

Kishan Chand and Another

Vs

The State of Haryana

Criminal Appeal Nos. 105 and 126 of 1968

(S. M. Sikri, I. D. Dua JJ)

19.09.1970

JUDGMENT

SIKRI, J. -

1. The appellants, Kishan Chand and Waryam Singh having obtained Special Leave, have appealed against their conviction under Section 304-A and Section 337, Indian Penal Code. The Cantonment Magistrate, Ambala Cantt. Convicted both of them. On appeal the learned Additional Sessions Judge acquitted Kishan Chand but maintained the conviction of Waryam Singh. Waryam Singh filed a revisions before the High Court and the State filed an appeal against the acquittal of Kishan Chand. The High Court dismissed the revisions of Waryam Singh, but allowed the appeal of the State and convicted Kishan Chand under Section 304-A and Section 337, Indian Penal Code.

2. Most of the facts have been found concurrently and the only question is whether on the facts proved in the case it can be held that appellants were rash or negligent within the meaning of Section 304-A.

3. The accident occurred on April 5, 1964, at about 12.35 p.m. on the Mall in Ambala Cantonment. The Mall is a wide of Mess Road is about 21 ft., but the Mall Road is wider. A collision took place between three vehicles at one end of the crossing. Two vehicles one truck No. PNK 2921, driven by Kishan Chand and the scooter driven by Captain R. P. Aggarwal, P. W. 1, who was himself injured, had gone along the Mall north to south, while truck No. PNP 1330, driven by Waryam Singh, entered the crossing of the Mall and Mess Road from Mess Road. Captain R. P. Aggarwal, with his wife riding on the pillion, was going on the Mall. The truck driven by Kishan Chand was in front of him. After getting the signal he passed the truck and approached the crossing. Now the truck driven by Kishan Chand was behind him. When he approached the crossing to state what he said in F. I. R. "I saw truck No. PNR 1330 coming from Rai Market side at a very high speed. I immediately applied both the brakes and turned the handle to left fully so as to avoid the collision. Also as I turned left, the scooter-stand on the left side touched the road. I put my left foot on the ground so as to avoid the accident but in vain. The truck following me also came and I was involved between both the truck Nos. PNA 2921 and PNP 1330 due to the rash and negligent driving of both the drivers". As the trial he gave a slightly different version. He said "As the truck was coming very fast I applied my brakes and stopped the scooter asking my wife to hold me. I stopped the scooter just on the left side to pass the truck from my front side. As I stopped the with my left foot on the ground, the truck, which I had crossed on the way, came annd his my scooter from my back. The stepeny fixed on the back of the scooter was knocked off, my right foot got stuck in the brake of the scooter and my wife fell on the bumper of the truck and the scooter slipped from under me. I was dragged alongwith the scooter. Thereafter the truck which was following me took turn towards left

to avoid accident with the truck which was coming from the Rai Market side but since both the trucks were coming at very fast speed, the truck clashed with the truck which was coming from the right side. My scooter was pushed under the truck which was coming from the Rai Market side, and scooter was practically sandwiched between the two trucks. Both the trucks then stopped". He further stated that "there was enough space for the truck coming from the Ri Market side to pass. If my scooter had not been pushed from the back side by the truck following me, I would not have met the accident by the truck coming from front side. However, the two trucks would have clashed with each other."

4. Photographs of the three vehicles as they rested after the collision were taken and we looked at them. They seem to substantiate the version of Kishan Chand.

5. Chaman Lal (P. W. 5) who saw the accident said that Waryam Singh accused was coming at high speed from the Rai Market side and was giving no horn. He admitted in cross-examination that while the scooter took turn towards the left its side came in collision with the truck coming from the Rai market side. In cross-examination by Waryam Singh's counsel, he, however, stated : "The first accident with the scooter came by the push by the truck coming from behind and thereafter the scooter dashed against at the truck coming from Rai Market side."

6. Bhag Singh (P. W. 6) also gave a similar statement, but he was confronted with the police statement where he had stated that "truck No. PNP 1330 (driven by Waryam Singh) had struck the scooter first and then after this impact truck No. PNA 2921 had struck the scooter". Waryam Singh in his statement said that he was no driving fast; he had blown the horn and had still lowered his speed when he speed when he was near the crossing. He described the accident as follows :

"I know nothing about it. As I reached the Mall Road, I saw the scooter on which a person and a lady were seated whose name I came to know later on as Capt. Aggarwal, were pushed forward by tuck No. PNA 2921 and on seeing them in that condition, I swerved my truck towards the right with a view to avoid the accident and stopped immediately. I was neither negligent nor rash."

