
(2011) 04 SHI CK 0230

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 434 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Jawahar Lal Jindal

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 201, 279, 337, 338

Citation : (2011) 04 SHI CK 0230

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The Respondent was charge-sheeted, tried, convicted and sentenced by the learned trial Court for the offences punishable under Sections 279, 337, 338 and 201 of the Indian Penal Code and in Cr. Appeal No. 17-Cr.A/10 of 2006, filed by the convict, he was acquitted by the learned Sessions Judge, vide its detailed judgment passed on 19.8.2009, against which State has directed the present appeal.

2. I have heard the learned Counsel for the parties and have carefully reappraised the evidence on record.

3. In short the prosecution case is that on 13.7.2002 at about 5.30 p.m., complainant P.W. 1 Ram Saran was standing in front of his house and his son Ajay Kumar (7 years) was playing on the side of the road. In the meantime, a Car bearing registration No. HR-03C-9544 came from Paonta side in a high speed and hit Ajay Kumar causing grievous injuries to his right leg. The driver ran away from the spot. P.W. 1 informed police. Police reached the spot and recorded statement of P.W. 1 u/s 154 of the Code of Criminal Procedure, which culminated into FIR Ex. P.W. 4/A.

4. The investigation of this case was carried out by P.W. 4 HC Mohinder Singh. He

prepared site plan Ex. P.W. 4/B of the place of accident and took the photographs with the help of a Photographer. He had noticed the brake skid marks on the road. The injured was admitted in the hospital. The alleged offending vehicle was taken into possession, which was got mechanically examined. After recording the statements of the witnesses and obtaining the MLC of the injured, the challan was presented in the Court for the trial of the Respondent.

5. Learned trial Court found the complicity of the Respondent causing alleged accident, being its driver. It returned the finding of guilt that the Respondent was driving the vehicle on the highway in the rash and negligent manner so as to endanger human life and personal safety of others and also failed to control the same which hit Ajay Kumar who was playing in the courtyard of his house causing grievous injury. After the accident, the Respondent fled away from the spot. Thus, he was convicted and sentenced for the offences aforesaid. In appeal, learned Sessions Judge reversed the findings of conviction and sentence and acquitted the Respondent, on the ground that (a) the circumstances appearing in the record show that the Respondent had tried to save the child, who was playing on the road, (b) he applied the brakes to avert the accident, (c) further that it was an admitted case that the house of the complainant and the School of the injured child were opposite to each other divided by the highway and the injured also admitted in the examination-in-chief that he was coming from his School to his house and almost reached on the side of the road which was in front of his house, and (d) the Investigating Officer in cross-examination admitted that during the investigation, it came to the notice that the injured child was playing on the road at the relevant time, which fact was also proved by D.W. 1 Smt. Sundra that while playing the child was running on the road to reach his house, due to this act, he came in contact with the car and the driver of the car had applied its brakes to save him and there were skid marks upto 30 feet. Her presence on the spot was admitted and held to be natural and reliable probablising the defence, as such, the appeal was allowed.

6. On re-examination of the matter, I do find that the reasons given for the acquittal of the Respondent are borne out from the record. P.W. 1 Ram Saran admitted the presence of D.W. 1 Sundra at the time of alleged accident. He also stated that it was a rear tyre which hit his son, whereas P.W. 2 Jai Pal though is not an eye witness but reached the spot after the alleged accident and P.W. 4 HC Mohinder Singh testified that during his investigation, it came to the light that the vehicle was going in the middle of the road and the child was also playing on the road. There were brake skid marks on the road duly depicted in the site plan. P.W. 5 Ajay Kumar is an injured child. He stated that at the relevant time, he was standing on the "Kacha" portion of the road towards the side of his house, whereas D.W. 1 Smt. Sundra testified that the vehicle was being driven on its own side of the road and the Respondent tried to avert the accident by all means to save the child, who was playing and running on the road. The site plan also corroborates this version that there were skid marks on the spot. All this probablises the defence version.

7. The above discussion of the evidence leads me to the conclusion that the rash or negligent act of driving by the Respondent stands not proved beyond doubt and the findings arrived at by the learned Sessions Judge are reasonable and based upon the evidence on record, thus require no interference. The appeal filed by the State sans merit and is accordingly dismissed.

8. The Respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of this case.

Send down the records.