

(1997) 01 MAD CK 0096

In the Madras High Court

Case No : Criminal R.C. No. 526 of 1987

Gnanasekaran @ Sekar

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 385, 386

Motor Vehicles Act, 1988 — Section 116, 118, 89A, 89B

Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (1998) 2 ACC 80 : (1997) 2 CTC 221 : (1997) 1 LW(Cri) 145

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : S. Baskaran, for the Appellant; Babu Muthu Meeran, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Balasubramanian, J.—The revision petitioner is the sole accused in C.C.No. 13397 of 1982 on the file of the III Metropolitan Magistrate, George Town, Madras. He was tried in the said case for offences Under Sections 304(A), 337 I.P.C. on five counts and Section 116, 89(A) and (B) read with Section 118(A) of the Motor Vehicles Act.

2. The case of the prosecution is that on 8.9.1982, he drove a lorry bearing registration No. AAW 2266 in a rash and negligent manner in a road called C.P. Road, Madras. While driving so rashly and negligently, the vehicle went out of his control, in that, the vehicle went over a platform and ran over two people namely Alliammal and Ramadoss who were sleeping there and dashed against door No. 5. As a result of this accident, Ramadoss who sustained injuries and admitted in the hospital, died on 12.9.1982. Alliammal, Kothandan, Shanthi, Rajalakshmi and Vijaya sustained injuries. Those injured witnesses had been examined as P.Ws. 1,3,4 and 6. Not content with causing the accident as stated above, the revision petitioner did not even bother to give any first-aid to the injured but curiously

ran away from the place of occurrence.

On the complaint lodged with the police, the Investigating Agency, after completing all the formalities regarding investigation, filed a charge sheet against the accused petitioner as stated above. P.Ws. 1 and 3 speak about the identity of the person who drove the vehicle. The Motor Vehicles Inspector who was examined as P.W.2, inspected the vehicle and gave a report that there was no mechanical defect in the vehicle. Since the vehicle was abandoned in the place of occurrence itself, the Investigating Officer was able to trace P.W.5 who is running an office in the name of "Andhra Transport" which is a lorry booking office. On enquiry, the said P.W.5 caught hold of the accused and surrendered him to the police. It is his evidence before court that vehicles which enter the Tamil Nadu from Andhra Pradesh could be looked after at his transport office and the drivers hailing from Andhra Pradesh, after a long journey would be taking rest in the lorry shed. At that time, the accused used to drive those lorries for hire. Though the accused contended before the trial court that he was not the person who drove the vehicle at the time of the accident, yet the evidence of P.Ws.1 and 3 coupled with the evidence of P.W.5 who surrendered the accused to the police, clinchingly establishes that it was the accused who drove the vehicle and there cannot be any doubt about it. The trial court, after going through the evidence of the injured witnesses as well as that of the Motor Vehicles Inspector came to the conclusion that the accused was guilty of the offences alleged against him and thus convicted him for the aforesaid offences and sentenced him to undergo R.I. for one year for offence u/s 304(A) I.P.C. three months R.I. for offence u/s 337 I.P.C. (on five counts) and a fine of Rs. 50 for each of the offences Under Sections 89(A) and (B) read with Section 118 of the Motor Vehicles Act.

4. Aggrieved against the judgment of conviction, the revision petitioner filed an appeal which was taken on file by VIII Additional Sessions Judge, Madras, in C.A.No. 96 of 1985. The appellate Judge, after going through the evidence on record, confirmed the judgment of learned trial Judge.

5. Mr.S. Baskaran, learned counsel for the revision petitioner, apart from contending that the evidence on record do not implicate the accused with the guilt, also raised a legal plea that the appellate Judge had erred in hearing the appeal in the absence of the accused and his counsel and that he had no jurisdiction to dispose of the appeal in the manner in which he has done.

6. As far as the contention on the merits of the case is concerned, I have already stated that there is overwhelming oral evidence in this case to show that the vehicle was driven rashly and negligently by the accused resulting in the death of one person and causing injuries to five persons. The identity of the person is spoken to by P.Ws.1 and 3 and on top of all these, P.W.5 under whom the accused was stated to be employed at the relevant point of time, had surrendered him before the police stating that it was the accused who drove the vehicle at the relevant point of time. I have already extracted in the earlier portion of this judgment the evidence of P.W.5 as to what he was doing and how

he came to know the accused. Therefore, I see no reason at all to interfere with the concurrent finding of fact rendered by the courts below holding that the accused is guilty of the offences alleged against him.

7. Coming to the legal submission made by learned counsel for the petitioner, I am of the view that though this legal ground was available to him on the date when he filed the revision, yet in view of the latest judgment of the Supreme Court, the ground available to the petitioner no longer survives. The question whether the appellate Judge should necessarily adjourn a case in the absence of counsel or the appellant or he should dispose of the case on merits, stands clearly decided by the Supreme Court in the case of Bani Singh and others Vs. State of U.P., No doubt, till the latest pronouncement of the Supreme Court in the case cited above, the earlier judgment of the Supreme Court in Ram Naresh Yadav's Case, AIR 1987 SC 1500 was holding the field. In Ram Naresh Yadav's case, the Supreme Court has held as follows:

"It is an admitted position that neither the appellants nor counsel for the appellants in support of the appeal challenging the order of conviction and sentence, were heard. It is no doubt true that if counsel do not appear when criminal appeals are called out it would hamper the working of the court and create a serious problem for the court. And if this happens often, the working of the court would become well nigh impossible. We are fully conscious of this dimension of the matter but in criminal matters the convicts must be heard before their matters are decided on merits. The court can dismiss the appeal for non-prosecution and enforce discipline or refer the matter to the Bar Council with this end in view. But the matter can be disposed of on merits only after hearing the appellant or his counsel. The court might as well appoint a counsel at State cost to argue on behalf of the appellants."

However, the point involved in the judgment referred to above, came up for consideration again before a larger Bench of the Supreme Court in Bani Singh and others Vs. State of U.P., . In the said case, the Supreme Court has laid down the law as follows:

"It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. The plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross checking the reasoning with the evidence on record with a view to satisfying

itself that the reasoning and findings recorded by the trial court are consistent with the material on record."

In the later judgment:- Bani Singh" case, 1996 S.C. 2439 the Supreme Court has over ruled the decision in Ram Naresh Yadav"s case, AIR 1987 SC 1500 and approved the earlier ruling reported in Shyam Deo Pandey and Others Vs. The State of Bihar, in the case of Shyam Deo. In view of the categorical and authoritative pronouncement of the Supreme Court in Bani Singh"s case, 1996 S.C. 2439 I have no other alternative except to reject the contention of learned counsel for the petitioner as ill-founded.

8. In the result, this revision fails and the same is accordingly dismissed.