

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 548 of 2001

Reserved on: 29.7.2008

Decided on July 31, 2008

State of H P

Appellant

Versus

Parmodh Singh

Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh.J.

Whether approved for reporting ?¹ yes.

For the appellant : Mr. J.S.Guleria, Law Officer.

For the Respondent Mr. Ashutosh Burathoki, Advocate.

Surinder Singh, J.

Heard and gone through the record.

The State has assailed the judgment of acquittal, recorded by the learned trial court on 31.5.2001 in Criminal Case No.RBT No.119-II/2K/99, registered under sections 279, 337 IPC read with Section 187 of the Motor Vehicles Act.

In short, the prosecution case is that on 27.3.1999 Ankit Sharma complainant along with his brother Ankur Sharma were going on foot near Octroi Post, Education Board, Dharamshala on the left side of the road. When a person, who was learning the scooter, with a pillion rider

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?yes*

came from the side of Court in a rash and negligent manner, struck against Ankit Sharma and caused simple injuries, thereafter, the scooterist fled away from the spot. Statement (Ex.PW2/A) of Ankit Sharma under section 154 of the Code of Criminal Procedure was recorded, on the basis of which formal FIR Ex.5/A was recorded. Police visited the spot and prepared the site plan Ex.PW5/B. After about 25 days i.e. 21.4.1999, after tracing its owner, the scooter along with its documents were taken into possession by the police vide memo Ex.PW1/A. The incident was alleged to have taken place on account of rash and negligent act of driving the scooterist by the respondent, as a such a case was registered under the aforesaid sections.

Injured Ankit Sharma was medically examined. He was alleged to have sustained three minor and simple injuries i.e. Haematoma and abrasions on the knee and calf region. His Medico-legal-certificate Ex. PA was also taken into possession by the police.

After recording statements of the witnesses, a challan was presented in the court for trial of the respondent. Notice of accusation was put to the respondent, to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution has examined its witnesses and the respondent was also examined under section 313 of the Code of Criminal Procedure. The respondent denied the circumstances put to him. No defence evidence was led.

At the end of the trial, the respondent was acquitted by the learned trial court on the ground that no rash and negligent act was proved against the respondent and even Ankur (PW3) himself has stated that the scooter was in a slow speed. The Investigating Officer (PW5) also stated that the scooter was being driven on the left side of the road.

Shri Guleria, learned Law officer for the appellant-State has vehemently argued that the statement of the injured itself is sufficient to inspire confidence to sustain conviction of the respondent.

On the other hand, Shri Burathoki, learned counsel for the respondent has supported the impugned judgment of acquittal.

I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and reappraised the evidence on record.

It is a fact that the complainant and his injured brother, aged about 12-10 years, respectively, were pedestrian. According to PW3 Ankur, he was walking along with Ankit and Gaurav on the left side of the road. Scooterist though was in slow speed hit him from the back and he fell unconscious. PW2 Ankit has also made a similar statement. PW4 H.C. Pawan Kumar has admitted that the scooter was found on the *pucca* portion of the road and on investigation it came to his notice that the children were walking on the wrong side and this fact was also depicted in the site plan.

In a case of rash and negligent driving, the prosecution has to prove, the act of rashness by the driver.

A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences and Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual

in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and caution.

Thus negligent or rash driving of the vehicle has to be proved by the prosecution during the trial which cannot be automatically presumed even on the basis of doctrine of *res-ipsa-loquitur*. Mere driving of a vehicle at a high speed or slow speed do not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact the speed is no criteria to establish the fact of rash and negligent driving of a vehicle. It is only rash and negligent act as its ingredients, to which the prosecution has failed to prove in the instant case. Further there is also no evidence that the respondent has run away along with the scooter from the spot. Therefore, the findings of acquittal recorded by the learned trial court, do not call for any interference. Hence, the appeal is dismissed. The respondent is discharged of the bail bonds, entered upon by him, during the trial of the case, at any stage.

July 31, 2008
(D)

(Surinder Singh), J.