

State of Himachal Pradesh Vs. Varinder Kumar

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Court : Himachal Pradesh

Decided On : Mar-28-2008

Reported in : 2008CriLJ4175

Judge : Sanjay Karol, J.

Appellant : State of Himachal Pradesh

Respondent : Varinder Kumar

Disposition : Appeal allowed

Judgement :

Sanjay Karol, J.

1. The present appeal arises out of judgment dated 25-2-2000 passed by Judicial Magistrate, 1st Class (4), Shimla, acquitting the accused of the offence punishable under Sections 279, 337 and 338,, IPC.

2. As per the case of the prosecution, on 31-7-1997 complainant-Dharam Pal was travelling in a private bus bearing No. HP-22-4311 from Nadaun to Shimla. The bus was being driven by the accused Varinder Kumar. At about 11.10 a.m., when the bus was about to reach a place called Ganahatti, on seeing the Truck bearing No. HP-11-2387, coming from opposite direction, the accused applied his brake but due to high speed and wrong direction the bus collided with the truck. The

accident occurred due to rash and negligent acts of the accused and the passengers sitting in the bus sustained injuries and both the vehicles were damaged. The statement of complainant-Dharam Pal (Ext. PW-8/A) under Section 154, Cr. P. C. was recorded and based on the same FIR No. 104, dated 31-7-1997 (Ext. PW-8/C) was registered against the accused with the Police Station Boileauganj, Shimla, under Sections 279, 337, IPC. The Police machinery was put into motion and the matter was investigated. The bus was impounded and the documents were recovered vide recovery memo Ext. PW-4/A. The broken pieces of glasses of the truck were taken into possession vide memo Ext. PW-4/B. Spot map (Ext. PW-8/B) was prepared and photographs of the vehicles were taken. The vehicles were also got mechanically examined vide report Ext. PW-5/A. The injured were also medically examined through Dr. J. L. Sharma (PW-7).

3. With the completion of the investigation, the challan was presented in the Court for trial. The accused was charged for an offence punishable under Sections 279, 337 and 338, IPC, to which he did not plead guilty and claimed trial.

4. In order to prove its case, the prosecution examined 10 witnesses and the statement of the accused under Section 313, Cr. P.C. was also recorded.

5. Considering the material on record, the Court below acquitted the accused of the charged offence giving him the benefit of doubt for the reason that there was a big pit on the curve and while negotiating the same, the accident occurred.

6. The benefit of doubt was also given for the reason that it had been raining and when the brakes were applied the bus skidded on the mud, which resulted into the occurrence of the accident. The Court found the evidence adduced by the prosecution not to be cogent, clear, consistent and corroborated and, therefore, did not inspire confidence. The prosecution witnesses were disbelieved on this count.

7. I have heard the learned Counsel for the parties and also seen the record.

8. In *State of Haryana v. Surinder and Ors. etc.* reported in : AIR 2007 SC2312 the Apex Court has held as under:

The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

9. In *Rathnashalvan v. State of Karnataka* : 2007 CriLJ1451 and *Prabhakaran v. State of Kerala* : AIR 2007 SC2376 , the Apex Court has considered what rashness and negligence would mean in the context of criminal culpability:

5....A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not...

6...Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that civil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

7. As noted above, 'Rashness' consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or

indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either 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 person to have adopted.

(Emphasis supplied)

Now applying the aforesaid principles, the evidence needs to be examined.

10. From the material on record, it is clear and undisputed that the two vehicles were involved in the accident and the accused was driving the bus at the relevant time.

11. In order to ascertain as to whether the accused was driving the vehicle, on public highway in a rash and negligent manner so as to endanger human life and personal safety of others and also cause simple and grievous injuries, the statements of the witnesses need to be examined.

12. Sri Paras Ram (PW-1) is the photographer, who has proved on record the photographs and negatives being Ex. P-1 to Ext. P-5 and Ext. P-6 to Ext. P-10, respectively. According to him, he took the photographs between 11 and 12 on 4th September, 1997.

13. LHC Tulsi Ram (PW-4) is the police official, who has witnessed the recovery of documents of the vehicle and license vide Ext. PW-4/A and Ext. PW-4/B. Sh. Vidya Sagar (PW-5) has mechanically examined the vehicles in question and in terms of his report Ext. PW-5/A, he has certified the fitness of the vehicles.

