
M.K. Khan Vs State of C.G.

Criminal Revision No. 297 of 2007

Court: Chhattisgarh High Court

Date of Decision: Nov. 25, 2009

Acts Referred:

Block Working Manual and Rules " Rule 14.11, 14.19, 14.9, 2.03, 9.4#Evidence Act, 1872
" Section 133#Penal Code, 1860 (IPC) " Section 304A, 338#Railways Act, 1989 " "
Section 114, 175

Citation: (2009) 4 CGLJ 69

Hon'ble Judges: Pritinker Diwaker, J

Bench: Division Bench

Advocate: Sourabh Dangi, for the Appellant; Pankaj Shrivastava, P.L., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Pritinker Diwaker, J.

Present revision petition is directed against the impugned judgment dated 16.3.2007 passed by the 9th Additional

Sessions Judge (FTC) Raipur in Criminal Appeal No. 171/2006 modifying the judgment dated 29.6.2006 passed by the Special
Railway

Magistrate, Raipur in Criminal Case No. 757/1996.

2. Brief facts of the case are that an FIR (Ex. P-17) was registered by one B.K. Pahare (P.W.-24), Inspector, Police Station, Balod,
on the basis

of merg intimation dated 26.1.1996 (Ex. P-18). It is alleged that on 26.1.1996, an information was given by the applicant to the
effect that an

accident between the trolley and the goods train had taken place in between Kusumkasa and Balod railway station in which four
persons namely

Ramadhar, Bhagat, Ramkumar and Gajre died and seven other persons were injured. Prosecution filed charge sheet against the
present applicant,

one Bharatlal - trolley driver and Brijlal, trolley man for the offences u/s 175 of the Railways Act and Sections 304A and 338 of the Indian Penal

Code.

3. Prosecution has examined 24 witnesses in support of its case. All the three persons also examined themselves as defence witnesses and pleaded

their innocence and false implication in the case. By order dated 29.6.2006 learned Special Railway Magistrate convicted the applicant herein and

the trolley driver namely Bharatlal u/s 304A of the Indian Penal Code and Section 175 of the Railways Act and sentenced them to undergo

rigorous imprisonment for two years with fine of Rs. 1,000 each, in default of payment of fine to further undergo simple imprisonment for two

months u/s 304A IPC and to pay fine of Rs. 500 each, in default of payment of fine to undergo simple imprisonment for 30 days u/s 175 of the

Railways Act. However, learned Special Railway Magistrate acquitted the trolley man namely Brijlal of the charge levelled against him.

4. The aforesaid judgment passed by the Special Railway Magistrate was challenged by the applicant before the Additional Sessions Judge (FTC)

Raipur who vide judgment impugned maintained the conviction under both the sections but altered the sentence and thereby the applicant has been

sentenced to pay fine of Rs. 5,000, in default to undergo simple imprisonment for three months u/s 304A IPC and to pay fine of Rs. 500, in default

to undergo simple imprisonment for 30 days u/s 175 of the Railway Act.

5. Allegation against the applicant is that at the relevant time he was discharging his duties as Station Master of Balod Railway Station and he had

given incorrect line clear permit to accused Bharatlal to proceed towards Kusumkasa railway station for distribution of salary of gang men and staff

of Dallirajhara railway station. It is said that after getting the authority letter, the trolley proceeded towards the Kusumkasa railway station and at

the same time the applicant had given private number to a goods train No. DBC 239/L, which was going from Kusumkasa to Balod. It is said that

at Dallirajhara both, the trolley and the goods train collided with each other resulting in the death of four persons and injury to seven persons.

