
(2019) 11 SHI CK 0134
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 226 Of 2011

Yash Pal Rana

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 184, 313
Indian Penal Code, 1860 — Section 279, 304A, 337, 338

Citation : (2019) 11 SHI CK 0134

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Karan Singh Kanwar, Somesh Raj, Kunal Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Complainant HHC Ved Parkash (PW-1) in his statement recorded under Section 154 of the Code of Criminal Procedure (for short 'Cr.PC') Ext.PW1/A, on the basis of which formal FIR Ext.PW-9/A came to be registered against the petitioner-accused (hereinafter referred to as the 'accused'), alleged that on the intervening night of 28th February, 2008 and 1st March, 2008, he was on night patrolling duty along HHC Sant Ram at place called Shamsheerpur/Heerpur and at about 3.30 a.m., a vehicle bearing No.HP-17A-0092 coming from Paonta Sahib in high speed turned turtle and further struck against the building of Pawar Clinic on account of rash and negligent driving of accused. The above named complainant alleged that all the occupants in the vehicle, i.e., two boys and one lady received injuries and they were admitted in the Pawar Nursing Home. Complainant specifically alleged that the accident took place on account of rash and negligent driving by driver of the vehicle bearing No.HP-17A-0092. On the basis of the aforesaid statement made by the complainant (PW-1), formal FIR Ext.PW-9/A was registered against the accused. After completion of investigation, police presented challan in the court of learned JMIC, Court No.1,

Paonta Sahib, District Sirmaur, who, being satisfied that prima facie case exists against the accused, put him notice of accusation for having committed offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code (for short 'IPC') to which he pleaded not guilty and claimed trial.

2. Prosecution, with a view to prove its case, examined as many as 9 prosecution witnesses, whereas the accused in his statement recorded under Section 313, Cr.PC denied the case of prosecution in toto and claimed that he has been falsely implicated. Accused also examined one witness namely Vijay Kumar as DW-1 in his defence.

3. Learned trial Court on the basis of evidence adduced on record by the respective parties held the accused guilty of having committed offences punishable under Sections 279, 337 and 304-A, IPC and accordingly convicted and sentenced him as under:-

Section

Sentence

In default of payment of fine

279 IPC

Simple imprisonment for three months and fine of Rs.500/-

simple imprisonment for one month

337 IPC

Do

Do

304-A IPC

Simple imprisonment for Six months and fine of Rs.1000/-

simple imprisonment for two months

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction passed by the learned trial Court, accused filed an appeal before the learned Sessions Judge Sirmaur District at Nahan, who vide judgment dated 1.10.2011 dismissed the appeal, as a consequence of which, judgment of conviction and sentence recorded by court below came to be upheld. In the aforesaid background, accused has approached this Court in the instant proceedings, seeking his acquittal after setting aside the judgments recorded by the courts below.

5. Having heard learned counsel for the parties and perused the material available on record, vis-à-vis judgments of conviction recorded by both the courts below, this Court finds force in the argument of Shri Karan Singh Kanwar,

learned counsel for the accused that there is no specific evidence available on record to the effect that the vehicle in question was being driven rashly and negligently by the accused and as such, the learned court below has erred in holding the accused guilty for committing offences punishable under sections 279, 337 and 304-A, IPC, merely on the basis of high speed, if any, of the vehicle.

6. Though careful perusal of evidence led by the prosecution, be it ocular or documentary reveals that prosecution was able to establish on record that the vehicle was being driven in high speed before it turned turtle but none of the prosecution witnesses has stated something specific with regard to the rash and negligent driving, if any, by the accused at the time of alleged accident. Though in the case at hand, prosecution with a view to prove its case beyond reasonable doubt examined as many as 9 witnesses but only statement of PW/1 is relevant, as he appears to be the only eye witness to the alleged accident. PW/1 in his deposition before the court below stated that on 28 February, 2008, he alongwith HHC Sant Ram was on a night patrol duty towards Shamsherpur/Heerpur. He deposed that at about 3.30 a.m. when he reached near Pawar Nursing Home, Shamsherpur, a vehicle being driven by the accused in high speed was coming from Paonta Sahib. As per this witness, when vehicle reached near Pawar Clinic, it went out of the road and turned turtle, as a consequence of which three persons sitting in the vehicle received injuries. As per this witness, persons who allegedly received injuries were admitted in Pawar Clinic for treatment and it is on the basis of his information given to police, Head Constable Rattan Singh reached the spot, who thereafter recorded his statement Ext.PW-1/A. Statement of this witness, if read in its entirety, clearly reveals that he has not stated something specific with regard to rashness and negligence, if any, on the part of accused while driving the vehicle in question, rather he has simply stated that when he alongwith HHC Sant Ram was on night patrol duty near Shamsherpur/Heerpur side, a vehicle being driven by the accused came in high speed from Paonta Sahib. It has specifically come in the cross examination of this witness that he was at the distance of 200 meter from the alleged spot of occurrence. It is own case of the prosecution that the accident occurred at 3.30 a.m., meaning thereby it was dark at that time and such version put forth by this witness ought to have been taken into consideration with utmost care and caution by the court below. There cannot be any quarrel with argument advanced by Shri Kunal Thakur, learned Deputy Advocate General that the version put forth by PW-1, who happened to be public servant, cannot be brushed aside but as has been noticed above, there is nothing in his statement suggestive of the fact that the offending vehicle was being driven rashly and negligently at the time of accident.

