

Kushal Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-26-2009

Reported in : 2009(1)ShimLC532

Judge : Surinder Singh Thakur, J.

Appellant : Kushal Singh

Respondent : State of H.P.

Disposition : Petition allowed

Judgement :

Surinder Singh Thakur, J.

1. The present Criminal Revision petition has been filed by the petitioner against the concurrent findings of his guilt for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, whereby the petitioner was sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 500 for each of the offences under Sections 279 and 337 IPC and to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 1,000 under Section 338 I.P.C.

2. Precisely, the facts of the case which have given arisen to the present petition are that on 22.11.1995 complainant PW 1 Sh. Rajesh Kumar was driving his

Maruti Van bearing registration No. DDA-1093 with his family members, namely, Sheelawanti, Bakshish Singh and Ajit Singh and were going to Baba Barh Bhag Singh in District Una. According to the complainant he was driving in a moderate speed. When he reached at a place known 'Lalsingi', an H.R.T.C. bus bearing No. HP-37-0301 came from the opposite side which was being driven by the petitioner herein, rashly and negligently. It hit the side of the Maruti Van, consequently, his Van over-turned with its impact on the road side and the occupants of the vehicle sustained injuries. They were immediately removed to the hospital for medical treatment and Rajesh Kumar (PW 1) informed the police and lodged a report Ext. PW-1/A.

3. The police reached the spot, took into possession the documents of the Van along with driving license of Rajesh Kumar vide memo Ext. PW-1/B. The accused-petitioner was arrested and enlarged on bail.

4. During the investigation of this case, a mechanical examination of both the vehicles was got conducted from police Mechanic Sh. Swarup Lal (PW 6). He submitted his reports Ext. PW-6/A&B.; The police also obtained medical certificates of the injured persons. Smt. Sheelawanti had sustained grievous injuries on her person and others had sustained multiple simple injuries. After recording the statements of the witnesses, the challan was presented in the court against the petitioner for his trial.

5. Finding a prima facie case against the accused, notice of accusation under Sections 279, 337 and 338 of the Indian Penal Code was put to the petitioner to which he pleaded not guilty and claimed that he has a defence to make.

6. To prove its case, the prosecution examined its witnesses and the petitioner was also examined under Section 313 Cr.P.C. with respect to the circumstances which were found attendant upon him. Although, he admitted that he was driving the vehicle at the time of the accident but he denied that it was due to his rash and negligent driving. He pleaded innocence. At the end of the trial, the petitioner was convicted and sentenced for the aforesaid offences which he unsuccessfully assailed in appeal. Consequently, he filed the revision petition on the grounds that the evidence on record was wrongly appreciated and the law was incorrectly

applied.

7. I have heard learned Counsel for the parties and have carefully gone through the record of the case.

8. PW 1 Rajesh Kumar, PW 2 Sheelawanti and PW 3 Bakshish Singh have only stated to the extent that the accused petitioner was driving his bus in a high speed but there is no whisper that the accident occurred on account of his rash or negligent driving. In contrast to the above statement there is PW 7 Naresh Kumar, who was travelling in the bus in question, though turned hostile to the prosecution yet he made an important deposition that he saw the Maruti Van coming from the opposite side but while negotiating the curve its driver lost the control and struck it against the tree. In his cross-examination conducted by the accused he admitted that the bus was in a normal speed.

9. In order to test the veracity of PW 1 to PW 3 above in the light of the statement of PW 7 the site plan and the photographs would have thrown some light to ascertain which version is true. But during the trial the Investigating Officer deposed that when he reached the spot the vehicles were already repositioned thus that spot got disturbed. Thus, the court was also deprived of to appreciate the spot. The above witnesses only deposed about speed of both vehicles without spelling out the rash or negligent driving of the petitioner.

10. Legally, to prove the offence under the aforesaid sections, it is not the speed alone which a decisive factor, but the prosecution is obliged to prove the rash or negligent act of driving by the driver of the offending vehicle by leading a cogent and reliable evidence. [See: State of H.P. v. Parmodh Singh, Latest HLJ 2008 (HP) 1360]. Once the rash or negligent act is established, only in that situation the onus to disprove it, shifts upon the accused to show that he had taken due care and caution to avoid the accident. Further, it must be proved that rash and negligent act of the accused was causa causans and not causa sin qua non (cause of the proximate cause). There must be some nexus between the injury/death of a person with rash or negligent act of the accused. [See: State of H.P. v. Manpreet Singh, Latest HLJ 2008 (HP) 538].

11. Simply because the complainant or his relatives who were the occupants of the Van had sustained injuries in the accident by itself would not be sufficient to hold the petitioner guilty for the offences alleged against him.

12. Thus examining this case, in the light of the above law, I do not find anything in the evidence of the prosecution that the accident in question is attributable to the rash or negligent driving of the petitioner and the speed as already stated above is not sufficient to conclude the offence charged against the petitioner, which fact was ignored by the courts below.

13. Thus, in my considered opinion, the judgment of guilt passed by the learned trial Court and affirmed in appeal against the petitioner is wholly un-sustainable, accordingly the revision petition is allowed and the judgment of conviction and sentence passed by both the courts below, are hereby quashed and set aside and the petitioner stands acquitted of the offences. The fine amount if deposited be released to him forthwith. The petition is accordingly disposed of.

Send down the record.