
(2017) 04 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : 207 of 2011

JIWA NAND

APPELLANT

Vs

STATE OF HIMACHAL PRADESH

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 154](#) - Examination of witnesses by police - Information in cognizable cases
[Indian Penal Code, 1860](#), [Section 279](#), [Section 338](#), [Section 337](#), [Section 336](#) - Rash driving or riding on a public way - Causing grievous hurt by act endangering life or personal safety of others - Causing hurt by act endangering life or personal safety of others - Act endangering life or personal safety of others

Citation : (2017) 04 SHI CK 0113

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : G R Palsra, Vikram Thakur

Final Decision : Dismissed

Judgement

1. By way of this revision petition, the petitioner/accused has challenged the judgment passed by the Court of learned Additional Sessions Judge, Mandi in Criminal Appeal No. 01 of 2009, dated 15.09.2011, vide which learned appellate Court while dismissing the appeal filed by the present petitioner, upheld the judgment of conviction passed by the Court of learned Additional Chief Judicial Magistrate, Court No. 1, Mandi in Criminal Case No.271-II/2005, dated 15.10.2009, whereby learned trial Court had convicted the present petitioner for commission of offence punishable under Sections 279 and 338 of the Indian Penal Code and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 279 of the Indian Penal Code and had further sentenced him to undergo simple

imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 338 of the Indian Penal Code and had ordered both the sentences to run concurrently.

2. The case of the prosecution was that on 26.09.2005 at around 2:20 p.m., accused was driving HRTC bus bearing registration No. HP-33-5420 in a rash and negligent manner so as to endanger human life and personal safety of others, near Ayurvedic Office, Zonal Hospital, Mandi and had struck the driver side of the bus with a wall, as a result of which, one of the occupant of the bus, namely Rahul, son of Pushap Raj, a minor boy aged about 4 years received grievous injury on his arm, which was dangerous to his life. As per the prosecution, the accident was the result of rash and negligent driving of the accused on a public road, as a result of which, Rahul had received grievous injuries on his person. On the basis of a statement recorded under Section 154 of the Code of Criminal Procedure (Ex. PW8/A) of Lala Ram, FIR Ex. PW11/A was registered at Police Station Sadar, Mandi. On the basis of the said FIR, investigation was carried out. In the course of investigation, site plan of the spot of occurrence of the incident was prepared, the offending bus was taken into possession alongwith its documents. The Investigating Officer took into possession the driving licence of the accused. Shirt of the injured boy was also taken into possession. Investigating Officer also obtained M.L.C. of Rahul and mechanical report of the offending bus was also obtained. Photographs of the site were also obtained by the Investigating Officer and statements of witnesses were also duly recorded under Section 161 of the Code of Criminal Procedure.

3. After completion of investigation, challan was filed against the accused under Sections 279, 336, 337 and 338 of the Indian Penal Code. Accordingly, notice of accusation was put to him, to which he pleaded not guilty and claimed trial.

4. Learned trial Court on the basis of evidence placed on record by the prosecution both ocular as well as documentary, held that the prosecution had succeeded in proving the charge against the accused. It was held by the learned trial Court that the prosecution had succeeded in proving on record beyond reasonable doubt that at the time of accident, bus bearing registration No. HP-33-5420 was being driven by the accused in a rash and negligent manner so as to endanger human life and personal safety of others, on account of which, Rahul received fracture injury grievous in nature on his arm due to the rash and negligent driving of the accused, who had struck the driver side of the bus in issue with a wall because of his rash and negligent driving. Learned trial Court held that there was sufficient space on the spot for the accused to have had driven the bus in a proper manner and there was no occasion with the accused to drive the bus in issue in such a manner that it would have struck against the wall on the side of the road from the driver side. Learned trial Court held that the accused was found driving the bus in such a manner that no space was left on his own side between the bus and the wall, which reflected that the accused was

driving the bus totally on the wrong side without leaving any space, which resulted the bus striking against the wall and causing grievous injury in the arm of a minor boy. Learned trial Court did not found any merit with the contention of the defence that it was the victim who had put his arm all of a sudden outside the bus. It was held by the learned trial Court that even if said argument was to be believed that the arm of Rahul was outside the bus in question, then also there was no occasion for the accused to have driven the bus in such a manner so as to have struck the same against the wall which was situated on one side of the road and that too with the driver side of the bus. It was further held by the learned trial Court that the factum of the injury having been received by Rahul being grievous injury stood proved by MLC Ex. PW7/A. On these bases, it was held by the learned trial Court that the prosecution had successfully proved its case against the accused for having committed offences punishable under Sections 279 and 338 of the Indian Penal Code.

