Infamous Drunken BMW driving - Sanjeev Nanda Case

Hon'ble SUPREME COURT OF INDIA

Criminal Appeal No. 1168 of 2012, Arising out of S.L.P. (Crl.) No.3292 of 2010, Decided on 03.08.2012, titled as State Vs. Sanjeev Nanda.

Hon'bleMr Justice DEEPAK VERMA &
Hon'bleMr Justice K.S. RADHAKRISHNAN.

Important observations:

Drunken driving

25. ……..The scope of Section 185 is not what the senior counsel submits. Section 185 of the M.V. Act is extracted herein below:

> "Section 185 - Driving by a drunken person or by a person under the influence of drugs Whoever, while Driving, or attempting to drive, a motor vehicle,-
>
> (a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or
>
> (b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,
>
> shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.
>
> Explanation -For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle."

26. Section 203 of the MV Act deals with Breath Tests. The relevant portion for our purpose is given below:

> "203. Breath tests.-
>
> (1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorized in this behalf by that Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185:
>
> xxxxxxxxxxxxxxxxxx

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

xxxxxxxxxxxxxxxxx"

Section 205 deals with presumption of unfitness to drive which reads as follows:

"205. Presumption of unfitness to drive.- In any proceeding for an offence punishable under section 185 if it is proved that the accused when requested by a police officer at any time so to do, had refused, omitted or failed to consent to the taking of or providing a specimen of his breath for a breath test or a specimen of his blood for a laboratory test, his refusal, omission or failure may, unless reasonable cause therefor is shown, be presumed to be a circumstance supporting any evidence given on behalf of the prosecution, or rebutting any evidence given on behalf of the defence, with respect to his condition at that time."

(a) The accused, in this case, escaped from the scene of occurrence, therefore, he could not be subjected to Breath Analyzer Test instantaneously, or take or provide specimen of his breath for a breath test or a specimen of his blood for a laboratory test. Cumulative effect of the provisions, referred to the above, would indicate that the Breath Analyzer Test has a different purpose andobject. The language of the above sections would indicate that the said test is required to be carried out only when the person is driving or attempting to drive the vehicle. The expressions "while driving" and "attempting to drive" in the above sections have a meaning "in praesenti". In such situations, the presence of alcohol in the blood has to be determined instantly so that the offender may be prosecuted for drunken driving. A Breath Analyzer Test is applied in such situations so that the alcohol content in the blood can be detected. The breath analyzer test could not have been applied in the case on hand since the accused had escaped from the scene of the accident and there was no question of subjecting him to a breath analyzer test instantaneously. All the same, the first accused was taken to AIIMS hospital at 12.29 PM on 10.01.1999 when his blood sample was taken by Dr. Madulika Sharma, Senior Scientific Officer (PW16). While testing the alcohol content in the blood, she noticed the presence of 0.115% weight/volume ethyl alcohol. The report exhibited as PW16/A was duly proved by the Doctor. Over and

above in her cross-examination, she had explained that 0.115% would be equivalent to 115 mg per 100 ml of blood and deposed that as per traffic rules, if the person is under the influence of liquor and alcohol content in blood exceeds 30 mg per 100 ml of blood, the person is said to have committed the offence of drunken driving.

28. Evidence of the experts clearly indicates the presence of alcohol in blood of the accused beyond the permissible limit, that was the finding recorded by the Courts below. Judgments referred to by the counsel that if a particular procedure has been prescribed under Sections 185 and 203, then that procedure has to be followed, has no application to the facts of this case. Judgments rendered by the House of Lords were related to the provision of Road Safety Act, 1967, Road Traffic Act, 1972 etc. in U.K. and are not applicable to the facts of this case.

On Duty of Driver, Passengers and Bystanders

36. We have found on facts that the accused had never extended any helping hand to the victims lying on the road and fled from the scene. Section 134 of M.V. Act, 1988 casts a duty on a driver to take reasonable steps to secure medical attention for the injured person. Section 134 of M.V. Act, 1988 reads as follows: "134. Duty of driver in case of accident and injury to a person. – When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall –

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desired otherwise;

(b) give on demand by a police officer any information required by him or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, or not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely :-

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii.) particulars of the persons injured or killed in the accident;

(iv.) name of the driver and the particulars of his driving licence.

