Jagdish Chander

Vs

State of Delhi

Criminal Appeal No. 20 of 1970

(I. D. Dua, K. K. Mathew JJ)

03.05.1973

JUDGMENT

DUA, J. –

1. Jagdish Chander appellant has preferred this appeal by special leave from the Judgment and Order of the High Court of Delhi, dated September 11, 1969, dismissing the appellant's revision from the judgment and order of the learned Additional Sessions Judge, Delhi, dated September 7, 1966, dismissing his appeal against the order of a Magistrate, Ist Class, New Delhi, dated April 30, 1966, convicting him for an offence under Section 304-A, I.P.C. and sentencing him to rigorous imprisonment for six months and a fine of Rs. 500.

2. The occurrence giving rise to these criminal proceedings against the appellant took place on April 20, 1965, at about 8.50 a.m. According to the prosecution version, the appellant was driving his auto-scooter rickshaw No. DLR 5614 and was proceeding from the side of Yusaf Sarai when near the D.T.U. Bus Stand Engineering College Hauz Khas, I.I.R. he suddenly turned to his right towards Mehrauli Road. Apparently, he wanted to turn back and reverse his direction. A truck No. DLG 8468 driven by one Labh Singh was coming from the opposite direction, that is, from Mehrauli Side. It is said that the appellant turned to his right suddenly without giving any signal and without paying any heed to the traffic on the right. The result was the accident giving rise to the present criminal proceedings. The front bumper on the left side of the truck struck the rear left side of the body of the appellant's scooter-rickshaw. As a result of this impact the appellant lost control of his scooter-rickshaw and swerved to the right and after crossing the edge of the road, crashed into a tree under which Smt. Vidya Sharma was standing with her baby in her arms and her brother Sat Pal standing by her side. On being hit by the appellant's scooter-rickshaw, Smt. Vidya Sharma could not keep control over her baby who Sat Pal also sustained simple hurts but the injuries suffered by the baby were serious and indeed they proved fatal resulting in the child's death, in the hospital soon after the occurrence in question.

3. Both, Labh Singh, driver of the truck and the appellant, were challaned and convicted by the learned Magistrate under Section 304-A, I.P.C. The trial court sentenced both of them to rigorous imprisonment for 6 months each and also to a fine of Rs. 500 each and in default of payment of fine the were both directed to undergo further rigorous imprisonment for 2 months each. Out of the fine, if realised, Rs. 500 were directed to be paid to the parents of the deceased child.

4. Both the convicted drivers appealed to the Sessions Court. The learned additional Sessions Judge, somewhat surprisingly, allowed the appeal of Labh Singh holding that he was not in a position to stop the truck instantenously with a view to avoid the collision of the two vehicles because the

appellant had all of a sudden brought his vehicle in front of the truck after taking a turn at a high speed. The Additional Sessions Judge also observed that the back portion of the appellant's scooter-rickshaw was not seriously damaged by the impact with the truck and the vehicle remained in a normal functioning condition. On this premise, the appellate Judge took the view that it was in order to save himself that the appellant took his vehicle towards the kacha side of the road in a state of utter confusion, his vehicle having got out of his control. In spite of this, however, according to the appellate Court, Jagdish Chander was in a position to avoid hitting Smt. Vidya Sharma. The scooter-rickshaw, to use the words of the Additional Sessions Judge, "was not thrown towards the tree because of the violent push given by the truck but..... it was actually driven by the accused Jagdish Chander towards the direction where Smt. Vidya Sharma and her brother were standing". The entire occurrence in this case, according to the Sessions Judge, had taken place as a result of the rashness or negligence of the appellant because he had decided to take a turn in a sudden manner at a high speed in the middle of the road and that in spite of the fact, that he had seen the truck of the accused coming towards him from a distance of less than 30 yards. The driver of the truck was considered by the Additional Sessions Judge to be within his right to drive the vehicle on Mehrauli Road at the speed of 30 to 40 miles per hour. At the time of the occurrence in question when driving his truck at this speed, Labh Singh was considered not to be in a position to avoid the collision. The sentence on the appellant was upheld by the appellate Court and it was directed that the fine, if paid by him, should be paid by way of compensation to the parents of the deceased child.

5. On revision, a learned single Judge of the High Court referred to the evidence of Asa Nand, P.W. 3, Vidya Sharma P.W. 11 and Sat Pal, P.W. 12, the three witnesses on whom the two courts below had placed reliance. After referring to the relevant version given by these three witnesses and also after noticing what the Motor Vehicles Inspector had said about the damage done to the appellant's auto-rickshaw and to the truck in question, the High Court observed that the road between Yusaf Sarai and Mehrauli had not much traffic, particularly in the early hours of the morning. Vehicles could, therefore, be expected to be driven on that road at a fairly high speed. The appellant's act in taking a sudden turn on that road without ensuring that there was no vehicle coming from the opposite direction, was, however, considered to be a rash or negligent act and it was this act which resulted in the impact between the truck and the appellant's auto-rickshaw and this impact was the direct and proximate cause of the death of Smt. Vidya Sharma's child and of the injuries caused to her and to her brother Sat Pal. So holding, the appellant's conviction and sentence were confirmed by the High Court.