5. In appeal, the findings so returned by the leaned trial Court were upheld by the learned appellate Court. While confirming the findings of the learned trial Court, it was held by the learned appellate Court that the statements of PW-1 Mohan Singh, PW-4 Dharma Devi and PW-6 Naresh Kumar clearly and categorically proved that the injuries were received by the child on account of bus which was being driven by the accused having struck against the wall, as a result of which, the arm of the child was fractured. It was further held by the learned appellate Court that the said prosecution witnesses had denied the defence of the accused that the child had extended his arm outside the bus and that the accident occurred on account of the negligence of the child or that the accident occurred as the road was too narrow. Learned appellate Court also held that the testimonies of the said witnesses were also corroborated by the statement of Dr. Virender Singh, who conducted the medical examination of the child. Learned appellate Court also held that photograph Ex. PW8/H demonstrated that there was scratch on the body of the bus, which proved that the side of the bus had hit the wall. It was further held by the learned appellate Court that in fact driver was under obligation to drive the vehicle carefully so as not to hit the objects outside the bus and also had to keep this possibility in mind that the passengers do extend their arms and body parts outside the bus. While relying upon the judgment of the High Court of Gujarat in Gujarat State Road Transport Vs. Keshavlal Somnath Panchal, AIR 1981 Guj. 205, it was held by the learned appellate Court that the driver has to keep the fact in mind that passengers keep their arms on the window sill and he has to drive the vehicle in such a manner so as not to cause any harm to them. Learned appellate Court has also placed reliance upon the judgment reported in Sushma Mitra Vs. M.P. State Road Transport Co., 1974 ACJ 8. On these bases, it was held by the learned appellate Court that the accused had not taken the said precaution and the same thus clearly demonstrated that the accused was negligent. Learned appellate Court concluded that learned trial Court had rightly held accused to be negligent in driving the bus, as a result of which, the bus had hit its side with the wall. It

further held that the factum of the child having suffered grievous injury on his arm on account of the accident stood duly proved and corroborated by the prosecution witnesses as well as the testimony of Dr. Virender Singh and the photographs on record. Thus, learned appellate Court while upholding the judgment of conviction passed by the learned trial Court, dismissed the appeal so filed by the present petitioner.

6. Feeling aggrieved, the petitioner has filed this appeal.

7. Petitioner has primarily assailed the judgment passed by both the learned Courts below on the ground that both the learned Courts below erred in not appreciating that the accident in fact had taken place on account of the negligence of the child and not on account of the negligence of the driver, as had been concluded by both the learned Courts below. This as per the petitioner was the perversity with the findings so recorded by both the learned Courts below against him and on these bases, it was prayed on behalf of the petitioner that the judgment of conviction passed against him by both the learned Courts below be set aside. No other point was urged.

8. On the other hand, Mr. Vikram Thakur, learned Deputy Advocate General submitted that there was neither any perversity nor any illegality with the findings of conviction so returned against the petitioner by both the learned Courts below, as it stood proved on record beyond doubt that the accident in fact had taken place on account of rash and negligent driving of the bus by the present petitioner and the accident had not taken place due to the alleged negligence of the child, who was injured in the accident. Accordingly, it was prayed on behalf of the State that as there was no merit in the case, the same be dismissed.

9. I have heard the learned counsel for the parties and have also gone through the records of the case as well as the judgment passed by both the learned Courts below.

10. In order to satisfy the judicial conscious of the Court as to whether the accident had taken place due to rash and negligent driving of the present petitioner or on account of the negligence of the child, who had suffered injuries in the accident, this Court perused the statements of prosecution witnesses as well as the evidence on record to find out as to whether there was any perversity in the finding of conviction recorded against the petitioner by both the learned Courts below or not.

