

Bachubhai Hassanalli Karyani vs State Of Maharashtra on 18 December, 1970

Equivalent citations: (1971)3SCC930, 1971(III)UJ134(SC)

Author: S.M. Sikri

Bench: I.D. Dua, S.M. Sikri, V. Bhargava

JUDGMENT

S.M. Sikri, J.

1. In this appeal special leave was limited to the question of sentence only.
2. The appellant was convicted by the learned Presidency Magistrate, 4th Court, Girgaum, Bombay, for rash and negligent driving, and sentenced to eighteen months R.I. and a fine of Rs. 1,000/- Under Section 304-A I.P.C., in default R.I. for three months; 3 months R.I. & a fine of Rs. 250/- Under Section 337, I.P.C., in default R.I. for 6 weeks, and 3 months R.I. and a fine of Rs. 500/- Under Section 117 of the Motor Vehicles Act, in default R.I. for 3 weeks. The substantive sentences were ordered to run concurrently. The High Court, on appeal, upheld the conviction and sentences passed by the learned Presidency Magistrate.
3. The High Court found that the appellant was drunk on that night and he was driving the car rashly and negligently at an excessively high speed
4. The learned Counsel contends that the heavy sentence has been imposed on the appellant because he was found to have been drunk on that night. He says that Dr. Kulkarni, who examined the appellant based his conclusion merely on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under a nervous strain and his gait might be unsteady. The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis produced by the prosecution.
5. It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time the accident occurred.
6. In view of this conclusion we are of the opinion that it would meet the ends of justice if the sentence of rigorous imprisonment passed against the appellant is reduced to imprisonment already

undergone, but the sentences of fine shall remain. It is directed that the appellant be released forthwith.