

Bajnath Singh

Vs

The State of Bihar

Criminal Appeal No. 166 of 1969

(A. N. Grover, M. H. Beg JJ)

05.04.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from an order of the Patna High Court dismissing in limine the revision petition filed against the decision of the courts below convicting the appellant under Sections 304-A and 279, Indian Penal Code, for which a sentence of one year's rigorous imprisonment was imposed under the first charge. No separate sentence was imposed under the second charge.

2. The case of the prosecution briefly was that on July 7, 1966, at about 7 p.m. the appellant was driving a bus on the katcha road from Chandauri side to Khargdiha. On the roof of the bus certain corrugated iron sheets were kept. Owing to driving at high speed there was too much of jolting with the results that some of the iron sheets fell down and hit Latif on the head and also injured some other persons who were going on the road. Latif was admitted as an indoor patient, in the Giridh Hospital where he was taken by the appellant in his bus. He however, died on, August 5, 1966.

3. The first information report was recorded at the hospital at 9 a.m. on July 8, 1966. This report was based on the statement of Mohd. Hanif who appeared as P.W. 2. Hanif had also received an injury which was described in the report as injury on his neck towards the right side. He had been brought with Latif to the hospital by the appellant, in the bus. According to the medical evidence Latif who was examined at 10 p.m. on July 7, 1966, had two head injuries and one injury on the lip. All these injuries were lacerated wounds; one of the head injuries and the injury on the lip were simple while the third injury which was on the head was grievous in nature. The post mortem examination was held on August 5, 1966. "On dissection pus and granulation tissues was found in and around the tissues. Anterior cranial fossa was full of pus. The meninges in the anterior cranial fossa has almost been eaten away by the purulent matter. The rest of meninges and brain matter were congested".

4. The charge which was framed by the trial magistrate was based solely on the act of rash and negligent driving thereby endangering human life and also causing the death of Mohd. Latif. P.W. 2, Mohd. Hanif on whose statement first information report had been recorded was considered by the trial magistrate to have been won over because, according to the first information report, the bus was going on high speed whereas in his statement in court he stated that he was not in a position to see by which thing he was struck. P.W. 4, Mohd. Usman, who was the main witness on whom the courts have relied, deposed that it was a dark night and on seeing the light of the bus Mohd. Saleem on whose cycle he was sitting went towards the left side. The bus was going fast. Saleem received

injury on his right hand. Hanif and Latif were also injured. The bus was stopped. Latif was conscious. Latif told him that he had been injured with a corrugated iron sheet. According to his statement there were 10 or 15 passengers in the bus. It is unnecessary to name the other witnesses because they were either not believed or were declared hostile.

5. We are wholly unable to understand how any conviction could be upheld on the material which was placed before the court by the prosecution. It is significant that there was no trace of the corrugated iron sheets and the Investigating Officer made no mention of any attempt on his part to find them or discover them nor did the prosecution care to find out who the owner of the bus was and who had loaded the iron sheets. This part of the evidence was very material because unless the driver could be held to be entirely responsible for loading the iron sheets and putting them in such a negligent manner or not tying them properly it is difficult to sustain his conviction under Section 304-A of the Indian Penal Code. Nor could he be convicted for rash driving under Section 279, Indian Penal Code, because there is hardly any evidence worth the name from which it could be inferred that the speed of the bus was such that any iron sheets even if it be assumed that they were loaded on the roof of the bus fell down because of driving at a high speed. It is clear from the evidence of the prosecution witness that it was a kachha track on which the bus was proceeding and there was bound to be some jolting. But it cannot be said to have been conclusively established that even if the bus was proceeding at a reasonable or slow speed there would be no jolting and iron sheets would not have fallen down. On the assumption that the case of the prosecution is correct that such corrugated iron sheets had been loaded on the bus the possibility of an accidental fall of the said sheets could not be excluded. The case of Bhalchandra alias Babu and Another v. The State of Maharashtra (Cr. A. No. 193 of 1965, dated April 11, 1968.) is quite distinguishable. The law as laid down there was that criminal negligence can be found in varying sets of circumstances. The appellants there had displayed a high degree of negligence by allowing or causing to use dangerous and prohibited compositions and substances which must be held to have been the efficient cause of the explosion which caused injuries to a number of persons with the result that as many as 11 persons died. Even if we assume that the case of the prosecution is correct that there were some corrugated iron sheets on the roof of the bus we are unable, on the evidence produced in the present case to find that the iron sheets were so loaded that a high degree of negligence could be attributed to the appellant and that it was his rash and negligent act which could be regarded as the efficient cause of the injuries to Latif.

6. In the result the appeal is allowed and the conviction and sentence of the appellant are hereby set aside.

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