

State of H.P. Vs. Man Singh

State of H.P. Vs. Man Singh

SooperKanoon Citation : sooperkanoon.com/890222

Court : Himachal Pradesh

Decided On : Apr-26-1994

Reported in : 1995CriLJ299

Judge : D.P. Sood, J.

Acts : Indian Penal Code - Sections 279, 337 and 338; ;Code of Criminal Procedure (CrPC) - Sections 154, 251 and 313

Appeal No. : Criminal Appeal No. 77 of 1987

Appellant : State of H.P.

Respondent : Man Singh

Advocate for Pet/Ap. : R.M. Bisht, Law Officer

Judgement :

D.P. Sood, J.

1. In this appeal against acquittal, the State of Himachal Pradesh, has assailed the judgment dated July 30, 1986, passed by the learned Sub Divisional Judicial Magistrate, Arki, District Solan, for the commission of offence under Sections 279/337/338 IPC, in Criminal Case No. 45/2 of 1984.

2. As per the prosecution case, the incident occurred on November 22, 1984, at about 2 P.M. at a place forming the portion of bus stand, Bhrarighat. Accused Man Singh was driving bus bearing Registration No. HPU-1208 and he was proceeding from Shimla towards Bilaspur side. Bhrarighat is located in between. The prosecution case is that S/Sh. Navjot Kalra, PW-1 and Pawan Kumar, PW-13 were passengers of another Himachal Road Transport Corporation bus, which also had stopped at Bhrarighat on its way from Shimla to Bilaspur. Both PWs 1 and 13 were standing by the side of a danga (retaining wall) of the shops belonging to Bishan Dass (PW-10) and Parkash Chand (PW-7) as shown in site plan Ex. PW-14/A at point 'A' i.e. to the extreme left side of the main State Highway known as 'Shimla-Bilaspur Road'. The tarred width of the road at the relevant place is 32' 6". Shops of both PWs 7 and 10 are located at a height of about 5' from the level of the main road. The prosecution version is that accused was driving his bus at a fast speed which struck against the retaining wall and caused not only simple but also grievous injuries on the person of Pawan Kumar Madan (PW-13): It is alleged that the injured was pressed in between the bumper of the bus and the retaining wall. The accused removed the injured in his bus to a hospital located at Bilaspur. Statement of the other passenger, namely, Navjot Kalra (PW-1) was recorded by A.S.I. Rajender Pal, In charge, Police Post (City) Bilaspur under Section 154 of the Code of Criminal Procedure who sent ruqaa to the Police Station, Arki, on the basis of which FIR Ex. PW-6/A was registered against the accused by the police of Police Station, Arki. The accused remained admitted in the hospital for a period of 6 months. Head Constable, Dev Raj, In charge, Police Post, Bhrarighat (PW-14) visited the spot, prepared site plan Ex. PW-14/A, collected medical evidence and recorded the statements of material witnesses and thereafter, on completion of investigation, prosecuted the accused.

3. Notice of accusation under Section 251 of the Code of Criminal Procedure, was put to the accused, to which he pleaded not guilty and claimed trial. However, in his statement under Section 313, Cr.P.C, he pleaded to the following effect:

On the day of occurrence, it was raining since morning and I was driving the bus at a low speed. There was also diesel at the scene of occurrence and the bus skid. There were many people in front of the bus. The bus skid towards the drain and I

let the bus go towards drain in order to save other persons those who were in front of the bus.

4. The prosecution produced 14 witnesses in support of its case. The accused led no evidence in defence.

5. The learned Court below, on appraisal of evidence, recorded the impugned order of acquittal, by holding that:

15. After discussing the entire evidence led by the prosecution, it is clear that the brakes of the bus were not perfectly in working condition and full effective brakes of the bus were only at paddle No. 3. There is no evidence to prove that the accident took place due to rash and negligent driving of the accused....

While discussing the evidence, the trial Court observed that the testimony of PWs 1 and 13 is of contradictory nature.

6. I have heard the learned Law Officer and have also gone through the entire record.

7. At the very outset, it is pertinent to detail that not only is there absolutely no evidence to support the defence version, but the prosecution evidence completely rules out the possibility of the bus having skidded on the road on account of existence of diesel or on account of it having rained incessantly since the morning. As per the site plan produced and proved on record, both PWs 1 and 13 were standing on the extreme left side of the main road by the side of the retaining wall. The tarred road is 32'6' in width. PWs 1 and 13 have categorically stated that the bus in question driven by the accused came there from Shimla side at a very fast speed and hit PW-13 and pressed him into the retaining wall. The medical expert, namely, Dr. N. K. Sankhyan (PW-3) has categorically proved that PW-3 sustained not only simple but also grievous injuries. He has also proved his MLC Ex. PW-3/A. In other words, according to medical evidence, the injuries sustained by PW-13 Pawan Kumar are consequent to the impact of the bus in question as per the manner stated by him. Though there is no direct evidence to support the prosecution case that the bus came without stopping before the scene of

occurrence, as has been deposed by PW-1 Navjot Kalra, the circumstances emerging from the record speak for themselves to show that the accused had failed to apply not only the brakes but also he was inattentive and had not kept a proper look out for persons who were walking/ standing at the bus Stand, Bhrarighat at the material time, though he was not in a position to see them.