7. Kishan Chand said that Captain Aggarwal overtook him but he did so when his truck was hardly 20 ft. from the crossing. He further said : "The Captain could never stop his scooter and he never applied brakes, the scooter went out of control and drove into the truck of Waryam Singh". He further said : "The scooter had already driven into the truck driven by Waryam Singh accused. Both Capt. Aggarwal and his wife had received injuries by that time. My truck stuck into the tool box to truck No. PNP 1330 and did not hit wither Capt. Aggarwal or his wife. I had no opportunity to step my truck because the other tuck immediately came from right side and the distance left between my truck and other truck was so short that with all the powers under my control I could not stop the truck. In spite of my best efforts the right Margad (sic-mudguard) of my truck struck into the tool box of the other truck. It was the duty of the truck driver coming from the approach road to stop the truck, allow the vehicles moving on the main road to pass before entering the main road."

8. Two witnesses appeared on behalf of Kishan Chand. According to Raja Ram (D. W. 1) a truck was coming from the side Raj Market and when it was in the middle of the crossing, the scooter which had by-passed him struck that truck. The other truck which was going along with him also touched the first truck when it was trying to take a turn. He never met the police to give the facts of the occurrence.

9. According to Mahavir Parshad (D. W. 2) a truck was coming from the Raj market side, and when it reached the crossing, it swerved a little towards the right to save the scooter but as the scooter was going at a high speed, the scooter struck the truck.

The High Court held :

"Waryam Singh reaching the main road, the mall, from minor road and it was his duty to slow his speed as to give way to the traffic passing on the Mall, the main road. According to Driving Regulation No. 7 in the Tenth Schedule of the Motor Vehicles Act, 1939, Waryam Singh was required to give way to all the traffic which was approaching the crossing of the roads, as he was approaching from a side road on to the crossing of the main road."

10. The High Court further pointed out that "on the Mess Road, coming from the direction of Rai Market near the crossing on the Mall, there was also a sign of 'STOP' at a distance of about fifteen feet from the crossing and the appellant was thus warned by that sign, but he did not heed to that".

11. The High Court disbelieved the plea of Waryam Singh that he was driving at a slow speed, as he had crossed the whole of the Mall Road and he was able to stop, with the scooter dragged right on the corner of the north-west of the crossing. These facts, according to the High Court, proved that Waryam Singh driving his truck rashly and negligently.

12. The learned counsel for the appellant, Waryam Singh, has not been able to show any reason why we should differ from the findings of the High Court. Both the Trial Judge and the Sessions Judge also held him guilty of rash and negligent driving.

13. Coming to the case Kishan Chand we are, however, not satisfied that the High Court was right in convicting him. With respect, the High Court has not given due weight to the fact that Capt. Aggarwal's scooter had first overtaken the truck driven by Kishan Chand and was in front of the truck. According to the evidence of Capt. Aggarwal himself he had to apply the brakes immediately when he noticed Waryam Singh's truck coming from Mess Road. Kishan Chand was said that the scooter was only 20 ft. from the crossing after overtaking him. In these circumstances when Kishan Chand had to pull up suddenly on seeing Capt. Aggarwal suddenly applying brakes, it is difficult to hold that Kishan Chand was rash and negligent. It seems that Kishan Chand tried his best to stop his truck and according to him he avoided the scooter and banged into the truck.

14. The learned counsel has drawn our attention to the memo regarding taking into possession of the scooter and the injuries on it. We have looked at the injuries and apart from the fact that the stepney and the belt were broken, there is no damage on the back side of the scooter. The real damage were on the handle, head light and horn. The stepney may well have broken with the impact from Waryam Singh truck. The nature of damage on the scooter seems to support Kishan Chand.

15. It will be further noticed that in the F. I. R. Capt. Aggarwal did not mention that Kishan Chand's truck struck the scooter and if pushed it, and he seemed to suggest that Waryam Singh's truck struck him first.

16. Similarly Chaman Lal (P. W. 5) did not give in his examination-in-chief the various which he gave when cross-examination by Waryam Singh's counsel. Bhag Singh (P. W. 9) had stated before the police that Waryam Singh's truck had struck the scooter first. It seems to us that accident occurred suddenly and it is to be expected that the witnesses would not be able to definitely say the order in which the three vehicles came into collision with each other.

17. This Court approved in *Kurban Hussain Mohammedali Rangwala v. State of Maharashtra*, the following passage in *Emperor v. Omkar Rampratap*, where Sir Lawrence Jenkins had to interpret Section 304-A :

"To impose criminal liability under Section 304-A, 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*."

18. We are unable to say on the facts of this case that the death of Mrs. Aggarwal was due to the direct result of any act of the accused Kishan Chand and that his driving was the proximate and efficient cause of death of Mrs. Aggarwal.

19. Similar is the case of far as the charge under Section 337, Indian Penal Code is concerned. It cannot be held that injuries to Captain Aggarwal were caused due to rash or negligent act of Kishan Chand.

20. In the result we allow the appeal of Kishan Chand and acquit him. The bail-bond of Kishan Chand shall stand cancelled. Fine, if any, paid by him should be refunded to him. We confirm the conviction and the sentence passed on the appellant Waryam Singh and dismiss his appeal.

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