
(1979) 11 DEL CK 0028

In the Delhi High Court

Case No : Criminal Revision No. 802 of 1977

Nand Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Citation : (1980) ACJ 423

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : B.D. Batra, for the Respondent

Final Decision : Allowed

Judgement

J.D. Jain, J.—The Petitioner was convicted of an offence u/s 304-A Indian Penal Code, by Shri K S. Khurana, Metropolitan Magistrate, vide his judgment dated February 14, 1977 and was sentenced to imprisonment till the rising of the Court and a fine of Rs. 3,000/- in default to undergo further rigorous imprisonment for six months, vide his order dated February 15, 1977. He preferred an appeal and the same was disposed of by Shri B.B. Gupta, Additional Sessions Judge, Delhi, who maintained his conviction as well as the sentence on the aforesaid charge. Hence this revision petition.

The prosecution version succinctly is that on July 7, 1974 at about 3.15 p.m. the Petitioner was driving motor-cycle bearing registration No. DHM 6115 on Rohtak Road while going to his village from the side of Bahadurgarh. One woman was riding the pillion. All of a sudden the motorcycle dashed against milestone No. 24 with the result that the woman, who was sitting on the pillion, was thrown off with force. The motor-cycle rebounded on account of forceful impact with the milestone and fell away. The Petitioner too sustained injuries as a result thereof. In the meantime, one truck bearing No HRR 3228 came from the side of Bahadurgarh. It removed the injured to a hospital.

2. On receipt of the information Assistant Sub-Inspector, Daulat Ram, proceeded

to the spot and recorded statement of the Exhibit PW5/A, Rampat, who was present there and happened to see this horrible accident. After investigation the Petitioner was challenged .

3. Rampat, the only eye-witness to the occurrence, turned round during the course of trial and did not support the prosecution. According to him, while he was going towards the road from his village on the relevant date he heard the sound of impact and went to the spot. He then found that the motor-cycle etc. were lying near the milestone. However, he denied having seen the occurrence as such.

4. The learned Additional Sessions Judge has sustained the conviction of the Appellant for the said offence on the ground that the very fact that the motor-cycle hit the milestone showed that the accused was negligent and rash. It is pointed out that the milestone was evidently beyond the kacha berm of the road and as such the motor-cycle of the Petitioner could not have run into the milestone unless he had lost complete control over it. He has disbelieved the explanation furnished by the Petitioner in the course of his examination u/s 313 of the Code of Criminal Procedure that his motorcycle hit against the milestone No. 24 because the wheel of the motor-cycle had slipped when he was trying to save himself from colliding against a truck which was coming from the opposite direction at a very fast speed on the wrong side and in order to avert the collision he had taken his motor-cycle on the kacha portion of the road.

5. None has turned up on behalf of the Petitioner today. However, the learned Government counsel Shri B.D. Batra has canvassed ,rather fervently, that even though there is no direct evidence to establish rash and negligent driving of the motor-cycle on the part of the Petitioner, the circumstances of the case speak out eloquently what must have happened .He has sought to invoke what is called the principle of *res ipsa loquitur*, i.e. the accident speaks for itself and tells its own story. In this context he has invited my attention to the site plan (Exhibit PN 10/ C) prepared by the investigating officer. A glance at the site plan reveals the relative position of the milestone and the deceased woman and the motor-cycle of the Petitioner after his unfortunate accident. It shows that the deceased fell off at a distance of about 10 paces from the milestone after the motorcycle had struck against it. The motorcyclist fell away at a distance of about 15 paces. Further the mechanical inspection of the motor-cycle, which was conducted by Inspector Shadi Lal (PW2), reveals some formidable damage to the same. So there can be no room for doubt that the impact between the motor-cycle and the milestone must have been very forceful. All the same in the absence of clear cut evidence to support the prosecution version, the explanation furnished by the Petitioner cannot be brushed aside slightly as unworthy of credence. The authorities, Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , and Hanuman Dass Vs. Usha Rani and Another, , adverted to by the Petitioner's counsel deal with cases of civil liability. In both the cases burden of proving that the incident was the result of inevitable

accident and not due to any act of rashness or negligence on the part of the driver was shifted by invoking the aforesaid principle of *res ipsa loquitur*. However, it is highly doubtful that the said principle would be attracted to the facts of the instant case. It is well settled that in a criminal case the prosecution has to establish the guilt of the accused beyond the reasonable doubt and Section 304-A, Indian Penal Code, cannot be held to be an exception to the rule. However, the onus on the accused, if any, is discharged on the theory of balance of probabilities. So from the mere fact that a motor vehicle leaves the road and meets with an accident resulting in death, there can be no presumption that the accused was driving the vehicle in rash or negligent manner and that he is bound to explain how the vehicle left the road. Further the negligence of the accused in a criminal case must be such that it goes beyond mere matter of compensation and shows such disregard for life and safety of people as to the commission of a crime. It must be of a high degree and not of the type which gives rise to claim for compensation. In other words, simple lack of care may give rise to a civil liability but without *mens rea* and such degree of culpability as amounts to gross negligence, there is no criminal liability. See in this connection *Sarwar Khan Vs. State of Andhra Pradesh*, , in which almost on similar facts it was held that the mere fact that the accused did not explain the circumstances which culminated in the accident did not wholly absolve the prosecution from proving its case inasmuch as the burden of proof never shifts. (See also *In Re: Natarajan*,). Hence I am of the considered view that the mere fact that the motor-cycle in this case left the road and hit against milestone would not be presumptive proof of rash and negligent driving requiring the Petitioner to prove to the contrary. The prosecution must stand on its own legs rather than take advantage of the weakness of defence. At any rate, the explanation furnished by him in this case is quite plausible and he is entitled to benefit of doubt.

As a result I accept this revision petition and set aside the conviction as well as sentence of the Petitioner's for the aforesaid offence.