Explanation. – For the purposes of this section, the expression "driver" includes the owner of the vehicle."

Section 187 of the M.V. Act, 1988 provides for punishment relating to accident, which reads as follows:

"187. Punishment for offence relating to accident –

Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." Of course, no proceedings were instituted against the accused in the case on hand invoking the above mentioned provisions, however, the unfortunate accident in which six persons were killed at the hands of the accused, prompted us to express our deep concern and anguish on the belief that, at least, this incident would be an eye-opener and also food for thought as to what we should do in future when such situations arise. This Court in **Pt. ParmanandKatara v. Union of India (UOI) and Ors. [(1989) 4 SCC 286]** pointed out that it is the duty of every citizen to help a motor accident victim, more so when one is the cause of the accident, or is involved in that particular accident. Situations may be there, in a highly charged atmosphere or due to mob fury, the driver may flee from the place, if there is a real danger to his life, but he cannot shirk his responsibility of informing the police or other authorized persons or good samaritans forthwith, so that human lives could be saved. Failure to do so, may lead to serious consequences, as we see in the instant case. Passengers who are in the vehicle which met with an accident, have also a duty to arrange proper medical attention for the victims. Further they have equal responsibility to inform the police about the factum of the accident, in case of failure to do so they are aiding the crime and screening the offender from legal punishment.

37. No legal obligation as such is cast on a bystander either under the Motor Vehicle Act or any other legislation in India. But greater responsibility is cast on them, because they are people at the scene of the occurrence, and immediate and prompt medical attention and care may help the victims and their dear ones from unexpected

catastrophe. Private hospitals and government hospitals, especially situated near the Highway, where traffic is high, should be equipped with all facilities to meet with such emergency situations. Ambulance with all medical facilities including doctors and supporting staff should be ready, so that, in case of emergency, prompt and immediate medical attention could be given. In fact, this Court in P**aschimBangaKhetMazdoorSamiti and Ors. V. State of West Bengal and Ors. (1996) 4 SCC 37**, after referring to the report of Justice LilamoyGhose, a retired Judge of the Calcutta High Court, gave various directions to the Union of India and other States to ensure immediate medical attention in such situations and to provide immediate treatment to save human lives. Law Commission in its 201st report dated 31.8.2006 had also made various recommendations, but effective and proper steps are yet to be taken by Union of India and also many State Governments. We call for the immediate attention of the Union of India and other State Governments, if they have not already implemented those directions, which they may do at the earliest.

38. Seldom, we find that the passing vehicles stop to give a helping hand to take the injured persons to the nearby hospital without waiting for the ambulance to come. Proper attention by the passing vehicles will also be of a great help and can save human lives. Many a times, bystanders keep away from the scene, perhaps not to get themselves involved in any legal or court proceedings. Good Samaritans who come forward to help must be treated with respect and be assured that they will have to face no hassle and will be properly rewarded. We, therefore, direct the Union of India and State Governments to frame proper rules and regulations and conduct awareness programmes so that the situation like this could, to a large extent, be properly attended to and, in that process, human lives could be saved.

<u>On Hostile witnesses</u>

40. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people's faith in the system. This court in **State of U.P. v. Ramesh Mishra and Anr. [AIR 1996 SC 2766]** held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In **K. Anbazhagan v. Superintendent of Police and Anr. [AIR 2004 SC 524]**, this Court held that if a court finds that in the process the credit of the witness

has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.

41. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in **SidharthaVashisht @ Manu Sharma v. State (NCT o Delhi) [(2010) 6 SCC 1] and in ZahiraHabibullahShaikh v. State of Gujarat [AIR 2006 SC 1367]** had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation.

