Duli Chand vs Delhi Administration on 6 August, 1975

Equivalent citations: AIR1975SC1960, 1975CRILJ1732, (1975)4SCC649, 1975(7)UJ648(SC), AIR 1975 SUPREME COURT 1960, 1976 ACJ 125, 1976 (1) SCJ 552, 1975 4 SCC 649, 1976 MADLJ(CRI) 345, 1975 SCC(CRI) 663

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

P.N. Bhagwati, J.

1. This appeal by special leave is directed against an order made by the High Court of Delhi rejecting a Revision Application preferred against an appellate order passed by the Additional Sessions Judge, Delhi confirming the conviction and sentence recorded against the appellant under Section 304-A of the Indian Penal Code.

2. One Desa Singh (hereinafter referred to as 'the deceased'), according to the prosecution case as unfolded in the evidence of three witnesses, viz., Mukhtiar Singh, PW2, Om Parkash, PW 3 and Jagir Singh, PW 5, who were eye witnesses to the incident, was going on a cycle along the Rohtak Road from West to East at about 10 a.m. on 16th June 1966. When the deceased came near Liberty Cinema which is situated on the southern side of the Rohtak Road, he turned to the right in order to enter Road No. 3 after giving a signal with his hand. It may be mentioned that here at this point Road No. 6 from the south meets Rohtak Road so that the Liberty Cinema on its north abuts on the Rohtak Road and on its east abuts on Road No. 6. The deceased had almost crossed Rohtak Road after turning to his right when suddenly D.T.U. bus bearing number DLP 46 driven by the appellant came at a fast and excessive speed from the opposite direction and struck against the cycle of the deceased and ran over him causing multiple injuries resulting in his death. This incident was witnessed by Mukhtiar Singh PW 2 who was following on a cycle just behind the deceased. There were also two other eye-witnesses to this incident, viz., Om Prakash PW 3 who was standing on the foot path in front of Liberty Cinema at the time of the incident and Jagir Singh PW 5 who was also standing near the site of the incident.

3. The appellant was prosecuted for an offence under Section 304-A pf the Indian Penal Code for causing the death of the deceased by rash or negligent driving, in the Court of the First Class Magistrate, Delhi. Mukhtir Singh P. W. 2, Om Prakash P. W. 3 and Jagir Singh P. W. 5 were examined as witnesses on behalf of the prosecution and they deposed to the incident as narrated above. The prosecution also examined Sub-Inspector Bishanpal PW 10 who investigated the case and this witness produced the site plan Exhibit PW 10/B prepared by him. The appellant in his

defence examined three witnesses who were alleged to be passengers travelling in the bus at the time of the incident and these three witnesses stated that the cyclist who was coming from the opposite direction suddenly turned towards the right and struck against the bus and consequently he was dragged with the bus for some distance and the appellant brought the bus to a halt on the passengers raising an alarm. The appellant was examined under Section 342 of the CrPC and what is stated in his examination is rather important. He stated in answer to a question put to him by the learned Magistrate: when I heard an alarm to the effect 'stop, stop', I stopped the bus. I did not see any cyclist being knocked down by the bus. Then in answer to another question, he added : I did not see the deceased being dragged. When I heard the alarm I stopped the bus immediately. The learned Magistrate on this evidence held that the appellant was negligent in driving the bus and that the death of the deceased was caused on account of such negligent driving and the appellant was, therefore, guilty of the offence under Section 304-A. The appellant was accordingly convicted and sentenced to suffer imprisonment for 18 months and to pay a fine of Rs. 1,000/- or in default of payment of fine, to suffer further imprisonment for three months.

4. The appellant preferred an appeal against the order of conviction and sentence to the Sessions Court, Delhi. The learned Additional Sessions Judge who heard the appeal, on a re-assessment of the evidence, came to the same conclusion as the learned Magistrate and confirmed the conviction of the appellant under Section 304-A but taking into account the fact that the appellant might have lapsed into absent mindedness at the critical moment, the learned Additional Sessions Judge reduced the sentence to six month imprisonment. The appellant, dissatisfied with the order, preferred a Revision Application in the High Court. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court.

5. Now it is obvious that the question whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused on account of his negligent driving is a question of fact which depends for its determination on an appreciation of the evidence. Both the learned Magistrate trying the case at the original stage and the learned Additional Sessions Judge hearing the appeal arrived, on an assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the appellant. The High Court in revision was exercising supervisory jurisdiction of a restriction nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was

caused on account of the negligent driving of the bus by the appellant. When three courts have, on an appreciation of the evidence, arrived at a concurrent finding of fact in regard to the guilt of the appellant, it is difficult to see how this Court can, in the exercise of its extraordinary jurisdiction under Article 136 of the Constitution, interfere with such finding of fact. We have had occasion to say before and we may emphasise it once again, that this Court is not a regular Court of appeal to which every judgment of the High Court in a criminal case may be brought up for scrutinising its correctness. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate Courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact Here, not only is the appreciation of the oral evidence by the learned Magistrate, the learned Magistrate, the learned Additional Sessions Judge and the High Court eminently correct, but there are certain tell tale circumstances which clearly support the finding of fact reached by them.

6. We will assume for the purpose of argument that the appellant was driving the bus at a speed not exceeding 20 miles per hour. That appears to be so, because the site plan Ex. PW 10/B shows that when the bus came to a halt the rear portion of the bus was at a distance of about 42 feet from the point of impact with the deceased and taking the length of the bus at about 18 feet, it would appear that, the bus came to a stop after travelling 60 feet from the point of impact. That accords fairly with a speed about 20 miles per hour Now, a speed of 20 miles per hour on a road like Rohtak Road which is 42, wide, cannot be said to be fast or excessive. But there can be no doubt that the appellant was grossly negligent in that he did not look to his right even though he was approaching a cross-road and failed to notice the deceased who was coming from his right and crossing the road. The statement of the appellant under Section 342 clearly shows that he did not see the deceased crossing the road and it was only when he heard an alarm to the effect: "stop stop" that he stopped the bus. That is also substantially the evidence of the three defence witnesses. It is indeed difficult, to imagine how the appellant could have possible failed to notice the deceased coming from his right. It was a main road 42 feet wide and if the appellant was reasonably alert and careful he would have seen the deceased coming from his right and trying to cross the road & in that event, he could have immediately applied the brake and brought the bus to a grinding halt. But it was the case of the defence that the appellant notice the deceased at all and it was only when the bus struck against the cycle of the deceased and knocked him down and an alarm was raised, that the appellant applied the brake and brought the bus to a stop. This was culpable negligence on the part of the appellant. We are, therefore, satisfied beyond doubt that the death of the deceased was caused on account of negligent driving of the bus by the appellant and the learned Magistrate, the learned Additional Sessions Judge and the High Court were right in reaching that conclusion.

7. The appeal, therefore, fails and is dismissed. The appellant will surrender to his bail.