SUPREME COURT OF INDIA

B. Nagabhushanam

Vs.

State of Karnataka

Crl.A.No……of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

13.05.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant was the driver of a bus bearing registration no. AP-10-Z- 5260. He was driving the said bus on Bangalore-Hindupur road. On 10.1.1999, at about 2:00 p.m. when the bus was passing through a village commonly known as Kamalapura, it dashed against a child by name Shantha, as a result whereof she died. Shantha was about 7 years old at that time. A criminal prosecution under Sections 279 and 304A of the Indian Penal Code was initiated against him. He was found guilty of the said offences. He was sentenced to one year's simple imprisonment and to pay a fine of Rs. 1,000/- for commission of the offence punishable under Section 304A and simple imprisonment for one month and to pay a fine of Rs.500/- for the offence punishable under Section 279 of the *Indian Penal Code*. The appeal preferred thereagainst by him was dismissed. The High Court, however, by reason of the impugned judgment modified the sentence directing:

> "The order of sentence passed against the revision petitioner for the offence punishable under Section 304- A IPC is modified. He shall undergo simple imprisonment for six months and to pay a fine of Rs. 5000/-. In default of payment of fine amount, he shall undergo simple imprisonment for one month. Out of the fine amount of Rs.5000/- if deposited by the revision petitioner-accused, a sum of Rs.4000/- shall be paid to P.W. 6 Gowramma and remaining Rs.1000/- shall be credited to the State exchequer."

3. A limited notice was issued by this Court by an order dated 25.2.2008 only on the question of sentence.

4. Mr. Kulkarni, learned counsel appearing on behalf of the appellant, submits that keeping in view the facts and circumstances of the case, this Court may also go into the merit of the

matter and pass a judgment of acquittal in favour of the appellant. Learned counsel contends that the very fact that in the First Information Report, it was alleged that the deceased was standing on the left side of the road and the dead body was found on the right side thereof is indicative of the fact that she all of a sudden ran along the road resulting in the said accident. It was urged that apart from the mahazar, the evidence was brought on record to show that the appellant was driving the said bus rashly and negligently and, in any event, the question of rash and negligent driving on the part of the appellant does not arise as the speed of the bus was about 20 kilometers per hour. The doctrine of res ipsa loquitur, the learned counsel urges whereupon reliance has been placed by the courts below, cannot have any application in a criminal case.

5. Ms. Anitha Shenoy, learned counsel appearing on behalf of the respondent, on the other hand, submitted that for the purpose of finding out the guilt on the part of the appellant, the entire circumstances must be construed as a whole which are:

> "i) The evidence of the eye-witnesses;
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> ii) No mechanical failure in the vehicle was noticed;
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> iii) No case of error of judgment has been made out; and
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> iv) Appellant has not offered any explanation at all as to how the accident took place."

6. Both the trial judge, the appellate court as also the High Court considered the matter in details. The learned trial judge categorically held that the bus was being driven at a high speed. It further took into consideration that no cross- examination was effected on the said question, stating:

> "7. In this case the PW 1 one Sri. Chowdappa is the complainant. He has sworn to the facts that on the date of incident about 8-10 months back earlier to the date of his evidence in this case, the said witness deposed to the effect that on that day he was very near at a distance of about 25 feet from the place of accident and by that time the bus driven by the accused person from Bangalore to Hindupur direction dashed against the child and as a result of which the child sustained grievous injury to head and other parts of the body and as a result the child died at the spot. In this connection he has also given a complaint as per Ex. P.1 and his signature came to be marked as per Ex. P.1(a). The PW 1 has also identified the accused person who is responsible for the accident. He has also deposed about the mahazar as per Ex. P 2 and identified his signature at Ex. P 2(a). The cross examination conducted on behalf of accused person also supports the prosecution case. During the course of cross examination against it has been made clear about the distance, place of occurrence, direction. On careful study of the cross examination discloses nothing has been elicited to disprove the case of the prosecution. It has also been elicited in the cross examination that the bus was driven in such a speed. Not even a single question was posed to him with regard to

contents of Ex. P 2 and Ex. P 2(a), thereby the contents of mahazar remained unchallenged. In addition to other witnesses and evidence, the evidence of PW 1 itself is sufficient to prove the guilt of the accused person, and this evidence is very helpful to the prosecution to prove the guilt of the accused person.

