

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Cr. Appeal No. 351 of 1999

Judgment reserved on :27.3.2006

Date of Decision: April 28 , 2006

State of H.P.	...Appellant.
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Versus.

Brij Lal	.. Respondent
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Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): Mr. J.S.Guleria, Law Officer.

**For the Respondent(s): Mr. R.K.Gautam, Sr.Advocate with
 Mr. Naveen Bhardwaj, Advocate..**

Deepak Gupta, J.

This appeal by the State is directed against the judgment of the learned Judicial Magistrate Ist Class, (2), Shimla in Criminal Case No.24/2 of 1995 decided on 4.5.1999 whereby the accused has been acquitted of the charges levelled against him under Section 279 and 304-A IPC.

The prosecution case in brief is that on 19.6.1994 at about 9.15 a.m. Balak Ram Sharma along with his grandmother Devku Devi was walking on the main road from Dhalli towards Sanjauli and when they reached near Plaza Hair-dresser, vehicle No.HP07-2271 being driven by accused Brij Lal in a rash and negligent manner came from Dhalli

side and struck against Devku Devi. She suffered serious injuries and died as a result thereof. The statement of Balak Ram was recorded under Section 154 Cr.P.C. (Ex.PW3/A) and on the basis of this statement FIR Ex.PW9/A was registered. The investigation was completed and thereafter the accused was summoned. The charges were framed against the accused for the offence under Section 279 and 304-IPC. He pleaded not guilty and claimed trial.

The prosecution examined nine witnesses in support of its case. The statement of the accused was recorded under Section 313 Cr.P.C. The learned trial court came to the conclusion that the prosecution has failed to prove that the accused was driving the vehicle in a rash and negligent manner and, therefore, acquitted the accused.

The accused does not deny the factum of accident. The accident, therefore, stands admitted. The only question to be decided is whether the prosecution has proved beyond reasonable doubt that the accident occurred due to rash and negligent driving of the driver.

PW1 Puran Chand has done mechanical examination of the vehicle and according to him there was no defect in the said vehicle. PW2 Khem Chand Sharma is the son of the deceased. He has not seen the accident.

PW3 Balak Ram Sharma is the grand son of the deceased. His statement is most important. He states that he was taking his grandmother Devku Devi to the house of Leela Nand at Sanjauli. He states that he was holding his grandmother's hand and was walking on

the extreme left side of the road next to the railing. In the meantime, vehicle No. HP07-2271 came from Dhalli side and the front side of the vehicle hit his grandmother who fell down. The witness also fell down. Thereafter the rear wheel of the vehicle went over the legs, stomach and chest of the deceased. He tried to give water to his grandmother and raised an alarm. A number of people collected on the spot. He states that Mast Ram, Kundan Lal and his son-in-law Tapes Kumar came at the spot and took his mother to IGMCH, Shimla where she was declared dead after examination. In cross-examination, he has admitted that there was heavy rush at the time when the accident took place. Vehicles were going on both sides. He states that the vehicles were coming at full speed and after hitting them, the vehicle went ahead. He, however, could not state as to what was the speed of the vehicle. He also denied the suggestion that because of the heavy vehicular traffic, his grandmother got confused and left his hand and went on to the middle of the road. He has denied the suggestion that the accident occurred due to nervousness of the deceased.

PW4 Tapes Kumar reached the spot soon-after the deceased suffered injuries. He is the son-in-law of PW3. He took the deceased to the hospital in his taxi. PW5 Mast Ram has stated that he was sitting in the shop of Prince Tailor when he heard some noise and when he went out, he saw that an accident had taken place and an old woman was picked up by some people. The old woman had been run over by a vehicle. He however, states that the police did not come to

the spot in his presence. The police came to the spot lateron. He has, however, admitted that Ex.PW5/A which is the seizure memo of the vehicle is signed by him. He was declared hostile. In cross-examination, he states that normally he signs the documents after reading it but he did not read the document Ex.PW5/A. According to him, the police had called him to the police station and asked him to sign some papers which he signed there in the police station.

PW6 reached the spot lateron. PW7 has proved the photographs and negatives Ex.PW7/A to PW7/D. These photographs clearly show that there was barely 1-1/2 ft. of space between the railing and the left side of the vehicle. PW8 is only a formal witness and stated that he has prepared and filed the challan. PW9 recorded the FIR.

The case has been very badly conducted on behalf of the prosecution. The post-mortem report was not proved on record to show that the deceased died as a result of the injuries. No doctor was examined to prove the said report. Therefore, the learned trial Court was right in holding that the prosecution has failed to prove that the accused was guilty under Section 304-A IPC. In fact, the manner in which the case has been conducted shows total lack of diligence by the Assistant Public Prosecutor as well as the police. Even the investigating officer was not produced despite various opportunities given and finally the evidence of the prosecution was closed by the learned trial Court.

To prove the offence under Section 304-A IPC, the prosecution must prove that the death has been caused by rash and negligent act. Here there is no evidence to show that the death has occurred as a result of the injuries sustained in the accident and therefore the acquittal under this Section is totally justified.

The only question is whether rash and negligent driving has been proved or not which remains to be decided. The learned trial Court while deciding this issue came to the conclusion that since PW3 states that the vehicle was coming from behind, he was not in a position to tell about the speed of the vehicle. PW3 in his statement in Court states that the vehicle first hit Devku Devi on his leg and then run-over her stomach and chest. This fact is not stated in the FIR Ex.PW9/A or in the statement Ex.PW3/A. No independent witnesses were examined and in my opinion, the learned trial court was justified in acquitting the accused. I find no infirmity in the judgment of acquittal passed by the learned trial Court.

In view of the above discussion, the appeal fails and the same is dismissed. Bail bonds are discharged.

April 28, 2006.

(Deepak Gupta), J.

s.