

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1103 of 2008

DINESH KUMAR

APPELLANT (S)

VERSUS

STATE OF HIMACHAL PRADESH

RESPONDENT (S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Himachal Pradesh in Criminal Appeal No.390 of 2000, dated 11.01.2008, whereby and whereunder the High Court has allowed the appeal and set aside the judgment and order, dated 04.02.2000, passed by the Trial Court in Criminal Case No. 21-II of 1995.

2. The brief facts of the case are as follows: on 18.04.1995, at 08:20 am, the appellant Dinesh Kumar, driving Jeep No.HP-22-1421 from

Hamirpur to Nadaun had hit Anu - the deceased, aged 4 years, on the highway at Doli Gharana, thereby causing her death. The deceased had been returning home after answering the nature's call and was suddenly hit by the jeep while she was standing on the edge of the road.

3. The deceased was taken to the hospital where she was declared dead. Immediately thereafter, her uncle, Chunni Lal (PW-1), informed the police of the incident and a report was registered. The police reached at the place of incident and recorded the statement of PW-1 under Section 154 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C."). On the basis of the said statement, the FIR was registered and the investigation commenced. The spot map was prepared. The jeep and relevant documents along with a pair of slippers were recovered from the spot and taken into possession. Thereafter, the inquest report and the test report of the jeep were prepared and the deceased's body was sent for post-

mortem examination. The post mortem report recorded the reason of death as ante mortem injuries on the head.

4. The appellant was charged under Sections 279 and 304-A of the Indian Penal Code, 1860 (for short, "the IPC") before the Trial Court. Summons were issued to the appellant who entered his appearance and pleaded not guilty of the charges against him. Consequently, the case was committed to trial.

5. The prosecution has examined 10 witnesses, while no witnesses were produced by the defense. The appellant's statement was recorded under Section 313 of Code in which he contended that he had been falsely implicated.

6. The Trial Court, after considering the evidence on record as also the arguments of the parties, had noticed that the deceased appeared to have crossed the road suddenly, without taking note

of the approaching jeep and thus, there was every possibility of her having dashed against the jeep without the appellant becoming aware of it. Therefore, in these circumstances, the appellant could not have possibly prevented the incident, irrespective of the speed at which he was driving the jeep. Further, the Court was of the view that since the prosecution had neither examined any independent witnesses nor led any evidence to indicate that the appellant was driving rashly or negligently on the fateful day, the appellant could not be held guilty of the offence alleged by the prosecution. Hence, the Trial Court acquitted the appellant of the charges against him.

7. Aggrieved by the judgment and order passed by the Trial Court, the respondent-State had approached the High Court on grounds that the Trial Court has not appreciated the evidence on record correctly and had erred in acquitting the appellant. The appellant supported the judgment and order

passed by the Trial Court and contended that the incident had been caused due to the deceased suddenly crossing the road and as a result, hitting the mudguard of his jeep, injuring herself. He had further submitted that the prosecution had failed to prove that he was driving the jeep in a rash or negligent manner and thus, failed to establish their case beyond reasonable doubt.

8. The High Court observed that the appellant had been unable to explain the circumstances under which the jeep, driven on the wrong side of the road, hit the deceased who was standing at the edge of the road and thereafter, left skid marks of 74 feet in length on the road. Keeping the aforesaid circumstances in mind, together with the evidence on record, the High Court rejected the appellant's contention that the incident had been caused by mistake on part of the deceased and concluded that the prosecution's case of rash or negligent driving on the appellant's part stands proved. Thus, the

High Court allowed the appeal, convicting the appellant and sentencing him to imprisonment for two months and a fine of Rs.500/- under Section 279 of the IPC and imprisonment of 6 months and a fine of Rs.5000/- under Section 304A of the IPC, with directions that the sentences would run concurrently.

9. Aggrieved by the judgment and order so passed by the High Court, the appellant is before us in this appeal.

10. We have heard learned counsel for the parties to the *lis* and carefully perused the evidence on record including the judgments and orders passed by the Courts below.

11. The appellant has contended that the fact that the jeep was being driven at a high speed has not been conclusively proved and therefore, the Courts below have erred in attributing rash or

negligent driving on his part as the reason for the incident and the deceased's consequent death. We do not find any merit in this contention. In our view, the appellant has not sufficiently explained the 74 feet long skid mark at the site of the incident. The aforesaid, together with the fact that the jeep was being driven on the wrong side of the road when it hit the deceased standing at the edge of the road, conclusively establishes that the appellant was driving rashly or negligently, at a high speed, and had caused the deceased's death. In our view, the High Court has rightly concluded that the prosecution has conclusively established its case through the evidence available on record.

12. In light of the aforesaid, we are of the considered opinion that the judgment and order passed by the High Court does not suffer any infirmity whatsoever and does not require our interference.

13. Accordingly, the appeal is dismissed.

14. If the accused person is on bail, we direct the jurisdictional police authorities to take him into custody forthwith to serve out the remaining part of the sentence awarded by the High Court.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI
AUGUST 13, 2015.

ITEM NO.13

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1103/2008

DINESH KUMAR

Appellant(s)

VERSUS

STATE OF H.P.

Respondent(s)

Date: 13/08/2015 This appeal was called
on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Vikas Mahajan, Adv.
Mr. Vinod Sharma, Adv.
Mr. Arun Singh, Adv.
Mr. Bhaskar Y. Kulkarni, Adv.

For Respondent(s) Mr. Suryanarayana Singh, Sr.AAG
Mr. Karanveer Jindal, Adv.
For Ms. Pragati Neekhra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of
the signed order.

(Neetu Khajuria)
Sr.P.A.

(G.V. Ramana)
(A.R.-cum-P.S.)

(Signed order is placed on the file.)