

Emperor Vs. Marshal

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Court : Mumbai

Decided On : Jul-29-1936

Reported in : AIR1937Bom80

Appellant : Emperor

Respondent : Marshal

Judgement :

Beaumont, C.J.

1. This is a reference by the District Magistrate, Bombay Suburban District, asking us to enhance the sentence of four months rigorous imprisonment passed upon the accused for an offence under Section 304-A, I.P.C., that is for causing death by a rash and negligent act.

2. Having gone through the record, I think there is no doubt as to what happened. The accused was driving a car from a wedding party. He had four passengers at the back and two in the front, which was two more than the car was properly capable of holding. He started from the party some distance behind another car which was driven by a man named Nasservanji, and on the Ghodbunder road the accused, desired to pass Nasservanji's car. The evidence is that the road is a straight road thirty-four feet wide and therefore there should have been no difficulty whatever in passing another car even at considerable speed. It is not suggested that there was any obstruction on the road at the time. However, according to the

evidence, both the cars got into something in the nature of a race. What happened, I apprehend, was that, as soon as the accused began to pass Nasservanji, Nasservanji not wanting to be passed by another car of the same party, accelerated the speed of his car, and probably the accused had to go faster than he intended, in order to get past the other car. Having got past the other car, - and the evidence of the only independent witness is that the car was going at the speed of forty or fifty miles an hour, - the accused swerved to the left in order to get back to the proper side of the road, and in so doing, he lost control of his car which ran off the road, collided with a tamarind tree, and was thrown into a field, with the result that three of the passengers sitting in the back seat were killed. I think the accused was guilty of a rash and negligent act, because although if he had been a really competent driver, he ought to have been able to pass another car, even at the speed of fifty or sixty miles an hour, the road being straight and there being no obstruction, still it is clear from the circumstances of the case that the accused was not capable of controlling the car while going at that speed. He evidently swerved to the left much too sharply, having regard to the pace at which he was going and the load in his car, and I think that was his rash and negligent act. When he found that he could not pass the other car, without going at an excessive speed, he ought to have refrained from doing so. But I do not think that in a case of this sort, we can measure the sentence to be imposed by the consequences of the act, unless those consequences were necessarily inherent in the act. If, for instance, a man drives car rashly and negligently into a crowd of people, one might say that that was a grossly rash act, because he was bound to kill or injure many people. But one cannot possibly say that going at too excessive a speed in order to pass another car, the accused was bound to kill the occupants in his own car. Having got six passengers in his car besides himself, it was certainly necessary for him to be careful. But I do not think we can hold that the fact that three deaths resulted is a circumstance which ought greatly to enhance the punishment to be inflicted for the rash and negligent act of the accused. I do not think that the death of the three persons was at all a natural and probable consequence of his act. In the circumstances, the rash and negligent act of the accused being in driving at a speed at which he was unable to control the car, I do not think we are in a position to say that the punishment of four months' rigorous

imprisonment inflicted by the Magistrate was so grossly insufficient, that we ought to interfere in revision.

3. I think therefore that there should be no order, on the reference. The Rule is discharged.

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