6. In this Court it was streneously contended that the courts below has approached the case from an erroneous point of view and had not read the evidence correctly. The appellate court and the High Court, according to to the submission, also erroneously absolved the driver of the truck who had no justification for driving at a fast speed, even if it be in the early hours of the morning. According to the appellant's learned counsel, 8.50 a.m. in the month of April cannot be described as early hours of the morning, it being added that there is no evidence on the record showing that at that time there was not much traffic on Mehrauli Road. The High Court was also not right in observing that vehicles could be expected to be driven at a fairly fast speed, argued the counsel, adding that if the vehicles could be expected to be driven at a fast speed, then the appellant should also have been held justified in driving his auto-rickshaw at a fast speed. The appellant's case should in that event have also been considered with leniency. Particularly stress was laid on the contention that the unfortunate death of the child could on no rational or logical reasoning be considered to be the direct and natural result of the collision between the truck and the rickshaw; in other words, this collision was not the proximate and immediate cause of the unfortunate death of the child. Our attention was also invited by the appellant's counsel to the evidence for showing that it was the truck

driver and not the appellant who was to blame for this accidental collision.

7. After going through the record to which our attention was drawn, we cannot help observing that the investigation into the offence in question was not conducted on scientific lines and it leaves much to be desired. Our attention was not drawn to any material on the record showing if the tyre marks of the two vehicles on the road were carefully examined with the object of finding out the approximate speed and the manner of application of brakes at the time of the collision. Nor were photographs taken of the position of the site soon after the unfortunate occurrence which is usually done in the course of efficient investigations. Our attention was not doubt drawn to the site-plan, Ext. P.W. 9-A which purports to show that the two vehicles in question which were coming from opposite directions, started swerving to their right presumably on seeing each other and that the collision took place at point 'A' from where the truck drove straight on the road, while the auto-rickshaw was driven towards its right to the point 'B' where Smt. Vidya Sharma was standing with her baby in her arms and her brother by her side. This plan, however, seems to be a rough plan. Our attention, was not invited to any statement of the witnesses explaining at whose instance various nothings were made on this plan. So far as the witnesses deposing as having seem the occurrence in question are concerned, their evidence has always to be carefully scrutinised because such witnesses only observe accidents after their attention is drawn to the impact resulting from the collision. Their statement about the events immediately preceding the occurrence are generally and to a very large extent influenced by what they imagine must have happened. After looking at the plan and going through the evidence to which our attention was drawn, one forms an impression that both the truck driver and the appellant were equally guilty of rash and negligent driving. But since the driver of the truck has been acquitted by the learned Additional Sessions Judge and no appeal was preferred against his acquittal, we have to take his acquittal to be final. According to the findings of the three courts below the appellant suddenly turned to the right without paying proper heed to the truck coming from the opposite direction and in doing so he was both rash and negligent. Under Article 136 of the Constitution we should not like to appraise the evidence for ourselves to see how far the concurrent conclusion of the three courts below upholding the appellant's act as rash and negligent is justified. The argument raised before us on behalf of the appellant on this point relates only to the appreciation of evidence and no serious legal infirmity was brought to our notice.

8. The question, however, remains if the death of the baby in Smt. Vidya Sharma's arms was the proximate, direct and immediate consequence of the appellant's rash and negligent driving. Looking at Exht. P.W. 9-A, it does appear that after the impact between the heavy vehicle like a truck and a very much lighter auto-rickshaw, the latter must in all probability, have been so pushed as to make its driver lose all control of the rickshaw. In such circumstances it could, no doubt, have been contended with a certain amount of reason that the death of the child was a remote and indirect result of the rash and negligent driving on the part of the appellant and not an immediate, direct, natural and proximate consequence. But the three courts having so held, we do not think this Court will be justified in appraising the evidence for itself of this part of the case on the peculiar fact and circumstances disclosed on the printed record. The appellant's conviction must, therefore, be upheld in agreement with the conclusions of the three courts below.

9. The more difficult question seems to be one of sentence in the present case. The accident took place on April 20, 1965, the trial court convicted the appellant on April 30, 1966, sentencing him to rigorous imprisonment for 6 moths and to a fine of Rs. 500. His appeal was dismissed by the Additional Sessions Judge on September 7, 1966, and his revision was disallowed on September 11, 1969. He was ordered to be released on bail by this Court on February 2, 1970. We are now in May, 1973. The criminal proceedings against the appellant have thus gone on since April, 1965, which

means a little more than 8 years. The circumstances in which the collision between he truck and the appellant's scooter occurred seems prima facie to suggest that they (their drivers) were both to blame. Penalties designed to deter crime should be guaged so far as possible to the degree of social danger that is represented by the crime and its repetition. To send the appellant back to Jail to serve the sentence of 6 months after 8 years seems to us to be highly unjust for the kind of offence which has been upheld against him by the three courts below. It is unlikely to have any reformatory effect on him. Harassment of a criminal trial for more than 8 years and the expense which he must have incurred, in our opinion, can legitimately be taken into account when considering the question of sentence to be imposed by this Court at this point of time. The appellant is stated to have served out only three weeks of imprisonment but on a consideration of all the relevant circumstances of the case we think it would be just and proper to reduce the sentence of imprisonment to that already undergone but to increase the sentence of fine from Rs. 500 to 700. Out of the fine, if realised, Rs. 500 should be paid to the mother of the deceased child. We, however, cannot help expressing our grave concern over the inordinate delay in the disposal of criminal cases including appeals and revisions. If our criminal justice is to achieve its real purpose and if it is to inspire the confidence of the people generally, causes for such delays should be eliminated as early as practicable. Law's delays tend to turn justice sour. The appeal is allowed in part in the terms stated above.

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