14. Dr. J. L. Sharma (PW-7) medically examined Smt. Ram Dei (PW-3), who received both simple and grievous injuries, as per MLC Ext. PW-7/A, which according to him were possible due to bus accident. He examined Laxmi Chand, who suffered simple injuries in terms of MLC Ext. PW-7/B and also examined Dharam Pal (PW-10), who suffered injuries in terms of MLC Ext. PW-7/C.

15. Shri Baldev Singh (PW-8), the Head Constable has proved that he carried out the investigation pursuant to the registration of FIR Ext. PW-8/C and after visiting the spot of occurrence got the passengers medically examined and prepared the site plan. On investigation he found that the accused was on the wrong side and driving the vehicle in a rash and negligent manner which resulted into the occurrence of the accident. He has, however, admitted that at the place of accident there is a curve and a pit. He proved that he got the vehicles photographed, which were taken on record. According to him, injuries were suffered by PW-6 and the passengers of the bus. He denied the suggestion put to him that due to rain there was mud and water on the road but has volunteered to depose that the water was on one side of the road and not at the spot where the vehicle collided.

16. None of the aforesaid witnesses have actually witnessed the occurrence of the accident, but, however, it stands proved that at the time and place of the occurrence of the accident the vehicle was being driven by the accused, which met with an accident and the passengers of the bus sustained injuries both simple and grievous.

17. Shri Yash Pal (PW-2), Smt. Ram Dei (PW-3) and Sh. Dharam Pal (PW-10) were the passengers travelling in the bus and Khem Raj (PW-9) was the driver of the truck with which the bus had collided. Their statements need to be examined to ascertain the culpability of the accused in the commission of the charged offence.

18. Yash Pal (PW-2) is a passenger of the bus, was declared hostile and examined by the Public Prosecutor. In spite of the fact that he resiled from his statement made to the police under Section 161, Cr. P.C. with which he was confronted, this witness has not fully exonerated the accused. Even though he has denied the suggestion that the bus collided due to high speed and negligence of the accused or that there was no mud at the spot, but, however, has clearly and categorically deposed that both the drivers were at fault. This part of his testimony goes un rebutted and unchallenged.

19. Smt. Ram Dei (PW-3) has deposed that she was travelling in the bus which met with an accident. The bus was being driven by the accused at a high speed. The truck came from the opposite direction and the bus collided with the same and the accident occurred due to the fault of the accused as the vehicle was in speed. As a result of the accident she lost six teeth. She recognized the accused in the Court. During her cross-examination, she has been consistent in her stand and has reiterated her earlier version. According to her, she was sitting two rows behind the driver seat from where the road and the front of the vehicle were easily visible to her. At the place of accident there was a curve and a pit on the left side where there was water. She has admitted that she was medically examined but has denied that accused was not driving the vehicle at great speed.

20. Importantly, no suggestion has been put to this witness that at the relevant time in order to avoid the pit the accused had actually manouvred the bus, which resulted into the occurrence of the accident. Her statement stands corroborated by the version of PW-2, according to whom drivers of both the vehicles were at fault. Simply, because the driver of the truck was at fault that by itself would not absolve the accused of his liability to be prosecuted in accordance with law. Her version that there was a pit and water on the left side stands corroborated by PW-8.

21. As per the sworn testimony of Shri Jatinder Kumar (PW-6), conductor of the truck, the truck was being driven by its driver on its correct side, but, however, the accused who was driving the vehicle at great speed ramped the bus into the truck. The accident occurred due to rash and negligent acts of the accused whom he recognized in the Court. In his cross-examination, he clarified that the speed of the truck was 30 to 35 kms., and their vehicle was not loaded and was within the speed limits. According to him, when the truck was negotiating the curve, the remaining width of the road on the conductor side was just about two feet. None of the occupants of the truck sustained injuries.

22. Sh. Khem Raj (PW-9), driver of the truck has fully supported the prosecution version. According to him, while he was on his way to Darlaghat near a place called Ganahatti, he saw a bus being driven on the wrong side, coming from the opposite direction and collided with his truck. The bus, being driven by the

accused, was also at great speed and due to the fault of the accused the vehicles met with an accident, he identified the accused. He corroborated the version of PW-2, PW-3 and PW-6 that the accident occurred due to the fault and negligence of the accused. He admitted that there was a pit on the left side of the road but, however, has denied that in order to negotiate the same the accused applied the brakes which resulted into the skidding of the bus and the accident did not occur due to the rash and negligent driving of the accused. According to him, PW-6 also sustained injuries.