6. Counsel for the applicant submits that both the courts below have completely ignored the rules governing the procedure of the Railways while

passing the impugned judgments. He submits that the general Rules 14.9, 14.11, 14.19, 2.03 of Block Working Manual and Rule 9.4 of the

Operating Manual are mandatory in nature and they have been completely ignored by the courts below while convicting and sentencing the

applicant. He submits that Amarnath Pandey (P.W.-7) - Payment Clerk, who was also traveling in the trolley but fortunately survived, has stated in

his statement that while proceeding from Balod towards Kusumkasa railway station, trolley driver Bharatlal was not having the order number which

is given by the Station Master. He has further stated that maximum eight persons can be carried in the trolley whereas on the date of incident as

many as 11 persons were traveling in the trolley. He submits that though this witness has categorically stated that within 20 minutes trolley could

have reached from Balod to Kusumkasa railway station but as in between the two stations the trolley had stopped for about extra 20 minutes for

making payment to the staff members, it could not reach the destination on time. This witness has also admitted that if the trolley would not have

stopped on the way, he could have reached the destination within the prescribed time. He submits that the prosecution has failed to establish the

fact that at any point of time the applicant had given the line clear permit to the trolley driver. He submits that the conviction of the applicant is

based on the statement of the co-accused namely Bharatlal D.W.-2 and Brijlal D.W.-3. He submits that the applicant cannot be convicted solely

on the basis of statement of the accomplice because his statement has not been corroborated by any other independent witness or circumstantial

evidence. In support of his argument counsel for the applicant placed reliance on the decision of Division Bench of Calcutta High Court in the

matter of Shankar Balakrishna v. King Emperor rendered in Criminal Revision No. 424/1904 and submits that according to him his case is

squarely covered with the said decision. He has further placed a strong reliance on the decision of the Apex Court in the matter of Haroon Haji

Abdulla Vs. State of Maharashtra, and submits that the statement of the accomplice cannot be used for convicting the other accused unless it is

corroborated by some independent witnesses. He also placed reliance on the judgment of the Supreme Court in the matter of Keshub Mahindra

Vs. State of M.P., in which it has been held as under:

(i) In a prosecution for an offence u/s 304A of IPC, the court has to examine whether the alleged act of the accused is the direct result of a rash

and negligent act and that act was the proximate and efficient cause of the death without intervention of other's negligence. The mere fact that an

accused contravenes certain rules or regulations in doing of an act does not establish an offence u/s 304A, IPC.

The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine

whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make

the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent

conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind boggle while

appreciating the evidence.

7. Counsel for the applicant submits that in view of the settled position and the relevant governing rules, the applicant cannot be convicted and

therefore the judgments passed by both the Courts below being ill-founded are liable to be set aside.

8. On the other hand counsel for the Respondent/State supports the impugned judgment and submits that it being strictly in accordance with law is

not worthy of any interference in revision.

9. Before advertng to the merit aspect of the case, it appears to be necessary to refer to certain rules including Section 175 of the Railways Act

which were applicable not only for the applicant but for the trolley driver and the department as well. General Rule 14.9 reads as under:

Section 175. Endangering the safety of persons - if any railway servant when on duty, endangers the safety of any person -

(a) by disobeying any rule made under this Act, or

(b) by disobeying any instruction, direction or order under this Act or the rules made thereunder, or

(c) by any rash or negligent act or omission.

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend one thousand rupees, or with

both.

General Rule 14.9

(1) The Driver shall ensure that the authority to proceed given to him is the proper authority under the system of working and refers to the block

section he is about to enter, and if the said authority is in writing that it is complete and duly signed in full and in ink.

(2) If the conditions mentioned in Sub-rule (1) are not complied with, the Driver shall not take his train past or start from the station until the

mistake or the omission is rectified.

Rule 14.19 reads thus:

14.19 Writing and signing of message and written authorities to proceed:

(1) All messages dispatched in connection with the working of trains, and all written authorities to proceed, shall be written up in ink and signed by

the person authorized to dispatch or issue the same.

(2) No message or written authority to proceed shall be written out, either in full, or in part, or signed, until necessary.

