

State of H.P. Vs. Rajesh Kumar

State of H.P. Vs. Rajesh Kumar

SooperKanoon Citation : sooperkanoon.com/891634

Court : Himachal Pradesh

Decided On : Mar-04-2008

Reported in : 2008(3)ShimLC397

Judge : Sanjay Karol, J.

Appellant : State of H.P.

Respondent : Rajesh Kumar

Disposition : Appeal dismissed

Judgement :

Sanjay Karol, J.

1. The present appeal arises out of the judgment dated 11th February, 2000 passed by Additional Chief Judicial Magistrate-II, Kangra in Criminal Case No. 214-II/93/92 titled as State of H.P. v. Rajesh Kumar, acquitting the accused of the charged offence under Sections 279, 337 and 304-A of the Indian Penal Code.

2. It is the case of the prosecution that on 6th December, 1990 at about 6.30 p.m., S.S.B. officials traveling in a Government vehicle bearing No. HPK-5260 towards Nurpur. The said vehicle was being driven by accused Rajesh Kumar. Near village Lappiana, when the vehicle had just crossed the bridge and was negotiating a curve where the road was quite steep, a scooter bearing No. PIH-2665 came from

the opposite side. Since the scooter was being driven in a rash and negligent manner, its rider could not control the same and consequently dashed into the truck due to which both rider and pillion rider received injuries. The officials of the S.S.B. brought the injured to a Hospital at Nurpur. On the version of SI Madho Ram (official of SSB), FIR No. 135/90 was registered with Police Station, Shahpur on 7th December, 1990 under Sections 279, 337 and 338, I.P.C.

3. Shri Ajay Kumar, driver of the scooter succumbed to the injuries and died and the pillion rider Chandi Dass received injuries.

4. Shri Tarsem Lal (PW-2) and deceased Sh. Ajay Kumar were got medically examined through Dr. A.R. Dutt (PW-6) and M.L.C. (Ext.PW-6/A) and Ext.PA were taken by the police. The inquest report of deceased Ajay Kumar Ext.PC was taken by the police. The truck was mechanically examined by Kewal Kumar (PW-5) in terms of his report (Ext.PW-5/A) and the scooter was also mechanically examined by Mohinder Singh (PW-10) in terms of his report (Ext.PW-10/A). Both the vehicles were seized vide seizure memos Ext.PW-1/A, Ext.PW-4/A and Ext.PW-4/B. Manohar Lal (PW-1) and Jaswant Singh (PW-4) witnessed the same.

5. During investigation Head Constable Nek Chand, Police Station, Shahpur, came to the conclusion that it was the accused Rajesh Kumar, driver of the truck who was responsible for the accident.

6. After completion of the investigation, the challan was presented in the Court for trial. The notice of accusation was issued to the accused for offence under Sections 279, 337 and 304-A I.P.C. to which the accused pleaded not guilty and claimed trial.

7. In order to prove its case the prosecution examined as many as 11 witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded. No evidence in defence was led by the accused. However, the defence taken by the accused in his statement as under:

Q. No. 16. Do you want to say anything else.

Ans. I was going to Harchakian at that time. There was a bridge at a distance of 30/35 yards away from the place of accident. I had crossed that bridge and thereafter I was on the ascent side. I was on the ascent and the speed of the vehicle was slow. The scooter was coming downwardly on a lower gradient It was in high speed. The scooter was on the wrong side of the road. On seeing the scooter, I stopped the truck. The scooterist tried to divert his scooter on his left side. He could not manage to do so and dashed against the truck. Accident occurred because of rash and negligent driving on the part of the scooterist.

8. The Court below appreciated the material in its entirety and came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and the accused could not be said to have committed the charged offence.

9. I have heard learned Counsel for the parties and considered the material on record.

Prem Singh (PW-8) endorsed rukka (Ext.PW-8/B) on the basis of which F.I.R. No. 135/90 was registered with Police Station, Kangra under Sections 279, 337 and 338 I.P.C. Nek Ram (PW-11) carried out the investigation and got the vehicles mechanically examined through Mohinder Singh (PW-10) and Kewal Kumar (PW-5). The injured were also got medically examined through Dr. A.R. Dutt (PW-6) in terms of M.L.C. (Ext.PW-6/A) and the inquest report of deceased Ajay Kumar was taken on record. Kali Dass (PW-9), police official made the entries in the Roznamcha pertaining to the challan filed in the Court. Kali Dass (PW-9) and Jaswant Singh (PW-4) witnessed the impounding of the vehicle vide seizure memo Ext.PW-1/A and Ext.PW-4/B.

