

A

SHIVANNA

v.

STATE BY HUNSUR TOWN POLICE
(Criminal Appeal No. 445 of 2003)

B

AUGUST 18, 2010

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

C

Penal Code, 1860:

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H

ss.304-A, 279, 337 and 338 – A truck loaded with stones and being driven by accused overturned leading to death of one and injuries to seven others – Conviction by trial court – Affirmed by appellate court as also by High Court – HELD: This is a case of no evidence, calling for interference at any stage – In the light of the statements given by the three primary witnesses there is no evidence which inculcates the accused – A cumulative reading of their evidence shows that the accused cannot be fastened with any allegation of wrong doing – PW.5 stated that the offending vehicle was going at a fast speed but in the cross-examination he clarified that it was going at a normal speed and that he had not seen the lorry going ahead but the brakes had been applied by the accused – PW.6, on the other hand, stated that the accused had been blowing the horn for some time and that there was a vehicle going ahead and the accused had no option but to apply the brakes failing which he would have dashed against the vehicle going ahead – PW.7, however, gave a statement which completely dislodged the prosecution story – Conviction set aside and accused acquitted – It is clarified that as this is a criminal appeal, the findings recorded herein would not have any effect on the civil proceedings, if any, pending with respect to the accident – Constitution of India, 1950 – Article 136 – Three concurrent judgments of courts below set aside.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 445 of 2003.

From the Judgment & Order dated 26.06.2002 of the High
Court of Karnataka at Bangalore in Crl. R.P. No. 469 of 2002.

Ananthamurthy (for P.P. Singh) for the Appellant. B

Sanjay R. Hegde, Ramesh Kr. Mishra, K. Joshi for the
Respondent.

The following Order of the Court was delivered C

O R D E R

When we took up this matter at the initial stage we were
surprised as to how and why leave had been granted by this
Court despite three concurrent judgments of the Courts below D
recording a conviction against the appellant for offences
punishable under Sections 304-A, 279, 337 and 338 of the
Indian Penal Code.

The learned counsel for the appellant has however pointed
out that this had happened as there was absolutely no evidence E
against the appellant and the findings recorded by the courts
below particularly the Trial Court and the First Appellate Court
(the High Court having dismissed the criminal revision in limini)
were completely outside the evidence and based on inferences F
which did not flow therefrom.

The facts are as under:

The appellant was a truck driver and was plying his vehicle
fully loaded with stones on the State highway bye-passing G
Hunsur town on the 15th September, 1992. As per the
prosecution the vehicle allegedly overturned and four persons
sitting in the cabin and three on the stones in the rear part of
the truck were thrown out, leading to the death of one sitting in
the rear and injuries to seven others. The appellant was H
accordingly brought to trial for the aforesaid offences.

A The prosecution in support of its case relied on the evidence of ten witnesses and several documents were also exhibited towards the evidence. The courts below placed reliance on the statements of PWs. 5, 6 and 7, all injured, who were travelling in the vehicle and had, therefore, witnessed the accident. These PWs admitted that the accident had happened as the driver of a truck going directly ahead of the offending vehicle had suddenly applied his brakes on which the appellant had to brake his vehicle as well which caused it to overturn on account of its heavy load. PW.7 in fact went even a little further and deposed that if the appellant had not applied the brakes his truck too would also dashed against the truck going ahead.

We have gone through the evidence of these three witnesses very carefully with the help of the learned counsel for the parties. We find that a cumulative reading of their evidence shows that the appellant cannot be fastened with any allegation of wrong doing. PW.5 stated that the offending vehicle was going at a fast speed but in the cross examination he clarified that it was going at a normal speed and that he had not seen the lorry going ahead but the brakes had been applied by the appellant. PW.6 on the other hand stated that the appellant had been blowing the horn for some time and that there was a vehicle going ahead of the offending vehicle and the appellant had no option but to apply the brakes failing which he would have dashed against the vehicle going ahead. PW.7, as already indicated above, however gave a statement which completely dislodged the prosecution story. We are therefore of the opinion that in the light of the statements given by the three primary witnesses there is no evidence which inculpates the appellant.

Mr. Sanjay R. Hegde, the learned counsel for the State of Karnataka, has however referred to Ext. P.10 (the site plan) to contend that as the accident had happened on a State highway on the Mysore bye-pass and the fact that a vehicle was going ahead of the offending vehicle would have been visible to the appellant and as the accident had happened as he was

attempting to overtake that vehicle, a duty to take extra care lay on him but he had ignored this basic principle. We are unable to accept this plea. The site plan only indicates the place where the accident happened and nothing more can be read into it. In the face of the eye witness evidence produced by the prosecution itself no inferences can be drawn as in such a situation the ocular evidence of those traveling in the vehicle has to be given primary importance. We are of the opinion that this is a case of no evidence, calling for interference at any stage.

We, however, clarify that as the matter before us is a criminal appeal, the findings recorded herein would not have any effect on the civil proceedings, if any, pending with respect to the accident.

We accordingly allow this appeal, set aside the conviction of the appellant and direct his acquittal. As the appellant is on bail, his bail bonds are discharged.

R.P.

Appeal allowed.