved. The appeal is allowed and acquittal of respondent, recorded by learned Chief Judicial Magistrate by the impugned judgment, is set aside. The respondent is convicted for having committed offence under Sections 279 and 304-A, IPC.

12. Now, the question is of quantum of sentence. The accident took place on 18-4-1995, more than 12 years ago, and at that time respondent was about 23 years of age. The pendency of the case has already consumed more than 12 years. The Hon'ble Supreme Court in Thakur Singh's case (supra), after noticing Dalbir Singh v. State of Haryana : 2000 CriLJ2283 , has held that Probation of Offenders Act cannot be invoked in cases involving rash and negligent driving resulting in death of human beings. Therefore, the benefit of Probation of Offenders Act cannot be given to the respondent. However, the fact cannot be ignored that the accident took place more than 12 years ago. Hence, the respondent/accused is sentenced under Section 279, IPC to undergo imprisonment for two months and fine of Rs. 500, in default of payment of fine he shall undergo further imprisonment of 15 days, he is further sentenced under Section 304-A, IPC to undergo imprisonment for six months and fine of Rs. 5000 and in default of payment of fine, further imprisonment for one month. The sentences shall run concurrently. The respondent/accused shall get benefit of Section 428, Cr.P.C. He shall surrender to serve out the sentence imposed. The bail bonds of the respondent/accused are cancelled.