
(2010) 12 SHI CK 0165

High Court of Himachal Pradesh

Case No: Criminal A. No. 185 of 2004

State of H. P.

APPELLANT

Vs

Suresh Thakur

RESPONDENT

Date of Decision: Dec. 22, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 313.
- Motor Vehicles Act, 1988 - Section 181, 187, 196
- Penal Code, 1860 (IPC) - Section 279, 337, 338

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Judgement

Surinder Singh, J.

The Respondent was acquitted by the learned trial Court, for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code read with Sections 181, 196 and 187 of the Motor Vehicles Act, as such, the State felt aggrieved and filed the instant appeal.

2. Heard and gone through the evidence on record.

3. The brief facts which emerge from the evidence on record can be states thus. On 21st November, 2002, at about 3.30 p.m. the vehicle No. DL-8CA-6446 was being driven on a public highway by the Respondent, rashly and negligently, so as to endanger human life and personal safety of Ors.. When he reached near village Ghatta, the Respondent had tried to overtake Anr. vehicle and in that process, hit the motor-cyclist PW5 Suresh Chand, with the result he alongwith his pillion rider PW6 Joginder Singh sustained injuries and his Motor Cycle bearing registration No. HP-53-1732 also got damaged.

4. The injured persons were removed to the hospital by the Respondent himself, where the statement of complainant Suresh Chand Ex.PW5/A was recorded u/s 154 of the Code of Criminal Procedure, which culminated into FIR Ex.PW7/A, registered under Sections

279 and 337 of the Indian Penal Code.

5. PW11 HC Pawan Kumar investigated the case, prepared site plan Ex.PW11/A and took into possession the vehicle of the Respondent vide recovery memo Ex.PW11/D alongwith its documents. Its mechanical examination was got conducted from PW3 Umesh Bali, who issued report Ex.PW3/A. Police also took into possession the medico legal certificate of the injured Suresh Chand whereby he was shown to have sustained grievous injury. Injured sustained as much as ten injuries. As per the doctor, injury No. 7 i.e. swelling on the right knee was got X-rayed. It was grievous in nature.

6. After recording the statements of the witnesses and completing the investigation, challan was presented in the court for the trial of the Respondent under the aforesaid sections, but the learned trial Court prima-facie found the Respondent responsible for committing the offences under Sections 279, 337 and 338 of the Indian Penal Code. Accordingly, he was charge-sheeted to which he denied and claimed trial.

7. To prove its case, prosecution examined its witnesses and the Respondent was also examined u/s 313 of the Code of Criminal Procedure. His case was that of denial simplicitor. At the end of trial, Respondent was acquitted on the ground that the prosecution has failed to prove the rash and negligent act of driving by the Respondent. Although one of the witnesses stated that the Respondent was driving his vehicle in a high speed, but high speed was not held to be a criteria to even infer the rash and negligent act of driving.

8. Although the speed alone is not the criteria to prove the rash or negligent act of driving, but on the scrutiny and reappraisal of the evidence on record, it stand established beyond reasonable doubt that the Respondent while overtaking the vehicle caused the accident by hitting his vehicle with the motor-cycle of PW5 Suresh Chand. He did not explain in his examination u/s 313 of the Code of Criminal Procedure as to what was the cause of accident and what due care and caution he adopted to avert the accident. Even in the cross-examination of the witnesses, nothing has been suggested. What emerges from the evidence is that the Respondent was driving the vehicle on the ascending public highway. There is nothing on record even to suggest that the Respondent while overtaking the vehicle had blown horn to cross and waited for the signal of clearance by the driver of the vehicle ahead of him. A duty is cast upon the Motorist who is to overtake the Anr. vehicle, especially on a hilly terrain to observe rules of the road in absence of which rash or negligent act of driving is writ large.

9. To substantiate the offences charged, the prosecution is obliged to prove the rash and negligence act of driving by the accused.

10. The rash act is primarily an over hasty act and is thus opposed to a deliberate act, but it also includes an act, which, though it may be stated to be deliberate, is yet done without due deliberation and caution. The most formally scientific analysis of negligence is that

the accused had caused the breach of duty by omission to do something, which a reasonable man, guided by those considerations which ordinarily regulate the conduct of the human affairs, would do, or the doing something which a prudent and reasonable man would not do. Negligence is not an affirmative word; it is the absence of such skill, care and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed. The difference between culpable rashness and culpable negligence is that 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 alleged offender has taken sufficient precautions to prevent their happening. The imputability arises despite the consciousness. On the other hand, culpable negligence is acting without the consciousness that illegal and mischievous result 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.

11. Against the facts and law discussed above, the prosecution in my opinion has been successful in proving the case that the Respondent was overtaking the vehicle in a rash and negligent manner and in that process, the accident had taken place.

12. Accordingly, in my opinion, the judgment of acquittal passed by the learned trial Court is perverse and inadmissible. Accordingly, the Respondent is held guilty and is convicted for the offences punishable under Sections 279 and 337 of the Indian Penal Code, whereas the prosecution has failed to prove the offence u/s 338 of the Indian Penal Code for the reasons that PW9 Dr. Jai Dev stated that injury No. 7 was grievous in nature, but the X-ray of the injury on knee does not reveal that there was any fracture nor the report of the Radiologist is on record. So what is the reason for opining injury No. 7 as grievous is not known, hence his acquittal u/s 338 of the Indian Penal Code is upheld.

13. In so far as the sentence is concerned, the learned Counsel for the convict-Respondent vehemently argued that keeping in view the date of the alleged offence and the torture of trial, the Respondent deserves to be given the benefit of Probation of Offenders Act.

14. I have considered this argument of the learned Counsel, but the prayer for granting benefit of Probation cannot be accepted.

15. In fact, the road accidents are rampant in this hilly state due to the rash and negligent driving by the motorists and there is overall spiral rise in the vehicular accidents, which are required to be curbed with firm hands, so that it sends a message down to everyone in the society that they are also to maintain road discipline and obey traffic rules while driving the motor vehicles, which endangers precious human life. Therefore, the release on probation in such type of cases is uncalled for.

16. However, keeping in view the exaggerating and extenuating circumstances in this case and also the date of alleged offence, which has taken place in the month of November, 2002, the torture of trial, the age of convict, the fact that he is a first offender, also the fact that the injured persons were immediately taken by him to the hospital for treatment and looking at the punishment provided under Sections 279 and 337 of the Indian Penal Code, the Respondent is sentenced till rising of the Court and to pay a fine of Rs. 1,000/- under Section 279 of the Indian Penal Code and in default of payment of fine, he shall further undergo simple imprisonment for a period of one month and also pay a fine of Rs. 500/- u/s 337 of the Indian Penal Code and in default of payment of fine, simple imprisonment for a period of one month. In addition, Respondent shall also pay compensation to the tune of Rs. 3000/- to the injured PW5 Suresh Chand, for his personal injuries and damage caused to his motor-cycle. The learned trial Court shall disburse this amount to PW5 Suresh Chand aforesaid.

17. The above entire amount i.e. Rs. 4500/- shall be deposited by Convict-Respondent on or before 03.1.2011 in the learned trial Court.

18. The convict-Respondent has been produced in custody pursuant to non-bailable warrants. He has undergone the sentence till rising of the court. In view of the above, the Respondent be released forthwith.

19. Copy of the judgment be supplied to the Respondent free of cost, duly authenticated by the Court Master of this Court.

20. Send down the records.