9. Comparative study of evidence of PW 3 to PW 6 and PW 8 to PW 11 clearly establishes the case of the prosecution. All the witnesses have deposed about the rash and negligent driving of the bus by the accused person resulting in death of Shanthamma, aged about 7 years. All these witnesses have stated that they were standing separately at different places nearby the place of accident and that they have witnessed the accident as eye witnesses, and absolutely there is no controversy of contradictory evidence between each witnesses i.e. from PW 3 to PW 6 and PW 8 to PW 11. The defence counsel has totally failed to establish that the driver of the bus is not responsible for the death of Shanthamma, and there is no rash and negligent driving on the part of the accused person. The contents of cross examination of all these witnesses also in the cross examination of PW 3, after the accident the bus was taken to the police station. As stated earlier PW 15 got released the bus from the police station."

There is no reason to take a different view. It is not possible for us in a case of this nature to reappreciate evidence.”

7. Reliance by the appellant on the deposition of one of the prosecution witnesses that the bus was being driven at a speed of 15-20 kilometers per hour, in our opinion, has rightly not been accepted.

8. The dead body of the girl was found 2 feet away from the bus. It was only 3 feet away from the pavement on the right side of the road. The bus admittedly did not have any mechanical failure. Appellant did not say that there was an error of judgment on his part. The High Court while exercising its limited revisional jurisdiction also discussed the case at some details.

There is a concurrent finding of fact that the bus was being driven rashly and negligently. The post mortem report was proved by PW 12 - Dr. M. N. Raju. She sustained several external injuries. On dissection, the following injuries were found:

"a) Right temporal region Depressed Wound present

b) Normal clots present in the right temporal region."

9. PW 1 is one Sri.Chowdappa. He is a witness to the accident. acording to him, the child sustained grievous injuries on head and other parts of the body. In answer to a question put to him in cross-examination, he stated that the bus was being driven at a high speed. The mahazar, was marked as Exhibit P-2. The contents of the mahazar were not challenged. It was found by the learned trial judge that the evidence of PW.1 alone was sufficient to hold

that the appellant was guilty of the said offences. Other prosecution witnesses were standing at different places. They had occasions to see the accident from different directions. The spot mahazar disclosed that there was a break-mark for about 20-25 feet on the road.

> "Reliance placed by *Mr. Kulkarni on Syad Akbar vs. State of Karnataka*[1] is not apposite. It preceded on the basis that doctrine of res ipsa loquitur stricto sensu would not apply to a criminal case as its applicability in an action for injury by negligence is well-known. In Syad Akbar (supra), this Court opined:
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> "Such simplified and pragmatic application of the notion of res ipsa loquitur, as a part of the general mode of inferring a fact in issue from another circumstantial fact is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances should make a chain so complete that they cannot reasonably any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt."
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> The maxim was not applied having regard to the fact of a said case and on the finding that it was a case of error of judgment and the accused gave a reasonable, convincing explanation of his conduct. The maxim res ipsa loquitur was not found to be applicable.
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> However, we may notice that the said principle was applied in a case under the Prevention of Corruption Act in *State of A.P. vs. C. Uma Maheswara Rao & anr.*[2] in the following terms:
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> "We may note that a three-Judge Bench in *Raghubir Singh v. State of Haryana*[3] held that the very fact that the accused was in possession of the marked currency notes against an allegation that he demanded and received the amount is "res ipsa loquitur"

10. Although a limited notice was issued, we have considered the contentions raised by Mr. Kulkarni with all seriousness that they deserved.

11. We are of the opinion that six months' simple imprisonment and a direction to the appellant to pay a fine of Rs.1,000/- for commission of the offence punishable under Section 304A and simple imprisonment for one month and to pay a fine of Rs.500/- for the offence punishable under Section 279 of the Indian Penal Code cannot be said to be shocking.

12. We may, in this connection, notice that in *Dalbir Singh v. State of Haryana*[4], this Court opined:

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

13. In *Rattan Singh v. State of Punjab*[5], this Court held:

"5. Nevertheless, sentencing must have a policy of correction. This driver, if he has - to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences. Maybe, the State may consider, in cases of men with poor families, occasional parole and reformatory courses on appropriate application, without the rigour of the old rules which are subject to Government discretion."

14. We, therefore, do not find any merit in this appeal which is dismissed accordingly.

[1]*[AIR 1979 SC 1848]*
[2]*[(2004) 4 SCC 399]*
[3]*[(1974) 4 SCC 560]*
[4]*[(2000) 5 SCC 82]*
[5]*[(1979) 4 SCC 719]*