

Mrs. Shakila Khader And Ors. vs Nausheer Cama And Ors. on 10 March, 1975

Equivalent citations: AIR1975SC1324, (1975)4SCC122, 1975(7)UJ393(SC)

Author: A. Alagiriswami

Bench: A. Alagiriswami, N.L. Untwalia

JUDGMENT

A. Alagiriswami, J.

1. These two appeals are by special leave granted by this Court against the judgment of a learned Judge of the Andhra Pradesh High Court. By that judgment the learned Judge set aside the conviction of the 1st respondent of offences under Sections 304-A, 337, 338 and 427, I.P.C. passed by the 3rd City Magistrate, Hyderabad and confirmed on appeal by the Principal Sessions Judge, Hyderabad. The facts giving rise to these appeals are as follows.

2. In the evening of the 4th June, 1967 seven youngmen, including the 1st respondent whom we shall hereinafter refer to as the accused, went in a Herald car, driven by the accused, from Hyderabad to Secunderabad and were passing along the Tank Bund Road connecting the two cities. There was an accident in which the rider of the scooter died and one of the occupants of the car died a few days later. P.Ws. 3 and 4 were the eye witnesses to the accident and P.Ws. 5, 6 and 7, who were among the occupants of the car, were treated as hostile and cross-examined by the prosecution. D.W. 1 was also one of the eye-witnesses. Both the trial Court as well as the appellate Court on an exhaustive consideration of the evidence came to the conclusion that it had been established that the accused was driving his car in a rash and negligent manner and was responsible for the accident. On revision, however the learned Judge of the High Court took the view that both the courts below have failed to judge the story of the prosecution with a view to find out whether the said incident could have taken place in the manner alleged by the prosecution and that there is no critical appraisal by them. He thought that if the car was really going at a High speed and also hit against an electric pole there cannot be on the pole merely a stain of blue colour which tallies with the colour of the scooter and that there must have been much more damage to the pole. He also thought that the further fact that the car travelled another 45 feet and hit against the parapet wall and then turned turtle showed that the car must have been travelling at an extremely high speed but there is a little blue, paint on the pole and a faint stain of gray colour on the parapet wall. He thought that if the prosecution had brought on record the extent and particulars of the damage to the car, the Court would have been in a better position to assess the truth of the prosecution story. He has further observed that P.Ws. 3 and 4 were silent as to how the scooter got entangled into the car and then was dragged. He also held that the place of the accident indicated in the plan had not been proved by the prosecution by

any evidence to be the same. He therefore came to the conclusion that the prosecution had not made an attempt to place a clear picture of the occurrence before the Court so as to enable it to assess whether the petitioner was driving the car in a rash or negligent manner when the accident took place. He thought that P.Ws. 3 and did not have the capacity to fix the speed of the car and it cannot be said that the speed of the car when it met with the accident was so high that it amounted to an act of culpable rashness on the part of the accused. Finally he came to the conclusion that the accident must have taken place in the twinkling an eye and it is difficult to believe that the witnesses were in a position to see how actually the occurrence took place and it is just possible that they have reconstructed the story drawing on their imagination. As a consequence he allowed the revision and set aside the conviction. The Criminal Appeal No. 50 is by the widow of the deceased scooter rider and Criminal Appeal No. 51 is by the State.

