

State of H.P. Vs Gurdeep Singh

Court: High Court of Himachal Pradesh

Date of Decision: Oct. 18, 2010

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 378

Motor Vehicles Act, 1988 â€” Section 187

Penal Code, 1860 (IPC) â€” Section 201, 279, 304A

Hon'ble Judges: V.K. Ahuja, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Ahuja, J.

This is an appeal filed by the State of H.P. u/s 378 Cr.P.C. against the judgment of the Court of learned Additional Chief

Judicial Magistrate, Court No. 1, Poanta Sahib, dated 18.7.2003, vide which the respondent was acquitted of the notice of accusations put up to

him for offences punishable under Sections 279, 304A, 201 I.P.C. and u/s 187 of the Motor Vehicles Act.

2. Briefly stated, the facts of the case are that on 29.7.2000 at about 4.55 P.M., statement of complainant Sanjiv Kumar was recorded at Civil

Hospital, Paonta Sahib u/s 154 Cr.P.C. by H.C. Sanjay Kumar, Investigating Officer, Police Station Poanta Sahib. In the said statement, the

complainant alleged that he is a truck driver and he was coming alongwith trader Rishi Kumar and at about 4.00 P.M., they reached at Bhuppur,

Paonta Sahib, where his brother Shamsher Singh was standing. The complainant parked his truck on one side and he alongwith his son went to

meet his brother. When they reached near his shop, a Tempo came from Bhuppur side and hit his son Sumeet Kumar. It was alleged that

thereafter Tempo driver ran away from the spot and his son died at the spot at the time of accident. It was alleged that the complainant was talking

with his brother Shamsher Singh on one side of the road. He did not suffer any injury, but his son died and the accident took place due to rash or

negligent driving of the Tempo driver. On this report, a case was registered and after investigation, the challan was filed before the learned trial

Court, who tried the respondent for the offences detailed above, leading to his acquittal.

3. I have heard the learned counsel for the parties and have gone through the record of the case.

4. On appraisal of the judgment passed by the learned trial Court, it is clear that it had observed that a specific plea has been taken by the

respondent that a boy had tried to cross the road by running and he struck with the Tempo due to his own fault. The learned trial Court had mainly

relied upon the testimony of one Nathi Ram DW-1, who was having a Dhaba at the place of accident and he was cited as a prosecution witness,

but the prosecution gave him up by making a statement that the witness was repetitive in nature. He was the main eye witness and an independent

witness, but the learned Prosecutor did not deem it necessary to examine him and he was given up as repetitive and there was no statement that he

has been won over by the accused. Therefore, the conduct of the learned A.P.P. in not examining him cannot be appreciated.

5. A perusal of the impugned judgment shows that the learned trial Court did not refer mainly to the testimony of PW-1 Sanjiv Kumar, father of the

deceased and PW-2 Shamsheer Singh, brother of the complainant, who were talking to one another or rejected their testimony since they were

talking to one another. Only one of them could have seen the occurrence, but it mainly relied upon the testimony of DW-1 Nathi Ram to hold that

the prosecution case had not been proved and it was the negligence of the boy who had tried to cross the road suddenly, which led to the

accident and death of the deceased.

6. A reference can be made to the testimony of the father of the deceased complainant, namely, PW-1 Sanjiv Kumar, who has stated that

along with him one Rishi Thakur and his son Sumeet were also with him apart from the cleaner. He stated that he parked his truck and went to meet

his brother. When he was talking to his brother, a Tempo came and struck with his son, who died there. He simply stated that the Tempo was at a

speed and he gave a statement Ext. PW1/A to the police. He also stated that the Tempo driver ran away from the spot and they brought the boy

to the hospital, where he was declared dead. A perusal of his statement shows that he had nowhere stated as to on which side he had parked the

truck and was standing. He had also not stated that on which side the shop of his brother PW-2 Shamsheer Singh was there, where in front of his

shop they were talking. He had also not named the conductor, who was also present at the spot and was a relevant witness, but neither he has

been cited by the prosecution as a witness nor examined by the prosecution. He himself is a driver but has not stated about the speed of the driver

at the relevant time to hold that the respondent was driving the vehicle at high speed or what was specifically the cause of the accident, which fact

could not be established from his statement.

7. PW-2 Shamsheer Singh is the brother of the complainant and the complainant was talking to him at the relevant time. He only stated that the

truck was parked on the side and the complainant was talking to him and Sumeet was standing with him. This fact does not stand established from

the evidence as to whether the deceased was standing with his father and uncle at the relevant time or was standing on the other side of the road

near the truck as appears to be the case as per the prosecution evidence. He also did not state anything about the speed of the vehicle or state that

the Tempo was being driven rashly or negligently and due to rash and negligent driver, it struck with the boy who ultimately died. His cross-

examination rather shows that while coming from Poanta Sahib, a mechanic shop is on the road side and the truck was parked on the left side of

the road, which suggests that the truck was on the other side, while his shop was on the other side of the road, where the accident had taken place.

