

State Vs. Subash Singh

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Court : Jammu and Kashmir

Decided On : Apr-20-1998

Reported in : 1999CriLJ220

Judge : Arun Kumar Goel, J.

Acts : Ranbir Penal Code (IPC), 1989 Smvt. - Section 304A

Appeal No. : Criminal Acquisition Appeal No. 21 of 1989

Appellant : State

Respondent : Subash Singh

Advocate for Def. : None

Advocate for Pet/Ap. : Madan Baru, Addl. Adv. General

Disposition : Appeal dismissed

Judgement :

Arun Kumar Goel, J.

1. State has filed this appeal against the judgment passed by learned Sessions Judge, Kakthua on 27-4-1989, whereby the appeal filed by respondent against his conviction and sentence imposed upon him by the Judicial Magistrate 1st Class, Billawar was allowed thereby acquitting him of the offence under Section 304-A

Ranbir Penal Code. Trial Magistrate had found respondent guilty and had ordered him to undergo simple imprisonment for one year as well as to pay a fine of Rs. 2000/-, in default of payment whereof respondent was directed to undergo one month's imprisonment. On recovery of fine it was ordered to be paid to the children of the deceased, if any failing which it was further ordered that it be deposited in Government Treasury.

2. In order to properly appropriate the case as was urged by Shri Baru, learned Additional Advocate General, in support of this appeal, it is necessary to refer to few facts which are material for determination of this appeal.

3. As per prosecution case respondent was driving truck bearing registration No. JKN- 610. On 28-6-1986 Koshaliya Devi deceased got down from Buson Dhar Udampur road at village Parnala. While the deceased was crossing the road from in front of the Bus in which she was travelling, accident is stated to have taken place due to rash and negligent driving on the part of respondent when he was driving the aforesaid truck and had come from Mahanpur side. This truck is stated to have struck against the deceased as a consequence whereof she fell down on the road and breathed her last then and there.

4. On receipt of information F.I.R. came to be registered vide Ex. PDH 1 and police swung into action. Dead body of the deceased was taken into possession and after conducting proceedings it was sent for post-mortem examination to the Doctor at hospital. Vide Ex. PMLG cause of death was given to be shock and haemorrhage by the Doctor. Further case of the prosecution is that the accident was witnessed by Dhani Devi PW who had also alighted with the deceased from the Bus and who was accompanying her. Besides this, other relevant witness Badri Prasad PW was also examined during the course of trial.

5. Though there are other witnesses also, namely, Bal Krishen PW 2, Saran Dass PW 4 and Karnail Singh PW 5, who are also stated to be eye witnesses, but when a reference is made to their statements, they do not advance the case of prosecution in any manner whatsoever. Besides these eye witnesses, police officials and Doctor have also been examined. When the evidence of Dhani Devi PW 1 is examined, it is clearly made out that after the witness as well as deceased

having alighted from the Bus in question, both of them tried to cross the road from front of the Bus when truck came and the deceased had reached middle of the road. Respondent, as per the witness, made an attempt to divert the truck on his right side but the effort failed. On the left side, the truck could not have been diverted as Bus was standing there and it would have led to a major accident. No doubt this witness has gone on record to state that the truck came at a high speed but what is meant by high speed could not be explained by the witness, as she Was unable to give the speed. There is not a single murmur about the truck having been driven at fast speed by the other witnesses examined. In addition to this there is no other evidence for this Court to hold that the negligence can be inferred against the respondent. All other so called eye witnesses namely Bal Krishan, Saran Dass and Karnail Singh have denied their presence at the spot when the accident had taken place.

6. Now remains the statement of Badri Dass which needs to be discussed and examined. As per this witness he was awaiting for a bus and was standing at a distance of about 12 ft. where the accident had taken place. This witness has given speed of the Truck to be 30/35 km. per hour. A woman who had alighted from the Bus had struck against the Truck although Truck driver made an attempt to avert the accident. Another salient fact admitted by this witness is that the truck driver had blown the horn.

7. So far Truck coming at a fast speed is concerned, firstly there is no legal evidence which can be translated against the respondent so as to hold him guilty for having driven the Truck in a rash manner. Further question that needs to be seen is that whether speed of 30/35 Kms. per hour can be taken to be an act of rashness. This will depend on so many factors, viz. type of the road, geographical condition where it is located, terrain, whether it is hilly or plain and the use as well as the frequency of vehicles on such a road are a few relevant and material circumstances which need to be examined by the Court. In a hilly road being narrow and zig zig, speed of 30/35' kms. per hour can be said to be an act of rash driving but in plains where roads are not only levelled but are quite wide, a speed of 30/35 kms. per hour can in no case be said to be rash.

8. Admittedly there is no such evidence produced by the prosecution in the present case in the absence whereof even if statement of Badri Prasad PW 3 is accepted on its face value and the speed of the Truck is taken to be 30/35 kms. per hour it cannot be said to be rash so as to bring the same holding the respondent guilty of rash and negligent driving.

