
(2015) 04 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 55 of 2008

Gian Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Motor Vehicles Act, 1988 — Section 184
Penal Code, 1860 (IPC) — Section 279, 304-A, 337, 338

Citation : (2015) 04 SHI CK 0104

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Virender Kumar Verma and Rupinder Singh, Additional Advocate Generals and Parul Negi, Dy. Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.

1. The petitioner has filed the present revision assailing his conviction and sentence passed by the learned Judicial Magistrate Ist Class(II), Dharamshala Distt. Kangra on 27/29.3.2003 and affirmed by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala on 18.12.2007 convicting him under sections 279, 337 IPC and section 184 of Motor Vehicles Act and sentencing him to undergo simple imprisonment for three months under section 279 IPC and to pay a fine of Rs. 500/-, simple imprisonment for a period of three months for the offence under section 337 IPC and also sentenced to pay a fine of Rs. 500/- under section 184 M.V. Act and in default of payment of fine amount, to undergo simple imprisonment for a period of one months. All the sentences have been ordered to run concurrently.

2. The facts as emerge out from the prosecution story are that on 12.9.2001, the petitioner while working as driver in H.R.T.C. was driving bus bearing registration

No. HP- 39-3921 from Khanyara to Dharamshala. At about 1.00 p.m., when the bus reached near a school at Khanyara, the petitioner on account of rash and negligent driving dashed against a child walking on the road resulting in his injuries. The petitioner was charge-sheeted for the offence under sections 279, 337 IPC.

3. Section 279 IPC reads thus:--

"279. Rash driving or riding on a public way.--Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

4. Section 337 IPC reads thus:--

"337. Causing hurt by act endangering life or personal safety of others.--Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

5. It would be seen from the aforesaid provision that before going to a conclusion that a person is guilty of any of the aforesaid offence, it must establish that the accused was driving the vehicle in a rash or negligent manner.

6. Section 184 of Motor Vehicles Act, 1988 reads as under:--

"184. Driving dangerously.--Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

7. Here again it would be seen that before a person can be convicted for contravention of the aforesaid sections, it has to be proved that driver was either driving the vehicle at a high speed or in a manner which is dangerous to the public having regard to all the circumstances of the case.

Bearing in mind, the aforesaid provisions, this court would proceed to scrutinize the evidence led by the prosecution.

8. The prosecution has examined eight witnesses. PW 1 is the complainant, who has stated that on the fateful day, he alongwith one Karan was going to school from his home on foot. His leg came under the bus tyre and then Karan called a

person, who picked him up. The bus left the spot. He had not seen the driver nor he was in a position to recognize him. In his cross-examination, he has admitted that his right leg came under the bus. He also stated that one uncle picked him up and he was taken home. He was conscious when the bus ran over him. The bus had come from back and his leg had been crushed.

9. PW 2 has stated that children were going on the road and he was following them. PW 1 was hit by the bus and he picked him up and took him to temple road. The bus belonged to government. In his cross-examination, he has stated that bus did not stop there and left the place. He also states that complainant was conscious at that time.

10. The statement of PW 3 is of no relevance, as it is based on hear say inasmuch as she has only narrated the story as told to her by her son Arjun. Similarly the statement of PW 4 is also not of much relevance, as he is the official to whom the bus had been given on sapurdari.

11. PW 5 is a student of second class and states that complainant while going from school towards his home met with an accident with the bus and the tyre of the bus ran over the leg of the complainant, who thereafter was picked up by a labourer and taken home. He has also given the bus number. However, in cross-examination he has admitted that number of the bus was disclosed to him outside the court. He also admitted that at the spot, there were piles of stones and water was also there. But he denied that complainant slipped there. He also maintained that complainant was conscious after the accident and talking with him and was telling that he could not walk. Thereafter he called a labourer and asked him to take complainant home. It is also stated that left tyre of the bus crossed over the foot of the complainant.