He is not even aware about the width of the road on the spot, though the accident had taken place in front of his shop. He stated that there was a

car standing behind the truck, but neither the car owner or driver or any other occupant has been examined, who may have seen the accident at the

relevant time. However, his statement thus establishes that the Tempo had struck with the boy on the Katcha side of the road. The learned trial

court had observed that there was no occasion for the Tempo driver to take the Tempo to Katcha side of the road since the road was sufficiently

wide and no vehicles were crossing at the relevant time. It had been concluded by the learned trial Court that this leads to the inference that the

Tempo driver took the vehicle to Katcha side of the road to save the boy, who suddenly appeared on the road near the truck where he was

standing. This witness admitted that he saw the accident only when it took place, meaning thereby his face was not towards the side from where

the Tempo came.

8. PW-3 Rishi Kumar is the person who was with the complainant at the relevant time. He has also stated that the truck was parked on the left

side and Sanjiv and Sumeet were talking. Sumeet was standing ahead of the vehicle and they were talking when the Tempo came and struck with

the child but did not stop. He neither stated about the speed of the Tempo at the relevant time or the manner of the accident or the fact that the

accident took place due to rash or negligent driving of the respondent. His cross-examination suggests that the truck was parked on the left side.

He stated that he did not see the car. He denied the suggestion that the boy got down from the truck and tried to cross the road when the accident

took place. He denied the accident had taken place on the metalled portion of the road, which also leads to the inference that it had taken place on

the Katcha side of the road. He also stated that he got down from the vehicle after the accident. He admits that the conductor was sitting in the

vehicle at the relevant time, which establishes the presence of the conductor, who has not been joined as prosecution witness for the reason best

known to the police.

9. Coming to the testimony of DW-1 Nathi Ram, whose statement has been mainly relied upon by the learned trial Court. It is clear that his

presence at the spot was established from the evidence since it has come up in evidence that the accident took place in front of his Dhaba. The

Investigating Officer who prepared the site plan Ext. PW7/B has also shown the Dhaba at point "D". No reason has come on record for giving up

this witness and has also observed that he was a material witness. His testimony has been relied upon by the learned trial Court to hold that the boy

had tried to cross the road and gone towards the other side, where his uncle was standing, which rather proves the defence version set up by the

accused that the deceased had suddenly tried to cross the road and attempted to go on the other side of the road. He admits in examination-in-

chief that the Tempo was going at a normal speed. He also stated that the accused tried to save the boy, but still he struck and fell on the pucca

portion of the road. He also states that he stopped the Tempo and the respondent took the deceased to the hospital, which fact was denied by

both the complainant and his brother and they have stated that the Tempo driver had run away from the spot.

10. The fact that the Tempo driver ran away could have been established by the testimony of Investigating Officer PW-7, who could state when he

arrested the accused and apprehended the Tempo also or where he apprehended the respondent after the accident. However PW-7 H.C. Sanjay

Kumar, is silent in this regard. He simply stated that he arrested the accused, but when and where he arrested the accused has not been established

from his statement. Therefore, there are two versions coming from the statement of the prosecution witnesses that the accused had run away from

the spot and another coming from the testimony of DW-1 Nathi Ram, who was a prosecution witness and whose presence has been established at

the spot since the accident took place in front of his Dhaba. He was having a Dhaba near the shop of PW-2 Shamsher Singh, brother of the

complainant and he had no reason to depose against the complainant party and rather in favour of the respondent. Moreover, nothing has come up

on record to show as to why he will depose falsely to favour the accused.

11. Investigation in this case has also not been done properly since the Investigating Officer has not clarified the facts as to when he arrested the

accused and when he prepared the site plan he did not show the place where the truck of the complainant Sanjiv Kumar was standing at the

relevant time and on which side, there was a shop of PW-2 Shamsher Singh, brother of the complainant. The Investigating Officer simply showed

the road and the place where the dead body was found and also showed the Dhaba of DW-1 Nathi Ram and one shop of Nanak but did not

show the place as to where the shop of the complainant's brother existed and showed where the truck was standing at the relevant time, which

could only prove the fact that the deceased had tried to cross the road and attempted to go on the other side resulting in this accident.

12. The mere fact that a person died in the accident while standing by the side of the road is not sufficient to prove the rash or negligent driving,

which fact has to be established on record, which fact was not established in view of the evidence led by the prosecution. Moreover, in case a

person suddenly tries to cross the road, the driver cannot avoid the accident, however he may be vigilant and as such, it cannot be held that the

person was driving the vehicle rashly or negligently. I am supported by the observations made by their Lordships of the Hon"ble Supreme Court in

Mahadeo Hari Lokre Vs. The State of Maharashtra, wherein it was observed as under:

If a person suddenly crosses the road the bus driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore,

it will not be possible to hold that the bus driver was negligent.

13. In view of the above discussion, it is clear that two views emerged which could have been taken by the learned trial Court, but the view taken

cannot be said to be perverse so as to hold that those findings are required to be reversed, though other view was possible in view of the evidence

led by the prosecution. I accordingly hold that there is no merit in the appeal for holding that the findings recorded by the learned trial Court are

perverse calling for an interference by this Court.

14. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed accordingly.

The bail bonds furnished by the respondent shall stand discharged.