
(2016) 03 SHI CK 0137
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 190 of 2011

State of Himachal Pradesh	Vs	APPELLANT
Jagdish Chander Gupta		RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A, 336

Citation : (2016) ILRHP 452

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Parmod Thakur, Addl. AG with Mr. Neeraj K. Sharma, Dy. AG, for the Appellant; Mr. Sumeet Raj Sharma, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is instituted at the instance of the State against the judgment dated 30.8.2010, rendered by the learned Judicial Magistrate Ist Class, Court No. V, Shimla, H.P., in Criminal Case No. 20-2 of 03/98, whereby the respondents-accused (hereinafter referred to as the accused), who were charged with and tried for offence punishable under Sections 336 and 304 A IPC have been acquitted.

2. The case of the prosecution, in a nut shell, is that in the year 1997, Director General Border Roads had undertaken construction work of bridge known as Malgi Bridge on Dhani Kingal road and the accused Jagdish Chander Gupta was the contractor. On 11.12.1997, when about 60-65 labourers were laying concrete over the under construction bridge, it suddenly collapsed. Nine labourers were buried alive under the debris and lost their lives. The mishap was reported to the police by Smt. Dhani Devi, Pradhan, Gram Panchayat Rebag. Thereafter, ASI Kishore Chand PP Sunni and other police officials reached on the spot. The statement of Mina Ram under Section 154 Cr.P.C. was recorded, on the basis of which FIR No. 210 dated 12.12.1997 was recorded at PS Dhalli, Shimla. The

investigation was assigned to ASI Kishore Chand. Spot map was prepared. The I.O. also took samples of steel bars, cement, grit, sand, mixture of cement, one iron plate vide seizure memos. Post mortem of the dead bodies was got conducted. Drawings of the under construction bridge and attendance register of the labourers were seized. It was found during investigation that the work of bridge was assigned by DGBR to Contractor Jagdish Chander Gupta. The expert report from the then Executive Engineer, HP PWD, Kumarsain was obtained, wherein he opined that the drawings of the bridge were not got approved from the competent authority and it was revealed from the drawings that there was no provision for tying both the trusses, as the drawings did not show such details of tie beams. As per the opinion of the Executive Engineer, the bridge collapsed mainly due to failure of the shuttering. The expert opinion regarding the steel bars was also obtained from the Engineering College, Sector 120, Chandigarh. The steel bars used for the construction were found of suitable strength. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 22 witnesses. The accused were also examined under Section 313 Cr.P.C. According to them, the construction work was under the supervision of the Engineers of DGBR. The construction work could not proceed further unless it was checked. The learned trial Court acquitted the accused, as noticed herein above. Hence, this appeal.

4. Mr. Parmod Thakur, learned Addl. Advocate General for the State has vehemently argued that the prosecution has proved its case against the accused. On the other hand, Mr. Sumeet Raj Sharma, Advocate for the accused has supported the judgment of the learned trial Court dated 30.8.2010.

5. I have heard the learned counsel for both the sides and have also gone through the judgment and records of the case carefully.

6. PW-1 Mina Ram deposed that he was working in D.G.B.R. since 1988. On 11.12.1997, the bridge was under construction. He was also working on the spot. He did not know the name of the contractor. On the spot S/Sh. O.C. Jain and Siddappa were supervising the work. About 60-65 labourers were working on the bridge. When on 11.12.1997 concrete was laid at 12:30 PM, the bridge collapsed. Three persons died on the spot. He was declared hostile and cross-examined by the learned Assistant Public Prosecutor. In his cross-examination, he admitted that the D.G.B.R. had awarded work to accused Jagdish Chander Gupta. He has admitted that on 10.12.1997, they have told the contractor and officers of the D.G.B.R. that they have heard cracking noises beneath the bridge. Neither the accused nor the officers of the D.G.B.R. took remedial steps. He further deposed that on 8th and 11th December, 1997, cracking noises were heard below the bridge. In his cross-examination by the learned defence counsel he deposed that on 10th the cracking noise was heard. The same were also heard on 11th when the bridge collapsed. He has informed the officers S/Sh.

O.C. Jain and Siddappa about the noises.