23. Sh. Dharam Pal (PW-10) was travelling in the bus at the relevant time. He has admitted that the vehicles in question met with an accident, but could not state who was at fault. He was declared hostile and was confronted with his original version recorded under Section 154, Cr. P.C. (Ext. PW-8/A). According to him, the accused was driving the vehicle at normal speed and the accident occurred as the accused was trying to negotiate the pit, which was full of mud and water.

24. The sworn testimonies of PW-2, PW-3, PW-6 and PW-9 are clear, cogent and consistent. The presence of these witnesses at the spot has not been disputed by the accused as is quite evident from the line of cross-examination. In my view, there is nothing in their statements which would shatter their veracity and make them unbelievable. They are totally reliable and their version also stands supported by the material on record. The photographs Ext. P-1 to Ext. P-5 and also site plan Ext. PW-8/B would show that the truck was on the extreme left side of the road and the bus coming from the opposite direction was absolutely on its wrong side. Perusal of the photographs would also show that the pit, being referred to by the accused in his defence, is on the berm and extreme right side and totally outside the metalled portion of the road. The gap between the truck and the pit was enough for any vehicle to have crossed very easily and comfortably.

25. The accident admittedly took place during the rainy season and the accused was expected to exercise due care and caution while driving the vehicle on the National Highway. It was expected of him to take into account the fact that on the curves the vehicle, if not driven at normal speed is bound to cause accident. He failed to exercise due care and caution thus rendering his acts to be reckless and

negligent. All the spot witnesses have unanimously supported the case of the prosecution. The defence that the bus skidded while maneuvering the pit is not supported by the record. The photographs and site plan do not show any skid marks at the site. In my view, the accused has been guilty of the offence charged for and the judgment rendered by the Court below needs to be interfered with. While arriving at its conclusion the evidence led by the prosecution is not cogent, clear and consistent the Court below has not assigned reasons. Similarly there is error in the conclusion that the version of the witnesses is uncorroborated and their statements did not inspire confidence.

26. No doubt PW-10, who was declared hostile, has given the version of innocence of the accused, but, however, his version stands belied by the material on record. The photographs prove that the pit is on the berm outside the metalled portion of the road, which is a National Highway. The road is not narrow and vehicles can easily cross each other. Further, PW-3, PW-6, PW-9 witnesses of the occurrence have consistently proved the guilt of the accused. Even PW-2 has deposed that the accused was at fault. Therefore, the version of PW-10 cannot be said to be the true and correct version raising a doubt about the innocence of the accused.

27. In the present case the prosecution witnesses (who are also independent witnesses) have consistently and cogently deposed that the accident occurred due to rash and negligent driving of the accused.

28. No suggestion has been put to any of the witnesses with regard to false implication of the accused in the matter. It is not a case that a cross complaint against PW-9 was either pending investigation or under trial. PW-6 and PW-9 may be stated to be interested witnesses, but, however, that fact by itself would not discredit their version. PW-9 has categorically stated that his vehicle got damaged due to the collision. The broken parts of the truck were also taken into possession by the Investigating Officer. The damage itself shows that the bus was being driven at high speed and no brakes were applied to maneuver the pit which in any event was on the berm of the road. There is no cross-examination on this point at all.

29. The version of the accused that he applied the brakes due to which the vehicle skidded is also not borne out from the record.

30. In the present case, the accused was driving the vehicle which was full of passengers. He ought to be conscious of the risk to which he was putting the passengers, by driving the vehicle at a high speed in a hilly terrain and during the monsoon season. Therefore, he was under an obligation to drive the vehicle in such a manner so as not to endanger the human life. The fact that he did not take any reasonable care is writ large.