7. Interestingly, in the case at hand, PW-3 Brijender Singh, who was one of the occupant of the car, nowhere supported the case of the prosecution. Though this witness admitted the factum with regard to the accident but nowhere stated that the accident took place on account of rash and negligent driving by the accused. This witness deposed that the accused was driving in normal speed but all of a

sudden, pigs came before the vehicle and accused with a view to save them, turned his vehicle to the left, as a consequence of which it turned turtle. At this juncture, it may be noticed that specific suggestion came to put to PW-1 that the offending vehicle turned turtle on account of effort made by accused to save pigs, which suddenly appeared on road. Though aforesaid suggestion put to PW-1 was denied but cross-examination conducted on PW-1 clearly reveals that he admitted the fact with regard to the presence of pigs on the spot at the time of alleged accident. If aforesaid suggestion put forth to PW-1 is read and analyzed in light of deposition made by PW- 3 that vehicle was being driven in normal speed by the accused but since pigs appeared suddenly on road, he with a view to save them turned the vehicle to left, appears to be correct version. Careful perusal of Ext.PW-9/C depicts the Pawar Clinic at the distance of 20 feet from the edge of the road. Photographs available on road suggest that offending vehicle after having turned turtle struck against wall of Pawar Clinic. Learned court below having taken note of site plan as well as distance of Pawar Clinic from the edge of road erred in concluding that the vehicle was in high speed. Even if the vehicle is in normal speed, it after having turned turtle would definitely skid to certain distance and as such, there is nothing abnormal if offending vehicle after having turned turtle struck against Pawar Clinic crossing the distance of 20 feet from the edge of road to Pawar Clinic. Cross-examination conducted upon PW-2 though is completely vague and is of no help to the case of prosecution but otherwise also version put forth by PW-3 being first person to see the accident could not have been brushed aside by the court below merely on the basis of statement of PW-1 that the vehicle was being driven in high speed.

8. DW-1 Vijay Kumar also stated that on the date of occurrence, at about 3.45 a.m. he was going for morning walk. Though statement of this witness, if read in its entirety, suggest that this witness was unable to render plausible explanation qua his presence on the spot at the time of alleged incident, especially when he did not take any steps to remove the occupants of the vehicle from it after the accident or for their admission to the Pawar Clinic, but otherwise, statement of this witness supports the case of defence that the accused while driving offending vehicle was compelled to turn his vehicle towards left with a view to save pigs on the road.

9. Leaving everything aside, this Court finds no specific evidence led on record by the prosecution to prove rash and negligent driving by the petitioner-accused. As has been taken note of above, PW-1 in a very casual manner has only stated that offending vehicle was being driven in high speed, but high speed cannot be a criteria to conclude rash and negligent driving, rather to prove guilt, if any, under Section 279 IPC, it is/was incumbent upon the prosecution to prove act of rashness and negligent so as to endanger the human life. But in the case at hand, prosecution has not been able to place on record specific evidence, if any, with regard to rash and negligent act, if any of accused, which endangered the human life. In this regard, reliance is placed on judgment rendered by the

Hon'ble Apex Court in *Braham Dass v. State of Himachal Pradesh*, (2009) 3 SCC (Cri) 406, which reads as under:-

"6. In support of the appeal, learned counsel for the appellant submitted that there was no evidence on record to show any negligence. It has not been brought on record as to how the accused- appellant was negligent in any way. On the contrary what has been stated is that one person had gone to the roof top and driver started the vehicle while he was there. There was no evidence to show that the driver had knowledge that any passenger was on the roof top of the bus. Learned counsel for the respondent on the other hand submitted that PW1 had stated that the conductor had told the driver that one passenger was still on the roof of the bus and the driver started the bus.

8. Section 279 deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. Obviously the foundation in accusations under Section 279 IPC is not negligence. Similarly in Section 304 A the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Section 279 or 304 A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved."

10. The Hon'ble Apex Court in case titled "*State of Karnataka v. Satish*,"1998 (8) SCC 493, has also observed as under:-

"1. Truck No. MYE-3236 being driven by the respondent turned turtle while crossing a "nalla" on 25-11-1982 at about 8.30 a.m. The accident resulted in the death of 15 persons and receipt of injuries by about 18 persons, who were travelling in the fully loaded truck. The respondent was charge-sheeted and tried. The learned trial court held that the respondent drove the vehicle at a high speed and it was on that account that the accident took place. The respondent was convicted for offences under Sections 279, 337, 338 and 304A IPC and sentenced to various terms of imprisonment. The respondent challenged his conviction and sentence before the Second Additional Sessions Judge, Belgaum. While the conviction and sentence imposed upon the respondent for the offence under Section 279 IPC was set aside, the appellate court confirmed the conviction and sentenced the respondent for offences under Sections 304A, 337 and 338 IPC. On a criminal revision petition being filed by the respondent before the High Court of Karnataka, the conviction and sentence of the respondent for all the offences were set aside and the respondent was acquitted. This appeal by special leave is directed against the said judgment of acquittal passed by the High Court of Karnataka.