Rule 2.03 of Block Working Manual reads thus:

Incorrect Authority to proceed-When a Line Clear Ticket is issued to the Driver of a train with wrong date, wrong train number, or other error on

it, or without Private Number, or with the Private Number not written both in words and figures, it is not to be surrendered to any one else except

the Loco/Shed/Traction Foreman of the Home Station of the Driver and the Loco/Shed/ Traction Foreman shall forward the same to the

concerned Divisional Safety Officer to take up with the staff at fault. The Driver shall, however, inform the Station Master in writing in what way it

is incorrect, and the Station Master shall issue a fresh Line Clear Ticket. Under no circumstances the Driver shall take his train into the Block

section with incorrect Line Clear Ticket. In the case of a wrong token, it shall be returned to the Station Master who shall issue a written memo to

the Driver on receipt of the said Token. All cases of incorrect ""Authority to Proceed"" shall be reported at the end of journey to the

Loco/Shed/Traction Foreman who shall send a special report to the concerned Divisional Safety Officer.

Rule 9.04 of Operating Manual reads thus:

(a) When a motor trolley holder requires an "authority to proceed" into a Block section, he must apprise the Station Master whether the trolley will

proceed direct or stop in mid-section for the purpose of inspection etc. before granting line clear the Station Master should take care to see that

the Section Controller is advised and his approval obtained.

(b) Should it is necessary to stop in the section, the Station Master must be informed how long it will take the trolley to clear section and the

Station Master should in turn advise the Section Controller. The Officer-in-charge of the trolley will be responsible to see that the time allowance

agreed to by the Section Controller is not exceeded.

General Rule 14.11 reads thus:

Responsibility of Station Master as to authority to proceed-

(1) An Authority to proceed shall not be given to the Driver until the procedure prescribed for the purpose, so far as it is applicable in the

particular case, has been followed.

(2) An authority to proceed shall not be given to the Driver except by the Station Master or by some railway servant appointed in this behalf by

special instructions.

(3) The Station Master shall see that the authority to proceed given to a Driver is accurate and that when it is writing, it is complete and is signed in

full and in ink.

10. According to General Rule 14.9, co-accused - trolley driver has failed to comply with this Rule which is mandatory in nature as it imposes a

duty on the driver to ensure that the Authority to Proceed given to him is the proper authority under the working system of the Railways. However,

in this case the driver did not check or ensure whether the Authority to Proceed was correct or not. Similarly, from Rule 2.03 of Block Working

Manual it is clear that on receiving the incorrect Authority to Proceed, the driver ought to have informed the Station Master regarding the incorrect

Authority to Proceed and should have reported the matter to Loco/Shed/Traction Foreman, for appropriate action. It is further clear that the driver

did not inform the Station Master nor has he made any complaint to him. This Rule further makes it clear that under no circumstance, the driver

shall take his train into the block section with incorrect line clear permit. The record shows that driver Bharat Lal proceeded with incorrect line

clear permit which he might have taken from the office of the Station Master without his permission.

11. Record further reveals that Rule 9.04 of the Operating Manual has also been completely overlooked by co-accused/trolley driver as he has

never informed the Station Master regarding the time which was likely to be consumed by him for covering the distance between the two stations

and that how much time he would take in reaching the destination and at which place he was likely to stop. From the evidence it is clear that the

trolley was stopped on the way for about 20 minutes and had this time not been consumed, the trolley would have reached Kusumkasa station in

time and the accident might have been averted.

12. Amarnath Pandey (P.W.-7) has categorically stated in his evidence as to why the time was consumed by the driver between two stations, by

assigning the reason that he had stopped the trolley at the turning before Kusumkasa station for making payment to the staff. From Rule 14.19 it is

clear that if necessary, to avoid delay, the Station Master is authorized to prepare the incomplete line clear permit so that in case of urgency as

soon as he receives the private number, he had to just fill up and forward the same to the driver. Thus it is clear that the applicant was duly

authorized by the Rule to keep ready the incomplete line clear permit in order to save time and to meet exigency.

13. As per General Rule 14.11, a mandatory duty has been cast on the station master i.e. the present applicant to ensure that incorrect line clear

permit is not handed over to the driver. Emphasis has been laid to the word ""given"". However, in this case, there is absolutely no evidence available

on record to show that the incomplete line clear permit was ever given to the driver. The only evidence in this respect is the statement of the

accomplice i.e. the trolley driver Bharat Lal which according to the considered view of this Court cannot be accepted.