11. Photographs of the site of accident are on record as Ex. PW8/C, Ex. PW8/D, Ex. PW8/E, PW8/F, PW8/G and Ex. PW8/H. A perusal of these photographs demonstrates that though the road at the place where the bus had struck against the wall is not very wide, but there was adequate space for the said bus to be driven by keeping sufficient distance from the wall. Besides this, a perusal of these photographs demonstrate that it is not as if the child suffered injury because his arm was extended outside the window which struck against the wall

despite there being adequate distance between the bus and the wall. Photographs also demonstrate that there are scratches on the back side of the bus starting from the rear tyre of the bus as well as on the wall against which the driver side of the bus was struck. This proves that the bus in fact was driven by the driver in such a manner that rather than keeping the same towards the left side of the road, the driver drove the same to extremely right side of the road, which resulted in the driver side of the bus striking against the wall which was on the right side of the road, as a result of which, the minor child travelling in the bus suffered grievous injuries.

12. A perusal of the site map which is Ex. PW8/B also demonstrates that there was sufficient road available at the site for the accused driver to have had driven the bus without brushing against the wall which was on the driver side of the bus had the bus been driven by him in a prudent manner. Besides this, statement of Dharma Devi (PW-4), mother of the minor child who had received injuries on account of rash and negligent driving of the accused, also categorically deposed in the Court that her son suffered injuries on account of the bus having struck against a wall, which was on the driver side of the bus. Though this witness was subjected to lengthy cross-examination by the defence, however, her credibility could not be impeached by the defence and from her cross-examination, nothing could be elicited by the defence so as to establish that that the accident in fact took place on account of the negligence on the part of the child or on account of mother of the child, i.e. PW-4. PW-6 Naresh Kumar deposed that the accused had struck the bus against the wall on the driver side of the bus, as a result of which the child who was passenger in the bus had suffered injuries. In his crossexamination, this witness denied the suggestion that there was no negligence of the driver in the accident. PW-7 Dr. Virender Singh has stated in the Court that he had medically examined the child and that the injuries suffered by him were grievous in nature.

13. In my considered view, the findings of conviction returned against the present petitioner by the learned trial Court and affirmed by the learned appellate Court can neither be said to be perverse nor it can be said that the findings so returned by both the learned Courts below are not borne out from the records of the case. As is evident even from the above discussion, the evidence placed on record by the prosecution both ocular as well as documentary clearly demonstrates that the accident in fact took place due to rash and negligent driving of the accused, because it was the duty of the accused who was driving the bus to have had driven the bus in such a manner so as to keep in mind the factum of its passengers having some part of their body outside the bus. It is apparent and evident from the evidence on record that it is not as if there was some reasonable gap between the bus and the wall which was on the driver side of the bus. Had that been the case and had the child suffered injuries in such a situation, then probably this Court could have given benefit of doubt to the driver. However, as is evident from the evidence on record, in the present case, the bus was driven by the present petitioner in such a manner that he struck the

driver side of the same with a wall which was on the driver side of the bus despite there being enough space on the road for having had driven the bus in such a manner that there was adequate space between the driver side of the bus and the wall on the said side of the bus. Therefore, in the present case, it is evident that the accident in fact took place due to rash and negligent driving of the bus and the same cannot be attributed to the minor child who suffered grievous injury on account of the said accident. It is pertinent to mention here that this Court is also not oblivious to the fact that in exercise of its revisional jurisdiction, this Court is not to re-appreciate the evidence per se and all that this Court has to see is that as to whether there is any perversity in the findings recorded by the learned Courts below or not and whether the view taken by learned Courts below was a possible view in light of evidence on record.

14. In my considered view, as I have already mentioned above, a perusal of the records demonstrate that the findings returned by both the learned Courts below are duly borne out from the records of the case and the same thus cannot be said to be perverse.

15. Hence, in view of my discussion held above, as there is no merit in the present revision, the same is accordingly dismissed.