
(1968) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 708 of 1967

Public Prosecutor

APPELLANT

Vs

Gokarakonda Subbarao

RESPONDENT

Date of Decision : 17-12-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 162, 342
Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (1968) 12 AP CK 0003

Hon'ble Judges : Chinappa Reddy, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; A. Ramarao and K. Nagaraja Rao, for the Respondent

Judgement

Chinappa Reddy, J.—This is an appeal by the State against the judgment of the learned III Additional Judicial First Class Magistrate Vijayawada acquitting the Respondent of the charges under Sections 304-A and 337 Indian Penal Code. The case against him was that on 21-11-1967 at about 8-40 A.M. he drove the bus MDR 2503 rashly and negligently on Kaleswararao, Market-Kothapet Road near Gandhi Park, Vijayawada, swerved the bus to the extreme right of the road so as to get on the pavement and hit an electric pole crushing a woman, Appayamma, to death. In the course of the same transaction it was also alleged that injuries were caused to two passengers travelling in the bus.

2. Several persons examined in support of the prosecution case turned hostile, but P. Ws. J, 4 and 8 did not. P.W. I stated in his evidence that he was travelling in the bus and that when the bus reached the Gandhi Park, it swerved to the extreme right side of the road, got upon the pavement and dashed against an electric pole. He also stated that the driver did not apply brakes when the bus got up the foot-path, but the bus came to a halt on hitting the electric pole. At various stops the driver had previously stopped the bus by applying brakes, P.W. 4 was the conductor of the bus at the time of the incident. He stated that he was

issuing tickets when suddenly he heard a sound and the bus came to a stop. He found that the bus had gone upon the foot-path and hit an electric pole which was bent as a result of the impact. He found an old woman injured. P.W. 8 who was going along the Kothapet road towards the river taking children to the school in his rickshaw, saw the bus going over the footpath and hitting an old woman. He stated that the bus did not come with speed, but added that he did not hear any horn being blown. He found an old woman injured caught between the bus and the electric pole. P.W. 11 the Sub-inspector of Police, who was informed about the occurrence by the accused himself, went to the scene of offence and arranged to send the old woman and two other injured persons to hospital for treatment. He received information later that the woman died in the hospital. He has stated in his evidence that the scene of offence is at the junction of the old Municipal office road and park road and that the road is a cement concrete road 21 1/2" wide with raised foot-path 6" higher than the level of the road over the side and 6.2* wide on one side and 9" 2* wide on the other. The bus was found facing north. The right wheels of the bus were completely over the eastern foot-path. The bumper of the bus was bent and touching the electric pole. He found dried-up-blood on the bumper of the bus and pieces of flesh sticking to the bumper. The electric pole was also bent. P.W. 7 the Motor Vehicles Inspector of Vijayawada, on receipt of a requisition from the, Sub-inspector of Police, went to the scene and examined the vehicle. He found the front bumper badly damaged and the right side main spring shackle broken; the tie rod was bent, the left side centre bolt was broken the wind screen glass was broken and the front grill dented. He examined the brakes and found them to be in good working order. He gave his opinion that the accident was not due to any mechanical defect. In cross-examination he stated that a hydraulic brake may suddenly fail sometimes, but he denied in such circumstances the vehicles would wobble. In re-examination he stated that if hydraulic brakes fail, the brakes would not come back to normal without repairs. The accused in his statement u/s 342 Code of Criminal Procedure admitted that the bus dashed against the pole, but stated "Brakes had failed. Control was lost. Rishaw came as an obstruction". The accused also examined D. Ws. 1 and 2, who claim that they travelled by the bus that day and that the accused swerved the bus towards the right to avoid a rickshaw and dashed against the electric pole crushing old woman between the bus and the electric pole. They have also stated that when the bus was about 10 yards from the pole the accused cried out that the brakes had failed. D.W. 1 admitted in his cross examination that though he was sitting by the side of the accused in the bus, he did not see the accused applying the brakes. D.W. 2 himself a bus driver, admitted in cross examination that when brakes fail, the vehicle can be brought to a stop by switching off the engine, or by changing the gear.

3. The learned Magistrate while finding that the brakes did not fail and that the story of the accused and the defence witnesses that the brakes failed and that he raised cries that the brakes had failed, is false, nonetheless acquitted the

accused on the ground that the prosecution had not established either rashness or negligence on the part of the accused. The State has therefore preferred this appeal against the order of acquittal

4. The learned Public Prosecutor urges that rashness or negligence is a matter which can be inferred from the circumstances of the case and that in the present case he submits that the circumstances are such that there can only be one inference viz., that the accused drove the vehicle in a rash or negligent manner.