<u>On Culpable homicide</u>

48. In a recent judgment, in Alister Anthony Pareira (supra), this Court after surveying a large number of judgments on the scope of Sections 304A and 304(II) of the IPC, came to the conclusion that in a case of drunken driving resulting in the death of seven persons and causing injury to eight persons, the scope of Sections 299, 300 and 304(I) and (II) of the IPC stated to be as follows:

> "Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II Indian Penal Code may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under Section 302 Indian Penal Code."

On facts, the court concluded as follows:

"The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part II Indian Penal Code undoubtedly show despicable aggravated offence warranting punishment proportionate to the crime. Seven precious human lives were lost by the act of the accused. For an offence like this which has been proved against the Appellant, sentence of three years awarded by the High Court is too meagre and not adequate but since no appeal has been preferred by the State, we refrain from considering the

matter for enhancement. By letting the Appellant away on the sentence already undergone i.e. two months in a case like this, in our view, would be travesty of justice and highly unjust, unfair, improper and disproportionate to the gravity of crime. It is true that the Appellant has paid compensation of Rs. 8,50,000/- but no amount of compensation could relieve the family of victims from the constant agony. As a matter of fact, High Court had been quite considerate and lenient in awarding to the Appellant sentence of three years for an offence under Section 304 Part II Indian Penal Code where seven persons were killed."

49. In **Jagriti Devi v. State of Himachal Pradesh [(2009) 14 SCC 771]**; wherein the Bench of this Court held that it is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

50. One of the earlier decisions of this Court in **State of Andhra Pradesh v. RayavarapuPunnayya and Another [(1976) 4 SCC 382]**, this Court succinctly examined the distinction between Section 299 and Section 300 of the IPC and in para 12 of the Judgment and held as follows:

> "In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part of Section 304. Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of Section 304."

51. Referring to para 14 of that judgment, the Court opined that the difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. The word "likely" in Clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words "bodily injury...sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature. Ultimately, the Court concluded as follows:

> "From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage forconsidering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is [the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on. whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."

52. The principle mentioned by this court in Alister Anthony Pareira (supra) indicates that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road. In our view, Alister Anthony Pareira (supra) judgment calls for no reconsideration. Assuming that Shri Ram Jethmalani is right in contending that while he was driving the vehicle in a drunken state, he had no intention or knowledge that his action was likely to cause death of six human beings, in our view, at least, immediately after having hit so many human beings and the bodies scattered around, he had the knowledge that his action was likely to cause death of so many human beings, lying on the road unattended. **To say, still he had no knowledge about his action is too childish which no reasonable man can accept as worthy of consideration.** So far as this case is concerned, it has been brought out in evidence that the accused was in an inebriated state, after consuming excessive alcohol, he was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case fall under Section 304(II) of the

IPC and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304A of the IPC.

Mitigating circumstances

56. Payment of compensation to the victims or their relatives is not a mitigating circumstance, on the other hand, it is a statutory obligation. Age of 21, as such is also not a mitigating factor, in the facts of this case, since the accused is not an illiterate, poor, rustic villager but an educated urban elite, undergoing studies abroad. We have to weigh all these mitigating and aggravating circumstances while awarding the sentence.

ORDER

3. In the light of separate judgments pronounced by us today, the judgment and order of conviction passed by Delhi High Court under Section 304A of the Indian Penal Code (IPC) is set aside and the order of conviction of Trial Court under Section 304 Part II of the I.P.C. is restored and upheld. However, we deem it appropriate to maintain the sentence awarded by the High Court, which the accused has already undergone.

4. In addition, the accused is put to the following terms:

(1) Accused has to pay an amount of Rs.50 lakh (Rupees Fifty lakh) to the Union of Indiawithin six months, which will be utilized for providing compensation to the victim of motor accidents, where the vehicle owner, driver etc. could not be traced, like victims of hit and run cases. On default, he will have to undergo simple imprisonment for one year. This amount be kept in a different head to be used for the aforesaid purpose only.

(2) The accused would do **community service** for two years which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, he will have to undergo simple imprisonment for two years.

The Appeal is accordingly allowed in terms of the judgments and this common order.

****