7. PW-2 Ved Parkash deposed that he was working in D.G.B.R. since 1983. They were putting concrete on 8th to 10th December, 1997 and heard cracking noises below the bridge. He did not know as to who informed about these noises to S/Sh. O.C. Jain and Siddappa.

8. PW-3 Nokh Ram deposed that he was working in D.G.B.R. for the last 14 years. The work was awarded to Sh. J.C. Gupta. He proved Ext. P-1 and PW-3/A. On the spot, accused Vikas Gupta was supervising the work. In his cross-examination, he admitted that the work undertaken by the contractor was being checked by the officers of the D.G.B.R.. He further deposed that the work could only be carried out at their instructions.

9. PW-4 Hem Raj has proved Ext. PW-4/A. He deposed that the police had taken into possession iron plate which was used while constructing the bridge in his presence.

10. PW-5 Sewa Ram deposed that the police has taken into possession sand, grit and cement vide Ext. PW-5/A.

11. PW-6 Kewal Raj deposed that on 11.12.1997 at about 2:00 PM, he heard noises from the side of bridge. He also noticed smoke. He reached the spot with other people. He noticed that the bridge had collapsed. Few labourers of contractor engaged by D.G.B.R. died. The attendance register was taken into possession vide memo Ext. PW-3/A. The police has taken into possession one iron plate vide Ext. PW-4/A. He along with Hem Raj signed the memos.

12. PW-7 Pradeep Kumar deposed that he was engaged as supervisor on the bridge in the year 1997. Drawings were taken into possession vide memo Ext. PW-7/A. He signed the documents at P.P. Sunni. He did not know as to who has prepared the drawings.

13. PW-8 Bhoop Ram deposed that he visited the spot. The police had reached the spot and took into possession grit, cement and sand vide memo Ext. PW-8/A.

14. PW-9 Mohan Lal was declared hostile. He has identified his signatures on Ext. PW-7/A.

15. PW-10 Sahaj Ram deposed that he was working on the bridge in the year 1997. On 11.12.1997, when they were working on the bridge, he heard noise below the bridge and the bridge collapsed. He has not heard the cracking noises before and after the collapse of the bridge. Neither he nor his colleagues have brought to the notice of the officers S/Sh. O.C. Jain and Siddappa about noises. Volunteered that he has not heard any noise before the collapse of the bridge. He did not know how the accident has taken place. According to him, it was an act of God. He has not seen accused Vikas Gupta or Jagdish Chander Gupta on the spot. He was declared hostile and cross-examined by the learned Assistant Public Prosecutor. In his cross-examination by the learned Asstt. Public Prosecutor, he

denied the suggestion that bridge has collapsed due to the negligence of contractor or the officers, namely, S/Sh. O.C. Jain and Siddappa.

16. PW-11 Bhajan Lal deposed that he was working in D.G.B.R. since 1967. The work was being supervised by S/Sh. O.C. Jain and Siddappa. These officers were present on the spot on 10.12.1997. The noise started emanating from the bridge. They told them about the noises coming from the bridge. They told him that it is due to support and there is no threat to them. On 11.12.1997, no noise was heard. The bridge collapsed. He was also declared hostile and cross-examined by the learned Assistant Public Prosecutor. He denied the suggestion that on 11.12.1997, the cracking noises were heard from the bridge. He also denied the suggestion that at 12:30 PM, cracking became shriller and despite that S/Sh. O.C. Jain and Siddappa had not got the work stopped. He denied that the accident has taken place due to the negligence of accused and supervisory staff of the D.G.B.R.

17. PW-12 Devi Singh deposed that on 10th, cracking noises were coming from below the bridge. They had apprised the D.G.B.R. officers, namely, S/Sh. O.C. Jain and Siddappa and the bridge collapsed at about 11-12:00 PM. He did not know how the bridge collapsed. He was declared hostile and cross-examined by the learned Assistant Public Prosecutor.

18. PW-14 G.K.Kapoor deposed that he was working as Executive Engineer in PWD since 1996. His opinion was sought as to how the bridge collapsed. He prepared the report and submitted it to the police. The report is Ext. PW-14/A.

19. PW-15 Shyam Lal proved Ext. PW-15/A.

20. PW-16 Dr. Rajnish has conducted the post mortem examination on the dead bodies of the labourers. According to him, the labourers died due to damage to their brain and spinal chord, as per the medical reports.