5. The undisputed facts are that at the place where the incident took place the road is 21 feet wide and that the vehicle instead of going on the left side of the road swerved to the extreme right and went upon the pavement which is 6" higher in level than the road and it came to a stop not as a result of the application of brakes but because it hit against the electric pole. The accused who was driving the vehicle at that time is certainly under a duty to explain the circumstances under which the vehicle came to proceed from the left side of the road to the extreme right of the road and go upon the pavement. It is true that he is not obliged to put forward any specific plea or to prove any plea which may be put forward by him, but as has been repeatedly pointed out by the Supreme Court the failure of the accused to explain the circumstances appearing in the evidence against him is itself a circumstance to be taken into consideration in arriving at a conclusion whether the accused is guilty of the offence with which he is charged. So also where the accused offers a false explanation the Court is bound to take into consideration the circumstance that he gave a false explanation. In the present case the version of the accused that the brakes failed, is absolutely false. The Motor Vehicles Inspector, who inspected the vehicle within two or three hours after the incident, found the brakes in good condition. The evidence of D. Ws. 1 and 2 that when the bus was at a distance of 10 yards, the accused shouted that the brakes had failed has not been accepted by the learned Magistrate and rightly so in my opinion. Having regard to the evidence of the Motor Vehicles Inspector their evidence can only be characterised as false. The accused has stated in his Section 342 statement that he had to swerve because of the obstruction of a rickshaw. It was not suggested to P. Ws. 1 and 4 that the driver had to swerve the bus because of a rickshaw obstructing it. In Ex. P. 9 the report given by the accused to the Sub-inspector of Police immediately after the occurrence there is no reference to the obstruction caused by any rickshaw. Ex. P. 9 which is not a confession, can be used as an admission. Being the First Information Report it is not r it by Section 162 Code of Criminal Procedure vide Faddi Vs. The State of Madhya Pradesh, .

6. Mr. Adivi Rama Rao, Learned Counsel for the accused, relies upon a judgment of the Madras High Court in *Re: Natarajan* and contends that there is no presumption in law of rash and negligent driving merely because the car leaves the road. He invites my attention to the observations of Anantanarayanan J, criticising the observations of Bardawell, J., in *Ratnam Mudaliar v. Emperor* 1934 N.W.N. 30 (Cri.). In *In Re: Natarajan*, , Bardswell, J., extracted a portion of the

judgment of the Lower court and expressed his approval of the statement of the case contained therein. The lower Court had observed there:

I take it that a person driving a motor car is under a duty to control that car, and that he is prima facie guilty of negligence if the car leaves the road and that it is for the person driving the car to explain the circumstances under which the car came to leave the road. Those circumstances may be beyond control, and may exculpate him, but in the absence of such circumstances the fact that the car left the road is evidence of negligence on the part of the driver.

7. It will be noticed that all that was said was that if a person driving a motor car allows the car to leave the road, he is prima facie guilty of negligence and that the fact that the car left the road is evidence of negligence on the part of the driver. It is difficult to see that exception can be taken to this statement. Naturally the driver of the car is the best person who can enlighten the Court regarding the circumstances under which the car came to leave the road. It is open to him to offer an adequate explanation. Bardswell J., never stated that there was any presumption in law of rash and negligent driving merely because the car left the road. The criticism of Anantanarayana, J., proceeds on the basis that Bardswell, J., talked of some presumption in law, which he did not.

8. Mr. Aduvi Rama Rao has next relied upon Sarwar Khan Vs. State of Andhra Pradesh, . In that case Mirza, J. did not dissent from the observations of Bardswell, J, but he took exception to the inference drawn from those observations by the trial Court in the case before him that the burden of proof had shifted to the Petitioner to prove the circumstances under which the car came to leave the road and dashed against the tree. Mirza, J. was certainly right in stating that the burden of proof never shifts and it is ever for the prosecution to prove its case beyond reasonable doubt. But with great respect to Mirza, J., I am unable to agree with the following observations.

He (the accused) may refuse to give an explanation and he may refuse to examine any witness on his behalf, But still none of these facts can be taken into consideration to assess the guilt of the accused.

9. These observations of my learned brother are opposed to the several Judgments of the Supreme Court, where it has been laid down time and again that the failure of an accused to explain the circumstances appearing in the evidence against him or the fact that the accused offers a false explanation are circumstances which can and must be taken into consideration in assessing the guilt of the accused. See Deonandan Mishra Vs. The State of Bihar, and Pershadi Vs. State of Uttar Pradesh, .

10. In the result I hold that the accused drove the bus in a negligent manner by taking it to the extreme right of the road and not bothering to apply the brakes. I therefore hold the accused guilty of an offence u/s 304-A Indian Penal Code and sentence him to pay a fine of Rs. 250/- in default to undergo rigorous imprisonment for two months. I would have imposed a heavier sentence but for

the fact that more than two years have elapsed since the occurrence. The accused is also found guilty of an offence u/s 337 Indian Penal Code but no separate sentence is awarded.