Suleman Rehiman Mulani & Anr.

Vs

State of Maharashtra

Criminal Appeal No. 50 of 1965

(S. M. Sikri, J. M. Shelat, K. S. Hegde JJ)

01.12.1967

JUDGMENT

HEGDE, J. -

In this appeal by special leave against the judgment of the High Court of Bombay in criminal revision application No. 917/64, the question that arises for decision is whether on the facts found by the courts below, the appellants were properly held to be guilty of all or any of the offences for which they have been convicted.

In the trial court there were as many as nine accused. All the accused excepting accused Nos. 1 and 2 who are appellants 1 and 2 respectively in this Court, were acquitted.

The prosecution case is as follows : The acquitted third accused was the owner of the jeep bearing registration No. BYF 5448. Accused No. 2 is his father. They are the residents of Malshiras. On October 27, 1962, the appellants along with PW Rambhau Bhombe and one other, went in the jeep in question first to Phaltan which is about 33 miles away from Malshiras, from there to Rajale about seven miles away from Phaltan. From Rajale they returned to Phaltan and from there to Malegaon. They stayed for the night at Malegaon. Next day they returned to Phaltan and finally to Malshiras. During all this time, appellant No. 1 was driving the jeep. On the way from Phaltan to Malshiras, about a mile and a half from Phaltan, the jeep struck one Bapu Babaji Bhiwarkar, as a result of which he sustained serious injuries. The appellants put the injured person in the jeep and brought back the jeep to Phaltan where they approached PW Dr. Karwa for medical aid, but Dr. Karwa refused to treat the injured as it was a medico-legal case. He asked them to go to Government Dispensary. The appellants instead of going to the Government Dispensary, drove straight to Malshiras. On the way the injured died. At Malshiras the appellants cremated his dead body. At the time of the incident, the first appellant had only a leaner's licence and no person having a valid licence for driving was by his side.

The courts below have accepted the above facts and on the basis of those facts, the trial court convicted the appellant No. 1 under s. 304A IPC, s. 3 read with s. 112 of the Motor Vehicles Act and under s. 89 of the same Act. It convicted the second appellant under s. 201 IPC, s. 5 as well as under s. 89 of the Motor Vehicles Act. These convictions were affirmed by the learned Sessions Judge of Satara in appeal and by the High Court in revision.

The conviction of the first appellant under the provisions of the Motor Vehicles Act was not challenged before us, but we fail to see how the second appellant could have been convicted either under s. 5 or under s. 89 of the Motor Vehicles Act. In convicting him under those provisions, the

courts below appear to have overlooked the fact that he was not the owner of the jeep. Nor was there any proof that he was in charge of the jeep. Hence, his convictions under those provisions cannot be sustained.

The conviction of the appellant No. 2 under s. 201 IPC depends on the sustainability of the conviction of appellant No. 1 under s. 304A IPC. If appellant No. 1 was rightly convicted under that provision, the conviction of appellant No. 2 under s. 201 IPC on the facts found cannot be challenged. But on the other hand, if the conviction of appellant No. 1 under s. 304A IPC cannot be sustained, then, the second appellant's conviction under s. 201 IPC will have to be set aside, because to establish the charge under s. 201, the prosecution must first prove that an offence had been committed not merely a suspicion that it might have been committed - and that the accused knowing or having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment, had caused the evidence thereof to disappear. The proof of the commission of an offence is an essential requisite for bringing home the offence under s. 201 IPC - see the decision of this Court in Palvinder Kaur v. State of Punjab [[1953] S. C. R. 94].

Therefore the principal question for decision is whether on the facts found, appellant No. 1 was rightly convicted under s. 304A IPC. On the material on record it is not possible to find out under what circumstances the accident took place. The High Court in its judgment specifically says that "There are no witnesses whose evidence can establish rash and negligent driving on the part of accused No. 1." We may go further and say that there is absolutely no evidence to show that the accused was responsible for the accident. The prosecution has not produced any evidence to show as to how the accident took place. The High Court observed :

> "It is however, a fact conclusively established and not disputed before me that the accused No. 1 had only a learner's licence at the material time. It is not even suggested before me that accused No. 2 held a driving licence so that he could act as a trainer for accused No. 1. In fact, there is no suggestion by the defence that there was a trainer by the side of accused No. 1. Thus on the facts established, it is quite clear that at the material time, the jeep was driven by accused No. 1, who not only did not have a valid driving licence, but had only a learner's licence. The question for consideration, therefore, is whether driving a jeep on a public road by a person, who does not know driving and is consequently unable to control the vehicle, is a rash and negligent act as contemplated by Section 304A IPC."

The court answered that question in these words :

> "The very fact that the person concerned holds only a learners licence, in my opinion, necessarily implies that he does not know driving and must be assumed to be incapable of controlling the vehicle. If a person who does not know driving and is a consequently not able to control a car or a vehicle, chooses to drive a car or a vehicle on a public road without complying with the requirements of Rule 16 of Bombay Motor Vehicles Rules, he obviously does an act, which can be said to be rash and negligent, as contemplated by Sec. 304A IPC. It is negligent because he does not take the necessary care of having a trainer by his side. It is rash because it utterly disregards the public safety. Prima facie it appears to me that driving a vehicle like a jeep or motor-car on a public road without being qualified to drive particularly in the absence of any evidence to show that the person concerned had the necessary experience and good control over the vehicle would amount to a rash and negligent

act, as contemplated by Sec. 304A IPC."

Assuming that the High Court was right in its conclusion that appellant No. 1 had not acquired sufficient proficiency in driving therefore he was guilty of a rash or negligent act in driving the jeep that by itself it not sufficient to convict him under s. 304A IPC. The prosecution must go further and prove that it was that rash or negligent act of his that caused the death of the deceased.

