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Manoj Vs State of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: April 1, 2010

Acts Referred: Motor Vehicles Act, 1988 â€" Section 146, 196
Penal Code, 1860 (IPC) â€" Section 279, 304A, 337, 338

Citation: (2010) 2 MPHT 98

Hon'ble Judges: T.P. Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.
By this criminal revision, petitioner challenged the legality and propriety of the judgment dated 16-3-2010 passed by

Additional Sessions Judge (FTC), Dhamtari in Criminal Appeal No. 6/2010, affirming the judgment of conviction and order of sentence dated 1-

2-2010 passed by Judicial Magistrate First Class, Nagri in Criminal Case No. 682/08 whereby and where under after holding the petitioner guilty

for the offence punishable u/s 304A of the Indian Penal Code and u/s 146 read with Section 196 of the Motor Vehicles Act, 1988 and sentenced

rigorous imprisonment for 3 months and fine of Rs. 200/- in default rigorous imprisonment for 2 days and fine of Rs. 500/- in default simple

imprisonment for 5 days.

2. Judgment is impugned on the ground that without any clinching and credible evidence Court below has convicted and sentenced the petitioner

and affirmed the conviction and sentence thereby committed an illegality.

3. Brief case necessary for disposal of this criminal revision is, on 28-11-07 at about 6 p.m. petitioner was driving the tractor No. C.G. 05 B 6862

and by his rash and negligent act caused homicidal death not amounting to murder Jai Singh, First Information Report was lodged, offence was

investigated and charge-sheet was filed before the Judicial Magistrate First Class, Nagri. After trial, learned Judicial Magistrate First Class, Nagri

convicted and sentenced the petitioner as aforementioned. Conviction and sentence was challenged before the Additional Sessions Judge (FTC),

Dhamtari who has affirmed the conviction and sentence vide judgment impugned.

4. Shri P.P. Sahu, Advocate for the petitioner and Shri Rajendra Tripathi, P.L. for the State/respondent are heard.

5. Judgment impugned and record of Courts below perused.

6. Learned Counsel for the petitioner vehemently argued that while convicting the petitioner both the Courts below have not considered the fact

that conviction u/s 304A of the Indian Penal Code the rash and negligent act of the accused is sine qua non and in absence of such essential

ingredients of the offence conviction is not sustainable under the law.

7. On the other hand, learned Counsel for the respondent/State opposed the criminal revision and submits that by adducing evidence prosecution

has proved its case. The conviction is based on cogent and credible evidence.

8. In order to appreciate and examine the legality and propriety of the judgment impugned, I have examined the records of the Court below. This is

a criminal revision after dismissal of criminal appeal, concurrent finding of facts of two Courts below are not liable to be set aside without any

cogent reason. In the present case Gulab (P.W. 1), Bhavesh (P.W. 2), Upendra (P.W. 3), Harilal (P.W. 4) and Tekeshwar Gond (P.W. 6) have

categorically deposed that at the time of accident petitioner was driving the vehicle, accident took place at turning and 8 years child Jai Singh was

dashed by the petitioner. These witnesses have been cross-examined by the defence and defence has tried to show that accident took place at

turning, petitioner has driven his vehicle cautious 8 years child Jai Singh was moving on the middle part of the road his other friends left the road

when he was driving the vehicle but Jai Singh did not leave the road thereby who was dashed by the vehicle.

9. This is a criminal revision in case of death by rash and negligent act. Maxim res ipsa loquitur is applicable in case of Section 304A of the Indian

Penal Code. In the matter of Thakur Singh v. State of Punjab, (2003) 9 SCC 208 , the Apex Court has held that in the facts of this case the

doctrine of res ipsa loquitur came into the play and the onus of proof shifted to the person who was in control of the automobile to establish that

the accident did not happen on account of any negligence of his part. Since the accused had not succeeded in showing that the accident happened

due to causes other than negligence on his part, his conviction could not be faulted.

10. The evidence of prosecution witnesses clearly establishes that petitioner was driving the tractor, accident took place in the turning of the road

Jai Singh was moving on the road according to petitioner his friend leave the road but Jai Singh did not leave the road and he was dashed by the

vehicle it shows that it was obligation upon the petitioner to drive the vehicle in the turning in case of child moving in the road right side or wrong

side the heavy duty is also casted upon the petitioner to take complete precaution to save the innocence child if petitioner would have been driven

the vehicle with aforesaid precaution then there would have been no occasion any accident that the maxim res ipsa loquitur would apply in the

present case and these circumstances are sufficient for drawing an inference that petitioner was not cautions while driving the vehicle and he was

negligent and by his negligent act he has caused culpable homicide not amounting to murder of child Jai Singh.

11. As regard the question of sentence is concerned, Theory of deterrence (Penology) was dealt by the Apex Court in the matter of Dalbir Singh

Vs. State of Haryana, , in which it has held that while considering the quantum of sentence to be imposed for the offence of causing death by rash

or negligent driving of automobiles, one of the prime considerations should be deterrence. Para 13 of the said judgment reads as under:

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal

Courts cannot treat the nature of the offence u/s 304A, IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering

the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations

should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly

inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He

cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not

necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he

is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for

causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the Courts can

play, particularly at the level of Trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

12. While dealing with the question of sentence in case of rash and negligent driving, the Apex Court in the matter of State of Kamataka v.

Sharanappa Basanagouda Aregoudar (2002) 3 SCC 736, has held that the sentence imposed by the Courts below should have a deterrent effect

on potential wrongdoers and it should be commensurate with the seriousness of the offence. Para 7 of the said judgment reads as under:

7. In the facts and circumstances of the case, we are inclined to interfere with the judgment of the learned Single Judge and hold that the

respondent is liable to undergo the sentence imposed by the Trial Magistrate and affirmed by the Appellate Court. Consequently, we direct that for

the offence punishable u/s 304A, the respondent be taken into custody to undergo simple imprisonment for six months. As regards the offences

under Sections 279, 337 and 338, IPC, no separate sentence has been awarded by the Trial Magistrate. The direction of the Trial Magistrate is

maintained.

13. The 6 months rigorous imprisonment was found proper and in the present case petitioner has been awarded rigorous imprisonment for 3

months Court below has already taken lenient view in sentencing the petitioner.

14. On close scrutiny of the evidence. I do not find any illegality or impropriety in the judgment impugned. Consequently, this criminal revision is

liable to be dismissed and is hereby dismissed at the stage of motion itself.