12. PW 6 is the doctor, who had examined the complainant and issued MLC Ex. PC. In his cross-examination, he has also stated that there was no tyre marks injury and the injuries so sustained could be with the blunt weapon. PW 7 is a formal witness of FIR Ex. PD. PW 8 is the investigating officer, who has stated that on 12.9.2001 he received a telephonic message from Zonal Hospital, Dharamshala about the accident and on the basis of this information ASI had reached at the Zonal Hospital, Dharamshala, wherein the statement of the complainant was got recorded under section 154 Cr.P.C. and he was medically examined. The spot map was prepared and the spot where the incident took place had been shown as mark-X and contained debris and stones.

This is the entire evidence led by the prosecution.

13. Now the bare perusal of the statements of the prosecution witnesses would clearly go to show that none of the witness had even remotely suggested that vehicle at the relevant time was being driven either rashly, negligently or dangerously.

14. This court while construing the provisions of sections 279, 338 and 304-A IPC

in Cr. Revision No. 103 of 2008 titled Kashmir Singh (since deceased) and substituted by his wife Rajo Devi v. State of H.P. decided on 26.3.2015 held as follows:--

"7. While it would be seen from the evidence that driver may have been driving the vehicle in speed, but then there is no evidence to show that the same was being driven in a rash and negligent manner. High speed in itself may not in each case sufficient to hold that the driver is rash and negligent. To constitute an offence, under section 279 and 304-A IPC, it must be shown that person was driving the vehicle in a rash and negligent manner.

8. Further, in order to constitute an offence, under section 279 IPC the point to be established is that the accused was driving the vehicle on a public way and that he was driving the same in a rash or negligent manner. Similarly to constitute an offence, under section 304-A IPC, the prosecution has to establish that the act of the accused was responsible for resulting in death and such act of the accused was rash and negligent, although, it did not amount to culpable homicide. Therefore, to constitute either of these offences, the proof of rashness or negligence is essential.

9. The only distinguishing feature is that under section 279 IPC the rash and negligent act made punishable relates to the manner of driving or riding on a public way, while the offence under Section 304-A IPC extends to any rash or negligent act falling short of culpable homicide. Therefore, before coming to a conclusion that a person is guilty of offence under section 304-A IPC, it must be established that the rash or negligent act was direct or proximate cause of the death. In other words, it must be cause causans and it is not enough that it must have been the cause sine qua non. Likewise in absence of any proof to the effect that petitioner was driving the vehicle in a rash and negligent manner, the provisions of section 338 IPC are also not attracted, because sine qua non for the applicability of this provision is that the act complained of must be rash or negligent."

15. It would be relevant to observe that neither the trial Magistrate nor the Additional Sessions Judge have concluded that at the relevant time the bus was being driven rashly, negligently or dangerously. The only conclusion which the courts below have drawn is that complainant had sustained injuries and it is only because of this that the petitioner has been convicted. Obviously, this in itself was not sufficient to fasten the criminal liability upon the petitioner particularly when the offence attributed to the petitioner was required to be proved beyond reasonable doubt that too by leading clear, cogent and convincing evidence to this effect.

16. No doubt, it is an unfortunate case where a young boy has sustained injuries, but then cases have to be decided on the basis of evidence and not on the basis of sympathies. The complainant is alleged to have sustained the following injuries:--

"1. About 3 inches lacerated wound over the dorsum of left foot extending from 4th space to lat. Side of ankle joint, muscles of foot, tenders and metatarsal bone exposed. Fracture of talus bone. Fresh bleeding was coming out.

2. Advised x-ray of left foot AP/Lat. For fracture of any metatarsal or tarsal bones."

But then PW 6 Dr. Ajay Dutta has clearly stated that there was no tyre marks injury. Even otherwise, had there been any such tyre marks injury, it would have been nearly impossible to remain conscious. Whereas it is also proved on record that the complainant was fully conscious at the relevant time. It is difficult to comprehend and is otherwise unbelievable that after sustaining such grievous injury, it would be possible for anyone, much-less a child of tender age to still be conscious.

17. In view of the aforesaid discussion, I find merit in this petition and the same is accordingly allowed and the judgment passed by the learned Judicial Magistrate Ist Class, Dharamshala dated 27/29.3.2003 and affirmed by the learned Addl. Sessions Judge, Dharamshala on 18.12.2007 is set-aside and the petitioner is acquitted of all the charges framed against him.