2. We have examined the record and heard learned counsel for the parties.

3. Both the trial court and the appellate court held the respondent guilty for

offences under Sections 337, 338 and 304A IPC after recording a finding that the respondent was driving the truck at a "high speed". No specific finding has been recorded either by the trial court or by the first appellate court to the effect that the respondent was driving the truck either negligently or rashly. After holding that the respondent was driving the truck at a "high speed", both the courts pressed into aid the doctrine of *res ipsa loquitur* to hold the respondent guilty.

4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case.

5. There being no evidence on the record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged. Appeal dismissed."

11. It is quite apparent from the aforesaid explanation of law that there cannot be any presumption of rashness and negligence, rather, onus is always upon the prosecution to prove beyond reasonable doubt that vehicle in question was being driven rashly and negligently. It has been categorically held in the aforesaid judgment that in the absence of any material on record suggestive of the fact that vehicle in question was being driven rashly and negligently, no presumption of rashness and negligence can be drawn by invoking maxim *res ipsa loquitur*.

12. The Hon'ble Apex Court in case titled *Ravi Kapur versus State of Rajasthan* (2012) 9 SCC 285, has held as under:

"15. The other principle that is pressed in aid by the courts in such cases is the

doctrine of *res ipsa loquitur*. This doctrine serves two purposes - one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the IPC that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of 'culpable rashness' and 'culpable negligence' into consideration in cases of road accidents. 'Culpable rashness' is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (*luxuria*). 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is *prima facie* evidence of such negligence. This maxim suggests that on the circumstances of a given case the *res* speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010)].

20. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of *res ipsa loquitur* is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of *res ipsa loquitur*. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that

necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as:

? The event would not have occurred but for someone's negligence.

? The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

? Accused was negligent and owed a duty of care towards the victim."

13. Reliance is also placed on judgment rendered by this Court in State of H.P. Vs. Manpreet Singh, Latest HLJ 2008 (HP) 538, relevant para whereof is as under:

"4. Legally, in a case of rash and negligent act, if the prosecution is able to prove the essential ingredients of the offence, the onus to disprove it shifts upon the respondent to show that he had taken due care and caution to avoid the accident. It is an admitted fact that said Shri Daya Ram had died in the accident caused by the respondent but still it is incumbent upon the prosecution to prove that it was the rash and negligent act of driving to conclude the rash and negligent driving of the respondent. In other words, it must be proved that the rash or negligent act of the accused was causa causans and not causa sin qua non (cause of the proximate cause). There must be some nexus between the death of a person with rash or negligent act of the accused. According to Rupinder Parkash (PW4) deceased was hit by the motor cycle which was in a high speed but the speed is not criteria to hold the act as rash or negligent. The respondent in his statement under Section 313 of the Code of Criminal Procedure has explained that on seeing the deceased, he had blown the horn and he (deceased) stopped on the road. As soon as he reached near him, he immediately tried to cross the road and got hit. His version has been duly corroborated by Hardeep Singh (DW1) who was a pillion rider with him. Ajay Kumar (PW-1) has admitted this version that the respondent had blown the horn and Daya Ram on hearing it, had stopped for a while. In these circumstances, if a person suddenly crosses the road, without taking note of the approaching vehicle and its driver may not be in a position to save the accident, it will not be possible to hold the Driver guilty of the offence. In the instant case, the deceased knowing fully well at least the approaching vehicle stopped on hearing the horn while crossing the road but when the motor cycle reached near him, he darted before it and the accident took place. Thus in my opinion the prosecution could not prove the offence charged against the respondent beyond reasonable doubt that the respondent was driving the vehicle rashly or negligently. Therefore, in these circumstances, the learned trial Court had rightly acquitted the respondent of the charges framed against him. As such, no interference in the impugned judgment of acquittal is called for. Accordingly the appeal is dismissed. The respondent is discharged of his bail bounds entered upon by him at any stage of the trial."

14. Reference is also made to the judgments passed by this Court in Criminal

Appeal No.251 of 2016 titled State of Himachal Pradesh Vs. Vijay Parkash and Criminal Appeal No.564 of 2010 titled State of H.P Vs. Hardev.

15. No doubt in the case at hand, unfortunately, one of the occupants namely Ms. Kamlesh lost her life on account of injury suffered by her in the alleged accident, but since there is no evidence that the vehicle in question was being driven by accused in such rash and negligent manner so as to endanger the life of the occupants of the car, courts below have fallen in error by holding the accused guilty for having committed offence punishable under Sections 279, 337 and 304-A, IPC.

16. Consequently, in view of the detailed discussion made here-in-above as well as law laid down by the Hon'ble Apex Court, the present appeal is allowed and the judgment of conviction recorded by the court below is set aside. The petitioner-accused is acquitted of the charges framed against him under Sections 279, 337 and 304-A of IPC. Pending application(s), if any, shall stand disposed of.