9. At the risk of repetition it may be noticed that the speed at which a vehicle is driven is material for the purposes of fastening criminal liability on the respondent. When a certain speed will be considered dangerous varies with the nature, condition and use of particular highway and the amount of traffic which actually is or may be expected to be on it. The driver of a vehicle is usually expected to drive at a speed that will permit him to stop well within the distance he can see clear, although excessive speed may not be conclusive evidence of negligence in a given situation.

10. Now coming to the question of negligence within the meaning of Section 304-A Ranbir Penal Code so as to hold a person liable on account of such act, it proved.

11. Negligence in law means an omission to do something which a reasonable man guided by those ordinary considerations should ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would not do. Besides this, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, it is the doing of some act which a person of ordinary prudence would not have done in similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. In fact conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm is a departure from the conduct expected of a reasonable prudent person under like circumstances. The term 'negligence' refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether to be slight, ordinary or great, it is characterised chiefly by inadvertence, thoughtlessness, inattention and the like. Wantonness or recklessness is characterised as wilfulness. It may also be pointed out that law of Negligence is founded on reasonable conduct or reasonable care under all

circumstances of particular case. Doctrine of negligence further rests on duty of every person to exercise due care in his conduct towards others which may result in causing injury. In addition to this criminal negligence which will lead to death of person is the omission on his part to do some act which an ordinary careful and prudent man would do under similar circumstances on the doing of some act which such a person under similar circumstances would not do by reason of which another person is endangered in life or bodily safety. Here it may be clarified that ordinary is synonymous with reasonable. A reckless disregard in human life and a degree of carelessness tantamounts to culpable disregard of rights and safety of the others.

12. In a given situation negligence involves blame worthy heedlessness on the part of a person which a normal prudent man exercising reasonable care and caution ought to avoid. Criminal negligence is the gross and culpable negligence or failure to exercise that due and proper care and precaution to guard against injury either to the general public or to an individual in particular by a person charged for it. A culpable rashness is acting with consciousness that the mischievous and legal consequences may follow but with the hope that they will not, and after the belief that the person concerned had taken sufficient precaution to avert the same. The imputability in a given case arises from the negligence of the civic duty of circumspection and between rashness and negligence, former is a grave offence.

13. Simply because a man had died in a motor vehicle accident, negligence cannot be presumed on the part of the motorist. In order to render a person liable it has further to be established by cogent and reliable evidence that such degree of culpability has to amount the gross negligence on his part it is not every little trip of mischief that will make a man so liable.

14. Above are a few tests relevant for determining whether a particular act in a given situation can be termed to be rash or negligent so as to Fasten a person with the criminal liability as in the present case.

15. When a reference is made to the statement of PW Dhani Devi it is clear that the deceased along with her after having alighted from the bus was trying to cross

the road from the front side of the Bus. In such a situation it cannot be said that the deceased was within a reasonably foreseeable distance of the respondent within which he could stop the Truck. This situation can further be examined that when the Bus had stopped and truck was coming from behind it could not be foreseen by the respondent that somebody will make an attempt to cross the road from the front side of the Bus. There is evidence of PW 3 - Badri Dass to the effect that respondent had blown the horn of his truck and a woman who had alighted from the Bus had struck with the Truck. In the face of this evidence, it cannot be said that either there was any lack of care or caution on the part of the respondent when he was driving the Truck in question, rather on the other hand the statement of PW Badri Dass further suggests that truck was diverted on the right side of the road because he had made an attempt to divert it on the left side as already noticed, it would have led to a major disaster. What appears to be that without caring for the rule of the road, deceased Smt. Koshalya Devi tried to cross the road and appeared at the spot of accident abruptly which led to the accident in question. Accident in fact had taken place due to sudden appearance of the deceased from the front side of the Bus and as such it cannot be said that any case is made out against the respondent for holding him liable for the offence for which he was tried. Although learned Additional Advocate General persisted, after referring to the prosecution evidence, that offence has been brought home against the respondent and he urged that the judgment of the Sessions Judge below was liable to be reversed, but when he was confronted with the aforesaid circumstances he was not in a position to pursue with his said line of argument.

16. In view of the aforesaid circumstances judgment passed by Sessions Judge below does not call for any interference in this appeal on the basis of the prosecution evidence. For taking this view reference can usefully be made to AIR 1972 SC 221 : (1972 Cri LJ 49). Mahadeo Had Lokre v. State of Maharashtra. 1979 Cri LJ 1258, Krishna Bahadur Chetri v. State of Assam and AIR 1964 Tripura 45 : (1964 (2) Cri LJ 213) Munsar Ali v. Union Territory of Tripura.

17. As a result of the aforesaid discussion there is no merit in this appeal, which is accordingly dismissed. Bonds, if any furnished by the respondent are discharged.