8. The first ground, leading to the recording of acquittal by the Court below, is that the statements of PW-1, the bus came at a fast speed and accused did not apply the brakes, whereas according to the version of PW-13, the accident took place due to fast driving of the bus by the accused. These are not statements of contradictory nature nor two versions appear from the record. The learned Court below has given an erroneous approach to the testimony of the two witnesses in concluding the manner in which the occurrence had taken place. The mere fact that there were no marks of tyres on the road nor he heard the sound of brakes at the time of occurrence nor the factum of the brakes being loose, were sufficient to conclude that the accused had applied brakes and he was cautious enough to avoid the accident by allowing the bus to go towards the drain. In fact, site plan shows that the driver could have looked out to the persons standing on or by the side of the road from a distance. The statements cannot be termed as of contradictory nature. Such discrepancies or contradictions are bound to occur because different persons standing at different places view the incident as per their own observations and from different angles. When a serious incident occurs, naturally, the on-lookers may not be concentrating their attention or faculties to the minutest aspects as to in what manner, the occurrence had taken place. Their first attempt is always that the seriously injured person, be extended medical aid at the earliest.

9. Record of this case shows that Pawan Kumar injured was taken out from in between the bus and the retaining wall by the accused and removed to the hospital at Bilaspur by him. The statements of the witnesses are to be viewed in the circumstances, existing at the spot. Discrepancies, on minute details, as observed above, are inevitable and in this case such discrepancies or contradictions, have not at all affected the credibility of the witnesses in relation to the broad aspects of the prosecution case. Even the accused admits the incident

and the injuries suffered by Pawan Kumar PW-13. The site plan Ex. PW-5/A coupled with the evidence of the Investigating Officer examined as PW-14, do not show the existence of the diesel on the road. The learned Court below has gravely erred in concluding the existence of different versions in the prosecution case, emerging from the record and giving its benefit to the accused.

10. Viewing the case from another angle. The accused has admitted the incident, the injuries suffered by PW-13 with the impact of his bus which was driven by him at the material time. It is in this perspective that the only question which had to be considered by the trial Court was 'whether it will amount to rashness or negligence on the part of the driver bearing Registration No. HPU-1208 and whether it was such rashness or negligence which resulted into the accident and the injuries suffered by PW-13.' The presumption of innocence is available even to the accused and as a normal rule it is for the prosecution to establish the rashness or negligence and their relation to the incident and the consequences. I am of the considered and firm opinion that the evidence satisfactorily discharged that burden.

11. It is well settled that no person is supposed to drive a vehicle on any public way in a manner which may endanger human life and is likely to cause hurt or injury to any other person. The law casts a duty on every user of the route or public way to exercise due care and caution while driving a motor vehicle. The amount of care and caution required to be exercised by a driver while driving on a public way would, of course, depend upon the situation and circumstances in which he is driving. When there are pedestrians about, the driver must keep alert and remain ready in case a pedestrian steps from a street refuse or a foot path or from behind some obstruction. The responsibility of the Driver becomes all the more greater while driving through a residential area and still greater when children of tender age are seen playing or walking in such area. Similar is the case when the driver is approaching the bus stand where normally the buses stop and its passengers or other pedestrians flock. The driver is under a duty to take all reasonable care to avoid the possibility of harm being caused to the pedestrians or persons of tender age, whose behaviour on appearance of a motor vehicle is most uncertain. The circumstances proved on record in the instant case are to be

viewed in view of the legal proposition detailed above.

12. At the cost of repetition, the width of the road is such that accused could have driven the vehicle straight. He was conscious of the fact that he was approaching a bus stand. Even, according to his plea in defence, he saw many persons standing on the road whereto his bus was proceeding. He does not state in his statement under Section 313, Cr.P.C. nor any such suggestion has been put to any of the witness that while his bus was approaching towards the bus stand, Bhrarighat, he continued sounding the horn. Rather, his simple plea is that he did apply the brakes and was driving the bus at a slow speed. Apart from it, the other circumstance detailed by him is the existence of diesel on the road upon which the bus skidded and ultimately occurrence took place.