Section 304A says :-

> "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The requirements of this section are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. As mentioned earlier there is no evidence to show that it was rash or the negligent act of the accused that caused the death of the deceased.

Before referring to the decided cases, we would like to revert to prosecution evidence for finding out whether the High Court was right in its inference that the accused was novice in the matter of driving. From the prosecution evidence itself it is clear that he drove the jeep to various places on October 27, 1962. Then there was the evidence of PW Shankar Burmule, showing that he had seen accused No. 1 driving for about six months to a year. The learned Judge of the High Court discarded his evidence with these observations :

> "In the present case, Mr. Jahagirdar relies on the evidence of Shankar Burmule, which is at Exh. 39, to contend that accused No. 1 had considerable driving experience. Unfortunately the English notes of evidence by the learned trial Magistrate do not indicate that the witness stated that accused No. 1 had driving experience, but the evidence recorded in Marathi undoubtedly indicates that the witness claims to have seen accused No. 1 driving for about six months to a year. The witness seems to be a relation of accused No. 2, though not a near relation, and his word cannot be taken at par. Moreover the admitted fact that at the material time accused No. 1 held only a learner's licence itself indicates that no importance can be attached to the above-said statement of Shankar Burmule. It is also urged that accused No. 1 did take the jeep from Malshiras to Phaltan and to some other places and that also would bear out the statement of Shankar Burmule. All that I can say is that it was a sheer stroke of good fortune that accused No. 1 did not meet with any accident during his trip from Malshiras to Phaltan and some other places."

With respect to the learned Judge we think this was not the proper way of appreciating evidence. Conclusions must be based on the evidence on record. PW Shankar Burmule has given material evidence against the accused. His evidence establishes an important link in the prosecution case. He could not have been compelled to give that evidence if he was not a truthful witness. The learned public prosecutor did not make any attempt in his re-examination to show that any portion of his evidence was untrue. There is no presumption in law that a person who possesses only a learners licence or possesses no licence at all does not know driving. For various reasons, not excluding

sheer indifference, he might not have taken a regular licence. The prosecution evidence that appellant No. 1 had driven the jeep to various places on the day previous to the occurrence is a proof of the fact that he knew driving. There was no basis for the conclusion that it was a sheer stroke a good fortune that he did not meet with any accident on that day.

Now let us turn to the decided cases. Dealing with the scope of s. 304A IPC, Sir Lawrence Jenkins observed in Emperor v. Omkar Rampratap [4 B. L.R 679] :

> "To impose criminal liability under s. 304A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the cause causans; it is not enough that it may have been the cause sine qua non."

That, in our opinion is the true legal position.

The scope of s. 304A IPC came to be considered by this Court in Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra [[1965] 2 S.C.R. 622]. In our opinion, the ratio of that decision governs the facts of the present case. The facts of that case were : The appellant was the manager and working partner of a firm which manufactured paints and varnish. The factory was licenced by the Bombay Municipality on certain conditions to manufacture paints involving a cold process and to store certain specified quantities of turpentine, varnish and paint. The factory did not have a licence for manufacturing wet paints but nevertheless manufactured them. Four burners were used in the factory for the purpose of melting rosin or bitumen by heating them in barrels and adding turpentine thereto after the temperature cooled down to a certain degree. While this unlicensed process was going on froth overflowed out of the barrel and because of heat varnish and turpentine, which were stored at a short distance caught fire, as a result of which seven workmen died. The appellant was prosecuted and convicted under s. 304A and s. 285, IPC. His appeal was summarily dismissed by the Bombay High Court. This Court set aside the conviction under s. 304A IPC, holding that the mere fact that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. In the course of the judgment this Court observed that the cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored, though that circumstance was indirectly responsible for the fire which broke out; what s. 304A requires is causing of death by doing any rash or negligent act and this means that death must be the direct or proximate result of the rash or negligent act. On the basis of the facts of that case, this Court held that the direct and proximate cause of the fire which resulted in seven deaths was the act of one of the the workmen in pouring the turpentine too early and not appellant's act in allowing the burners to burn in the particular room. In the present case, we do not know what was the proximate cause of the accident. We cannot rule out the possibility of the accident having been caused due to the fault of the deceased. The question whether appellant No. 1 was proficient in driving a jeep or not does not conclude the issue. His proficiency in driving might furnish a defence, which a learner could not have, but the absence of proficiency did not make him guilty. The only question was whether, in point of fact he was not competent to drive and his incompetence was the cause of death of the person concerned.

On behalf of the prosecution reliance was placed on the decision of this Court in Juggankhan v. State of Madhya Pradesh [1965] 1 S.C.R. 14], to which one of us was a party (Sikri, J). The ratio of that decision does not apply to the facts of the present case. In that case, it had been conclusively

proved that the rash or negligent act of the accused was the cause of the death of the person concerned.

For the reasons mentioned above, we are unable to agree with the courts below that on the basis of the facts found by them the first appellant could have been held guilty under s. 304A IPC. We accordingly allow his appeal and acquit him of that offence. From that finding, it follows that the second appellant could not have been convicted under s. 201 IPC.

In the result, the second appellant's appeal is allowed in full and he is acquitted of all the charges. The first appellant's appeal is allowed in part and his conviction under s. 304A is set aside. But his other convictions are sustained, namely, his convictions under s. 3 read with s. 112 of the Motor Vehicles Act and s. 89 of the same Act, for which offences only a sentence of fine had been imposed upon him.

Appeal allowed.

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