31. Learned Counsel for the respondent has argued that there is contradiction in the statements of PW-9 and PW-3, which in my view is incorrect. According to him, as per the version of PW-9 at the time of the accident the truck was stationary, whereas according to PW-3 the truck was moving. A careful scrutiny of their statements of these witnesses as also the photographs would show that the accident occurred on the curve and PW-3 and PW-9 were sitting in front of the respective vehicles. On seeing the vehicle coming from the opposite direction PW-9 applied brakes and swerved to his left, which made the truck stationary. This is evident from the photographs as can be noticed that the truck went absolutely outside the metalled portion of the road and on the extreme left side on the berm. PW-9 has deposed that seeing the bus he had applied the brakes. The truck was bound to become stationary. Therefore, there is no contradiction in their statements.

32. To my mind, there are no contradictions in the version of PW-6, PW-9 and PW-8 with regard to the injuries sustained by PW-6. Simply because PW-6 has not stated that he sustained injury would not make the version of PW-8 and PW-9 to be contradictory. In any event, whether PW-6 received injury or not is not relevant to the main issue determining the guilt of the accused in the commission of the charged offence.

33. Learned Counsel for the respondent has further argued that even with regard to date of accident the witnesses have contradicted themselves. According to PW-1, PW-4 and PW-6 the accident took place on 4-9-1997, 31-7-1997, 23-7-1997, respectively. In my view, the contradictions are not material and minor having no

bearing on the prosecution case as the date on which the accident took place is not disputed by anyone. The statements of these witnesses were recorded in the Court in the year 1999 and variation is possible. In any event these witnesses have indicated the year and the approximate time of the accident, therefore, this contradiction being immaterial would not be fatal to the case of the prosecution. It is not the case of the accused that none of the prosecution witnesses were present at the time and place of the occurrence of the accident.

34. In my view, it has been proved on record beyond reasonable doubt that the accused was driving the vehicle in question on Public Highway in a rash and negligent manner endangering human life, which has caused injuries both simple and grievous and has endangered human life and personal safety of the passengers.

35. In my view the prosecution has been able to prove the guilt of the accused in the commission of the offence. A perusal of the material on record would show that the accused was driving the vehicle on the wrong side and there was enough space for crossing the vehicle at the relevant place.

36. The recklessness and indifference as to the consequences are writ large in the present case, which would only show the gross culpable neglect and failure to exercise reasonable and proper care and precaution to guard the passengers against any injury. The accused has not raised any defence of the mechanical failure of the vehicle in question.

37. The statements of PW-2, PW-3, PW-6 and PW-9, sufficiently prove the guilt of the accused beyond reasonable doubt, leading to no other hypothesis except to the guilt of the accused. The appreciation of the evidence by the Court below, therefore, in my view is contrary to law, perverse and resulting into miscarriage of justice. Therefore, there is no enough material on record to prove the guilt of the accused to have rashly and negligently driven the vehicle in a manner so as to endanger human life, personal safety and cause injury to the occupants of the bus.

38. Any doubt showing the innocence of the accused is absent. In my view, the acquittal of the accused had resulted into miscarriage of justice. The Court below

has not correctly appreciated the evidence while acquitting the accused and relevant convincing materials have not been considered. As has been noticed, there are compelling and substantial reasons for interfering with the judgment of the Court below. The reasoning and finding returned by the Court below are totally unreasonable and the relevant material has been ignored while arriving at its conclusion.

39. The decisions in *Beda Kanta Phukan v. The State of Assam* 1992 Cri LJ 1197, *State of Karnataka v. Satish IV* (2006) ACC 582 (SC) and *Bajinath Singh v. State of Bihar* 1972 STPL (LE) 6286 : 1972 Cri LJ 919 (SC) referred to and relied upon by the learned Counsel for the respondent, in my view, do not apply to the facts of the present case. Those were cases where the accused was acquitted on the ground that except for the fact that the accused were driving the vehicles at a high speed there was no other evidence on record.

40. The Court held that simply because the vehicle was being driven in high speed that fact alone would not lead to the presumption of rashness or negligence.

41. The decision of Orissa High Court in *Badri Prasad Tiwari v. The State* reported in 1994 Cri LJ 389, as referred to by the learned Counsel for the respondent is clearly distinguishable on facts.

42. The prosecution has been able to prove the guilt of the accused in the commission of the offence and the accused is held guilty for the charged offences punishable under Sections 279, 337 and 338, I.P.C.

43. For the foregoing reasons, the appeal is allowed and the impugned judgment dated 25-2-2000 is set aside.