13. As I have already observed above that there is no cogent and convincing evidence onrecord to the effect that diesel was in existence on the road at the material time. Apart from this fact, suggestion to PW-13 has been made that petrol was sprinkled at the place of occurrence. It is different from the plea taken by him in his statement under Section 313, Cr. P.C. Diesel, in fact is too slippery but petrol is not so much, as compared to the former. The other suggestion is that accident had taken place due to slip of brakes of the bus. Evidence also shows that it had rained earlier to the accident. According to the accused, the rain had started since the morning and he was plying the bus from Shimla to its place of destination. In the circumstances, the accused was required to be much more cautious with respect to the condition of the bus. He could have verified as to whether the brakes of his vehicle were or were not in working order. According to Sh. Gian Chand, Mechanic (PW-5) who inspected the bus, the brake was defective and full effective brakes were found on third paddle. According to him, the bus required brake shoe adjustment for effective brakes. The defence has not set up the plea that the accused had got the vehicle mechanically examined before the journey commenced from Shimla. Naturally, the principle of *res-ipsa-loquitur*, would come into play. In other words, the Driver was careless in his duty in handling the vehicle from the very start. To his knowledge, it was raining before he started from Shimla. He did not see whether bus was in perfect order of being put to road. This fact also shows his negligence. In *Thomas v. State*, ILR (1971) 1

Kerala 318 it has been observed :

Culpable rashness in acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that that will not and often with the belief that the actor has taken sufficient precautions to prevent their happening, the imputability arises from acting despite the consciousness.

In Duli Chand v. Delhi Administration, AIR 1975 SC 1960 : (1975 Cri LJ 1732) the accused while driving a bus on a cross road knocked down the deceased, who was on a cycle. It was held that his failure to look on right while approaching the cross road was negligence, though the bus was driven at a moderate speed of 20 miles. In another decision in Usman Gani Mohammad v. State of Maharashtra, (1979) 3 SCC 362 which was a case where a girl was knocked down and the version of the driver was that he did not notice how the impact took place and how the girl came under his lorry, it was, therefore, held that he was inattentive and had not kept proper look out for persons who were walking though he was in a position to see them from quite a distance and this would establish negligence on his part while driving the lorry.

14. In the instant case, the accused has not given the speed at which he was driving his bus on the road nearing bus stand, Bhrarighat. His simple statement is that he was driving at a low speed and he applied the brakes. May it that be so, yet the injuries suffered by PW-13 Pawan Kumar indicate his negligence from the very inception when he took the vehicle under his command for the purpose of discharging his duties. The above said fact is a corroborative evidence to the other evidence adduced by the prosecution as discussed above.

15. The trial Court has not considered all the aspects in appreciating the evidence and coming to the conclusions in having recorded the order of acquittal. The appraisal of evidence is neither reasonable nor proper in the circumstances. Ordinarily, the jurisdiction of this Court in a Criminal Appeal is restricted and it cannot embark upon lightly interfering the order of acquittal, however, in case the evidence by the trial Court is not properly legally appreciated, the powers of this Court are not restricted in re-appreciating the same.

16. In view of the above, the accused is found guilty for the commission of offence under Sections 279/338, IPC. and convicted under these Sections.

17. On the question of sentence, suffice it to state that the record of the case shows that notice of appeal was served upon the accused and he submitted his bond with respect to the appearance in the Court as and when directed. Record further shows that notice of actual date through registered post was also sent as envisaged under Chapter III-A of the Rules and Orders of Punjab High Court, Vol. V., as applicable to this Court, but he did not appear. In the circumstances, the accused (now respondent) has not been able to be heard on this aspect of the case. I need not repeat that this nature of crime requires deterrent punishment. It is necessary to emphasise the magnitude of the pain and suffering caused to PW-13 Pawan Kumar on account of the culpable rashness and negligence of the accused. The plying of vehicles rashly or negligently by drivers thereof have become a perpetual danger to the pedestrians and vehicular traffic. We cannot forget the fact that the interest of society is a prime consideration in the exercise of sentencing discretion. If the sentence will act as a deterrent to other drivers, the benefit derived by the society thereby will far outweigh the difficulties of the accused and his family. In the circumstances, the accused is convicted and sentenced to simple imprisonment for six months and Rs. 1000/- fine for the offence under Section 279, IPC. He is also convicted and sentenced to simple imprisonment for six months and a fine of Rs. 500/- for the commission of the offence under Section 338 IPC. The Substantive sentences under both the offences shall run concurrently. In default of payment of fine, the accused shall undergo simple imprisonment for three months under each count. Out of the fund, if realised, and amount of Rs. 1500/- be paid to Pawan Kumar, PW-13. The driving licence of the accused shall remain suspended for a period of one year from the date when the accused surrenders himself or when he is arrested consequent upon the punishment awarded to him. The appeal stands disposed of accordingly.