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BRAHAM DASS

v.

STATE OF H.P.

(Criminal Appeal No. 26 of 2003)

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MAY 5, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

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Penal Code, 1860 – ss. 279 and 304A – Applicability of – Allegation against bus driver that he started the bus while one of the passengers was on its roof – Passenger succumbing to the injuries – Acquittal by trial court – Conviction by High Court – On appeal, held: accused liable to be acquitted – Provisions of s. 279 and 304A not applicable in the facts of the case.

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Prosecution was initiated against the appellant-accused (a bus driver), u/s. 279 and 304A IPC, alleging that he started the bus, all of a sudden, without waiting for a signal from the conductor and without verifying if all the passengers on the board whether had alighted. This resulted in injuries to one passenger, who had gone on the top of the bus to unload his luggage. He latter succumbed to the injuries. Trial court acquitted the appellant. High Court convicted him. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: Section 279 IPC deals with rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the accused was driving any vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person. The foundation

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in accusations u/s. 279 IPC is not negligence. Similarly in Section 304A IPC, the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Section 279 or 304A, it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence which led to show that any negligence was involved. [Paras 3 and 4] [910-G-H; 911-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 26 of 2003.

From the Judgment & Order dated 17.7.2002 of the High Court of Himachal Pradesh, Shimla in Crl. Appeal No. 373 of 1998.

Ranjit Kumar and Binu Tamta for the Appellant.

Naresh K. Sharma for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Himachal Pradesh High Court convicting the appellant who had been acquitted by the learned Judicial Magistrate, 1st Class, Nurpur, Kangra. The appellant was the driver of a bus of the Himachal Pradesh Road Transport Corporation (in short the 'Corporation'). According to the prosecution version on 19.11.1991 while he was driving the vehicle, the bus had stopped at a bus stop. One passenger after alighting from the bus went to its roof top for the purpose of unloading his luggage. The accused without waiting for a signal from the conductor and without verifying if all the passengers who were to board, had boarded and who were to alight had alighted, all of a sudden started the bus as a result of which the said passenger fell down and sustained injuries. He was carried to the hospital where he succumbed. A case was registered. On complaint of

- A investigation, charge sheet was filed and he pleaded innocence. He was charged for commission of offences punishable under Sections 279, 337 and 304 of the Indian Penal Code, 1860 (in short 'IPC'). Eight witnesses were examined to further the prosecution version. The trial court found
- B that there was no negligence and as a matter of fact there was nothing on record to show that he had been asked to wait till all passengers alighted and/or boarded the bus. The High Court reversed the conclusion in appeal filed by the State. The basic stand of the State before the High Court was that the accused
- C was supposed to wait till he was given a signal by the conductor to do so. It was noted that one of the witnesses stated that the conductor told the driver that one of the passenger was still on the roof of the bus but the driver started the bus. Accordingly, the appellant was found guilty of offences punishable under
- D Sections 279 and 304 A IPC and sentenced to rigorous imprisonment for six months and fine with default stipulation.

2. In support of the appeal, learned counsel for the appellant submitted that there was no evidence on record to show any negligence. It has not been brought on record as to
- E how the accused-appellant was negligent in any way. On the contrary what has been stated is that one person had gone to the roof top and driver started the vehicle while he was there. There was no evidence to show that the driver had knowledge that any passenger was on the roof top of the bus. Learned
- F counsel for the respondent on the other hand submitted that PW1 had stated that the conductor had told the driver that one passenger was still on the roof of the bus and the driver started the bus.

3. In the cross-examination PW1 categorically stated that
- G he does not know who the driver was. It is of relevance that the conductor was not examined as a witness. Section 279 deals rash driving or riding on a public way. A bare reading of the provision makes it clear that it must be established that the
- H accused was driving any vehicle on a public way in a manner

which endangered human life or was likely to cause hurt or injury to any other person. A

4. Obviously the foundation in accusations under Section 279 IPC is not negligence. Similarly in Section 304 A the stress is on causing death by negligence or rashness. Therefore, for bringing in application of either Section 279 or 304 A it must be established that there was an element of rashness or negligence. Even if the prosecution version is accepted in toto, there was no evidence led to show that any negligence was involved. B

5. Above being the position, the judgment of the High Court cannot be sustained and is set aside. The accused appellant is acquitted of the charges. The bail bonds executed to give effect to order dated 7.10.2002 shall stand discharged. C

K.K.T.

Appeal allowed. D