

Mahadeo Hari Lokre

Vs

The State of Maharashtra

Criminal Appeal No. 37 of 1969

(P. Jagmohan Reddy, D.G. Palekar JJ)

23.11.1971

JUDGMENT

PALEKAR, J. -

1. This appeal by special leave arises out of an order of conviction and sentence passed by the learned Presidency Magistrate, IV Court Giragaum, substantially confirmed in appeal by the High Court of Bombay. The appellant was convicted under Section 304A IPC and sentenced to one year's rigorous imprisonment and a fine of Rs. 2000. In appeal the fine was reduced to Rs. 1500.

2. The facts are that the deceased Ravikant Vasant Mhatre and his friend Vijay Kumar, PW 2 were standing at the Western Corner of the first Panjrapole Lane, C.P. Tank Road eating pan at a Pan Shop at about 11.00 p.m. on October 18, 1966. The C.P. Tank Road runs from South to North and is about 40 wide. The first Panjrapole Lane meets it on the Eastern Side as shown in the sketch Ex. D. The two friends may be taken to be roughly standing near about the point B in the sketch. After eating pan, Ravikant said that he would go home, for which purpose, it appears, he first crossed over to the Western Side of the C.P. Tank Road. PW 2 Vijay Kumar lost sight of him but about half a minute later he heard a commotion. So he turned back and saw that a double decker bus of the B.E.S.T. was standing on the road. Going nearer, he found that his friend Ravikant was lying on the left side of the bus with his left palm and part of the face smashed. Ravikant was removed to the Hospital where he died on October 21, 1966. One other gentleman named Dayanand Tukaram Shinde, PW 1 was standing at the point C. He claims to have seen how the accident occurred and it was he who gave the First Information in this case. According to the FIR filed by that witness, Ravikant was walking along the C.P. Tank Road from South to North and he was thrown down by the bus which came from behind. The bus was also plying from South to North. The accused was the driver of the bus. He had put on the brakes immediately after the impact and the bus came to a halt within 4 or 5. The High Court came to the conclusion that it was possible to say that the driver was rash in driving the bus, but in its opinion the appellant was criminal negligent in not keeping his eyes on the road while driving the vehicle through a busy locality. On that ground the conviction recorded by the Magistrate was confirmed by the High Court.

3. The High Court agrees that it could not be said that the appellant was driving the bus at high speed. Being a busy locality even at that time of the night, that was not possible. The High Court also agrees that the bus was being driven on its correct side, considerable distance away from the footpath. In fact the impact took place about 14 away from the Western edge of the road. So the question is how this accident happened. The appellant's case is that he was driving the bus neither rashly nor negligently and that the deceased Ravikant came suddenly and slipped under the bus. The speed of the bus was just 10 miles an hour.

4. It must be said that there is really no good evidence on the side of the prosecution to show how exactly the accident took place. All that PW 2 Vijay Kumar, the friend of the deceased, was able to say was that the deceased left him at point B. Since the deceased came under the left front wheel, it can be only inferred that he must have crossed the road to the Western Side. That seems to be borne out by the F.I.R. of PW 1 Dayanand who says that when he was standing near point C he saw Ravikant going by the C.P. Tank Road towards tin batti, that is, towards the North and at that time he saw bus dashing against him with its left side mudguard. The High Court has, in one place, held that while Ravikant was going along the road from South to North, he was suddenly dashed by the bus coming from behind. In the first place, it is rather difficult to hold that Ravikant would be walking in that street from South to North some 14' away from the Western Kerb of the road. Secondly in his evidence before the Court Dayanand, PW 1 did not stick to this case in the F.I.R. He stated that Ravikant was actually crossing from the Western Side of the road to the Eastern Side of the Road. If that is true, it will only mean that Ravikant was not dashed from behind as he was going towards North but the impact took place when he was crossing the road from West to East. The High Court was not quite clear on the point and so it observed at another place "that was precisely the reason why he (appellant) could not see the man walking ahead of him or trying to cross the road in front of his bus". If Ravikant was walking along the street in front from South to North and the bus was coming from behind, it can be legitimately said that the driver of the bus would see him in front and if he dashed against Ravikant as he was walking along, that would undoubtedly amount to negligence on the part of the driver. It may have been, perhaps, fool-hardy on the part of Ravikant to walk in the middle of the road about 14' away from the Kerb. But that would not justify the bus driver knocking him down after taking due note that he was walking straight in front of the bus. But the case assumes a different complexion if we agree with the sole eye witness in the case Dayanand PW 1 that at the time of the impact Ravikant was actually crossing the road from West to East. That would mean that if Ravikant suddenly crossed the road from West to East without taking note of the approaching bus there was every possibility of his dashing against the bus without the driver becoming aware of his crossing till it was too late. 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.

5. In the result, therefore, the appeal will have to be allowed. The order of conviction and sentence is set aside and the appellant is acquitted. Fine, if paid, shall be refunded. Bail bond to be cancelled.

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