14. As per Permanent Way and Works SR 15.25.02 (a) at no time shall more than 8 persons be carried on a motor trolley. From the evidence of

Amar Nath Pandey (P.W.-7) it is clear that on the date of incident as many as 11 persons were traveling in the trolley and this fact was not even

within the knowledge of the applicant. If without informing the applicant 11 persons were traveling in the trolley, the applicant cannot be held liable

for any such mishap.

15. From perusal of the Rules and the facts set out by the applicant it becomes clear that the only piece of evidence against the applicant is the

statement of Bharat Lal - the accomplice and the law in this respect is well settled. In the matter of Haroon Haji Abdulla Vs. State of Maharashtra,

in which it has been held by the Apex Court as under:

The statement of Bengali being relevant we have next to see how far it can be held to be legal corroboration of Kashinath's accomplice evidence.

The law as to accomplice evidence is well settled. The Evidence Act in Section 133 provides that an accomplice is a competent witness against an

accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect of

this provision is that the Court trying an accused may legally convict him on the single evidence of an accomplice. To this there is a rider in

illustration (b) to Section 114 of the Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is

corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice who betrays his associates is

not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his foul story appearing

true, there may be no means at hand to sever the false from that which is true. It is for this reason that Courts, before they act on accomplice

evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each

accused named by the accomplice. In this way commission of the offence is confirmed by some competent evidence other than the single or

unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This Rule of caution or prudence

has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law.

Further in the case of K. Hashim Vs. State of Tamil Nadu, it has been held by the Apex Court as under:

38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent

evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord

Reading says:

Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it

would be merely confirmatory of other and independent testimony.

39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true

and that is reasonable safe to act upon it.

40. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably

connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the

accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to

identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonable safe to

believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that

history, without identifying the persons, that is really no corroboration at all... It would not at all tend to show that the party accused participated in

it.

41. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to

corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in

those special circumstances a conviction so based would not be illegal. I say this because it was not contended that the mother in this case was not

an independent source.

42. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial

evidence of his connection with the crime. Were it otherwise, ""many crimes which are usually committed between accomplices in secret, such as

incest, offences with females"" (or unnatural offences) ""could never be brought to justice.

16. In respect of holding the accused guilty u/s 304A of the Indian Penal Code it has been held by the Apex Court in the matter of Keshub

Mahindra Vs. State of M.P., the Apex Court has clarified that in a prosecution for an offence u/s 304A of IPC, the court has to examine whether

the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without

intervention of other's negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an

offence u/s 304A, IPC. The Apex Court has further observed that the act causing deaths must be the causa causans; it is not enough that it may

have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or has there been a cause

intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or

whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and

regrettable it may be, ought not to allow the mind boggle while appreciating the evidence.

17. Thus from the record it is clear that though the line clear permit was seized by the prosecution vide Ex. P-11, the same is not available on

record and the prosecution has also not proved the same during trial. There is no cogent material on record to connect the present applicant with

the crime in question. Moreover, both the Courts below have proceeded on a presumption that since the applicant was the Station Master, he had

handed over the incorrect line clear permit. In view of the provisions of Section 114 of the Evidence Act no such presumption can be drawn

against the accused/applicant. It is a settled legal position that the burden of proof in a criminal trial never shifts, and it is always the burden of the

prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. It is no doubt a matter of regret that a criminal should

go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story

may be true; but between "may be true" and "must be true" there is inevitably a long distance to travel and the whole of this distance must be

covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. It is also a settled principle of

criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict

the accused. This apart, even the statement of the accomplice in this case remains uncorroborated by any other evidence and therefore to act upon

his statement implicitly would not be justified.

18. Thus keeping in view the aforesaid factual and legal position this Court is of the considered view that the judgment impugned does not hold the

ground and thus liable to be dislodged. Accordingly, the revision is allowed and the judgment impugned dated 16.3.2007 passed by the Additional

Sessions Judge (FTC) Raipur, in Criminal Appeal No. 171/2006 is set aside.