3. It appears to us that the learned Judge has not only exceeded the scope of his powers while exercising the Court's revisional jurisdiction but has completely misdirected himself in regard to the appreciation of the evidence. We have evidence in this case that the width of the road at the point where the accident took place was 30 feet 10 inches and the accident took place at a point 9 feet 3 inches from the edge of the road on the wrong side. As the car driven by the accused was going from Hyderabad to Secunderabad the accused was on the wrong side of the road when the accident took place. After the accident the car hit an electric pole and the parapet wall on the wrong side of the road. The learned Judge is not right in saying that the place of accident; indicated in the plan has not been proved by the prosecution by any evidence to be the same. The plan, Ex. P-19, drawn by the investigating officer, P.W. 2 as well as the evidence of P.W. 9, who speaks to the measurements taken by the police and the preparation of the Panchnama, Ex. P. 8 which bears his signature, and gives evidence that its contents are correct prove the exact point of impact between the car and the scooter. As against the evidence of P.Ws. 3 and 4 that the accused overtook a motor cycle, a bus and an Ambassador car and was going on the wrong side of the road and that was how the accident occurred, the explanation attempted by the accused in this statement given under Section 342, Cr. PC was that he was going behind the bus and the scooter came and hit him. If that was so the, accident could not have taken place on the wrong side of the road. Nor could the scooter, even if it had overtaken some other vehicles, got behind the bus and hit at the car. According to the accused he swerved to the left in order to avoid the scooter and when his car was going off the road & in order bring it back on the road he swerved the car towards the right due to which it hit the parapet wall and overturned. This story is wholly unacceptable. If he had swerved his car to the left it should have hit the parapet wall to the left and not the parapet wall on the right.

4. We can see no satisfactory reason for not accepting the evidence of P.Ws. 3 and 4 which the two courts below had accepted after a careful consideration. There was occasion for the witnesses to notice the car because just a little earlier a girl was in danger of being run over by the car and she had to run back to avoid being hit by the car. As for as the evidence of P.Ws. 5 to 7 is concerned the less said the better. They had obviously gone back on their statement given to the police and that is why they were allowed to be treated as hostile and cross-examination. It would have been better if their statements had been proved by the police officer who recorded them. But it has not been done in this case. Even so their evidence is interesting. P.W. 5 says that at the time of the accident their car was behind the bus and then when he was directing his attention towards the boat club the dash

took place between the car and the scooter. The same criticism which we have made of the statement of the accused applies to this evidence also. P W. 6 stated that he did not know how the accident took place. P.W. 7's evidence is to the same effect as PW 5's. As regards the evidence of DW 1 it was wrong to have allowed him to be cross-examined by the prosecution with reference to the statement which he had given to the police. Under Section 162, Cr. PC only witnesses on behalf of the prosecution could be contradicted by reference to their statements made to the police, and not court witnesses or defence witnesses. Even so in the circumstances of this case his evidence, which is more or less similar to the evidence of P.Ws. 5 to 7 cannot be accepted.

5. In an attempt to impugn the evidence of P.Ws. 3 and 4, Mr. Frank Anthony appearing on behalf of the accused referred to Ext. P-7 the inquest report, and wanted to argue that P.W. 3 was not an eye-witness to the accident as his name does not find a place in it. Quite clearly there is no substance in this contention. In an inquest all the witnesses need not be examined as an inquest under Section 174, Cr. PC is concerned with establishing the cause of the death and only evidence necessary to establish it need be brought out. A look at Ex. P-11 would also show that this contention is baseless. In the inquest held over the body of Surender Reddy, one of the occupants of the car, only P.W. 3 has been examined and not P.W. 4. We see therefore no substance in the contention that Ex. P-7 establishes that P.W. 3 was not one of the eye-witnesses.

6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic and the attempt, as in this case to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in twinkling of an eye it is not difficult for an eye-witness to notice a car overtaking other vehicles and going to the wrong side of the road. The criterion adopted by the learned Judge for assessing the evidence of P. Ws. 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is difficult to be clear and specific in giving details as to the cause of the accident but this is not one such case. The reference by the learned Judge about the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turn turtle showed that the car must have been traveling at an extremely high speed but there is a little blue paint on the pole and a faint gray stain on the parapet wall is self contradictory unless we are to infer that the learned Judge implied that the one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of the road and hit an electric post and parapet wall and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did it would have stepped at one of those points. We should remember that the collusion with the scooter and pushing it back would have considerably reduced the speed of the car. Even so it travelled further. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for the purpose of this case. The car would probably not have stopped but for turning turtle and it should have been travelling quite fast before it could overturn as the learned Judge himself realises. There is only one

conclusion possible on the facts of this case and that is that the accused came over to the wrong side of the road and was responsible for the accident and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.

7. The appeals are allowed and judgment of the learned Principal Sessions Judge is restored.