21. PW-18 Const. Jaswant Singh deposed that on 2.8.1998, MHC PP Sunni has handed over the iron bar and plates to be carried to Principal, College Chandigarh. He deposited the same at Chandigarh.

22. PW-19 Prem Singh deposed that on 11.12.1997, the bridge collapsed. He did not know how the accident took place. He was declared hostile and cross-examined by the learned Assistant Public Prosecutor.

23. PW-20 ASI Kishore Chand was the I.O. He received the information from Smt. Dhani Devi, Pradhan, Gram Panchayat Rebag. He reached the spot and recorded the statement of Mina Ram under Section 154 Cr.P.C. He prepared the spot map. He also took into possession iron bar and other construction material. In his cross-examination he admitted that he came to know during the investigation that work of the bridge was being carried out under the supervision of D.G.B.R. They used to visit the spot.

24. PW-22 S.I. Surender Singh, has proved drawings PW-7/B and PW-7/G-2.

These were got examined from the Executive Engineer, HP PWD, Kumarsain. His report is Ext. PW-14/A.

25. It has come in the evidence that labourers have brought the cracking noises to the notice of the officers of D.G.B.R. and despite that the work was not stopped. The labourers started hearing the noises from 9th/10th December, 1997 onwards. The remedial steps ought to have been taken by the supervisory staff. According to report Ext. PW-14/A which is proved by PW-14 G.K.Kapoor, it is stated that from the drawings of staging truss, it appeared that no tangible efforts were put forth for getting these drawings approved from the competent authority before putting them in use. These drawings were required to be got approved from the competent authority in order to adjudge the adequacy of its connected members to see whether they were safe for carrying out the super imposed load liable to be carried out by the truss. According to him, provision for tying both the trusses was not made as the drawings did not show such details of the tie-beams. He finally concluded that the collapse of the bridge was mainly due to failure of the shuttering.

26. PW-1 Mina Ram in his cross-examination has admitted that on 10th, cracking noises were heard and those were brought to the notice of the officers, namely, S/Sh. O.C. Jain and Siddappa of the D.G.B.R. PW-3 Nokh Ram has also deposed that the work was being supervised by the officers of the D.G.B.R. PW-10 Sahaj Ram, in his examination in chief, deposed that they were hearing noises on 11.12.1997 and before that he has not heard any cracking noise. He was also declared hostile. In his cross-examination, he denied that the bridge has collapsed due to mischief of the accused or the officers of the D.G.B.R. PW-11 Bhajan Dass deposed that no noises were heard on 11.12.1997 when the bridge collapsed. PW-12 Devi Singh deposed that the noises were heard on 10th below the bridge and those were brought to the notice of the officers of D.G.B.R. They told him that there is no threat to their lives and they should keep on working. PW-19 Prem Singh has not supported the case of the prosecution. He was also declared hostile.

27. In order to prove an offence under Section 304-A IPC, the prosecution was required to firstly prove that it was the accused who did some act which was rash or negligent; secondly it entailed death of any person and the death was the direct result of the rashness or negligence and lastly that the rash and negligent act did not amount to culpable homicide. The prosecution is required to prove that the act was much more than simple negligence. Similarly, in order to prove an offence under Section 336 IPC, the prosecution was required to prove that some act was done and the act was rash and negligent and resultantly such act endangered the life and personal safety of the others. The rash or negligent act must be proved.

28. The drawings were required to be approved by the D.G.B.R. In case, there was any defect in the drawings, the officers/officials of the D.G.B.R. were responsible. The iron bar was also sent for checking its quality and strength to

Punjab Engineering College. The copy of the same is Mark "C". According to Mark "C", the average strength of 16 mm dia rods was 13.25 as against desired value of 8.3 ft. Both 10 mm dia and 16 mm dia rods samples supplied for testing were of suitable strength. The police has though taken into possession the sand, concrete and cement but the same was not sent to the recognised laboratory.

29. Thus, the prosecution has failed to prove the case against the accused persons. This Court has no occasion to interfere with the well reasoned judgment of the learned trial Court dated 30.8.2010.

30. Accordingly, there is no merit in this appeal and the same is dismissed.