10. From the statement of the aforesaid witnesses, it is clear that the vehicles in question met with an accident in which PW-3 sustained injuries and the driver of the scooter Shri Ajay Kumar succumbed to the injuries after the accident. This fact, however, would not be sufficient to prove the complicity of the accused with the commission of the charged offence, particularly, when Nek Ram (PW-11) has categorically stated that from the investigation he could not state with certainty whether the accident did not occur due to the fault of deceased Ajay Kumar who was driving the scooter at the relevant time. He has prepared spot map (Ext.PW-

11/A) and has deposed that just before the place of occurrence of the accident there is a bridge which has to be crossed at a slow speed as prior to the bridge there is a blind curve. The accused admittedly had crossed the bridge and was found to drive the vehicle at a slow speed.

11. A perusal of the spot map, in fact, would show that there is a blind curve immediately before the bridge and with the bridge there is a steep ascent.

12. The statement of the Tarsem Singh (PW-2) and Chandi Dass (PW-3) the spot witnesses need to be examined. Even though in his examination-in-chief PW-3, has stated that the accident took place due to the fault of the accused who was driving the truck. But, however, he has clarified that there was blind curve, which leads to the bridge and immediately thereafter there was another curve where the road was quite steep. At the spot of occurrence the road was steep and the vehicle coming from the side of the bridge has to climb up. He has also admitted that at the time when the truck was crossing the bridge it was at a slow speed and immediately along with the bridge there is steep climb and the truck was on its ascent whereas the scooter was on its decent. He was unable to specify the speed at which the scooter was being driven. In his examination-in-chief he has stated that the accused stopped the vehicle and then ran over the scooter. Photographs would however show that there is not much damage to the scooter.

13. PW-2 has admitted in his cross-examination that the spot of occurrence was not visible from the place where he was standing at the time of the occurrence of accident. He reached at the place of occurrence only after two minutes. He has admitted that from where the scooter was coming there was a blind curve and due to the blind curve the driver of the scooter could not see the vehicle coming from the opposite direction. He has, however, stated that there is a steep descent at the place where the scooter was coming at the relevant time. He has further admitted that the truck was ascending. He could not specify the speed at which the scooter was being driven. He could also not state as to whether the driver of the scooter had applied the brake at the time of accident. He could not specify that the accident might have occurred due to the scooter being driven at a high speed. He has further admitted that immediately before the bridge there is a blind curve and

the vehicle crossing the bridge has to be slowed down to maneuver the curve and immediately after the bridge there is a steep climb and the speed of the vehicle at the time of crossing of the bridge has to be slow.

14. Thus from the statements of PW-2 and 3, it cannot be said that both the witnesses have proved the complicity of the accused in the commission of the crime beyond reasonable doubt. It has come on record through the statements of PW-2, PW-3 and PW-11 that there is a blind curve and the bridge could be crossed only after the vehicle slowed down.

15. The trial Court has carefully considered the material on record and arrived at its conclusion. The Court below has correctly held that the vehicle in question had to be driven at the slow speed in order to negotiate the curve and cross the bridge.

16. In my view the accused cannot be said to have driven the vehicle in a rash or negligent manner and it cannot be said that the deceased died due to rash or negligent act of the accused. None of the essential ingredients necessarily required to constitute an offence under Sections 279, 337 and 304-A I.P.C. have been proved by the prosecution in the present case. It has come on record that the truck being driven by the accused was ascending and the scooter driven by the deceased was on its descent. It has been proved on record that the accused had slowed down his vehicle in order to negotiate the blind curve and cross the bridge which is quite narrow. It is the case of the prosecution itself that as per first information given by one Madhu Ram it was the driver of the scooter who was at fault and in fact immediately after the accident the injured were taken to the hospital by the officers of the S.S.B., the owner of the vehicle in question. There officers could have narrated the correct sequence of events but, however, in spite of cited witnesses they were not examined by the prosecution during the trial.

17. From the material on record, thus, it is clear that in order to cross the bridge the accused had slowed down his vehicle. The scooterist was on the descent and road was not fully visible. The witnesses could not state with certainty that the deceased was not driving the scooter at a high speed. As per the first version given to the police, it was the scooterist who was at fault, which probability can not be ruled out in the present case. The scooterist was not in a position to see the

road ahead as there was a curve. The defence of the accused that the scooterist was in speed and negligent and could not control his vehicle which resulted into the accident is quite probable from the material which has come on record.

18. The accused has had the advantage of being acquitted by the Court below and the entire material has been considered. I see no perversity in the same. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The appeal is dismissed and the bail bonds are discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com