

**The State of Mysore Vs. Tythappa**

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**Court :** Karnataka

**Decided On :** Jan-10-1966

**Reported in :** AIR1967Mys51; 1967CriLJ557; ILR1966KAR247;  
(1966)1MysLJ108

**Judge :** M. Santhosh, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 304A; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32, 439 and 545; Motor Vehicles Act - Sections 3(1) and 112

**Appeal No. :** Criminal Revn. Petn. No. 342 of 1965

**Appellant :** The State of Mysore

**Respondent :** Tythappa

**Advocate for Def. :** V. Krishna Murthy and ;V. Tarakaram, Advs.

**Advocate for Pet/Ap. :** B.K. Ramachandra Rao, High Court Govt. Pleader

**Judgement :**

ORDER

1. This is a revision petition filed by the State for enhancement of the sentence passed on the respondent in Criminal Case No. 445 of 1965 on the file of the Second Magistrate, Hassan. The respondent was charged with having committed

an offence under Section 304-A of the Indian Penal Code and also of ;in offence under Section 3(1) read with Section 112 of the Motor Vehicles Act. Charges under Section 304-A of the Indian Penal Code and Section 3(1) read with Section 112 of the Motor Vehicles Act were framed and he pleaded guilty to both the charges. The learned Magistrate convicted him of both the charges and sentenced him to a fine of Rs. 250/-, in default to undergo simple imprisonment for three months for the offence under Section 304-A I. P. C. He also sentenced the petitioner to a fine of Rs. 25/-for the offence under Section 3(1) read with Section 112 of the Motor Vehicles Act.

2. Sri Ramachandra Rao, learned High Court Government Pleader appearing on behalf of the State, has contended that the sentence passed by the Court below is grossly disproportionate to the offence. He contends that the petitioner who is the owner of the car drove the car in a crowded street rashly and negligently and caused the death of Ameer, a boy of 8 or 9 years, the sentence of fine awarded is unduly lenient and the learned Magistrate ought to have imposed substantive sentence of imprisonment in the case.

3. Sri Tarakarum, learned counsel appearing for the respondent (accused), has submitted that the sentence of fine imposed on the respondent is not at all inadequate. Considering the circumstances of the case, he contends that the learned Magistrate was justified in passing such a sentence. He cited before me the decision of the Supreme Court in *Alamgir v. State of Bihar*, : 1959 CriLJ527 wherein the Supreme Court has laid down that the question of sentence is normally within the discretion of the trial Judge. It is for the trial Judge to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case. The High Court undoubtedly has jurisdiction to enhance such sentence under Section 439 Cr. P. C. Hut this jurisdiction can be properly exercised only if the High Court is satisfied that the sentence imposed by the trial Judge is unduly lenient or that in passing the order of sentence, the trial Judge has manifestly failed to consider the relevant facts. He has also cited before the *Emperor v. Khan Mohamed Sher Mohamed* AIR 1937 Bom 96, a Bench decision of the Bombay High Court. In that case, Beaumont, C. J., has stated that the mere fact that human life is lost due to negligent driving of a motor car does

not justify the Court in passing a deterrent sentence, if the loss of life could not have been reasonably anticipated by the Accused. In considering the question of enhancement of sentence their Lordships state, that one has to consider whether the rash and negligent act of the accused showed callousness on his part as regards the risk to which he was exposing other persons. The severity of the sentence imposed depends to a great extent on the degree of callousness which is present in the conduct of the accused. In that particular case, the trial Court had convicted the accused of an offence under Section 304-A I. P. C. and imposed a fine of Rs. 150/-. The State moved for enhancement of the sentence and their Lordships after considering the facts and circumstances of the case, dismissed the application of the State for enhancement.

4. Sri Tarakaram has also relied on a Bench decision of this Court in *State of Mysore v. Govindarao*, (1965) 2 Mys LJ 238. That was a case where the accused was charged with having committed an offence under Section 304-A and acquitted by the trial Court. In the appeal filed by the State, their Lordships set aside the order of acquittal and found the accused guilty of the offence under Section 304-A I. P. C. Coming to the question of sentence, in the last paragraph at p. 272, their Lordships observed as follows:

'In regard to the sentence it seems to us that it is not necessary at this distance of time, and having regard to all the circumstances of the case, to impose a sentence of imprisonment. In taking this view which we have reached after 'bestowing over the matter our most careful thought and attention, we are also influenced by the fact that Kuppuswamy himself quite carelessly was proceeding in the middle of the road on a bicycle, knowing as he should have done, that it was extremely dangerous to do so and that he should have kept to the left side of the road, instead of venturing into the middle of it which was full of danger and perils such as those which he ultimately encountered. In that view of the matter, we think that the ends of justice will be met if we sentence him to pay a fine of Rs. 300 and in default to suffer simple imprisonment for two months.'

I am of opinion that there is considerable force in the contention of the learned High Court Government Pleader that the sentence passed on the respondent is

totally inadequate. As the learned High Court Government Pleader has submitted, the respondent (accused) was driving the motor car very fast in the crowded street. The records disclose that he did not sound any horn and though it is a straight road and the deceased was coming on the left side of the road, he ran over and caused the death of Ameer, an young boy of 8 or 9 years. Further, it has to be remembered that the accused was driving motor car though his driving licence had expired. One of the charges against him was under Section 3(1) read with Section 112 of the Motor Vehicles Act, for driving the motor car without renewing the licence. Taking the circumstances of the case into consideration, I am of opinion the sentence of Rs. 250/- awarded for the offence under Section 304-A I. P. C. is unduly lenient and the sentence deserves to be enhanced.

5. Now coming to the question of what sentence should be imposed on the respondent, it has to be borne in mind that more than a year has passed from the date of the occurrence. The incident took place on 17-12-64. As observed by their Lordships of the Division Bench of this Court, the distance of time which has elapsed is a very relevant circumstance in awarding sentence. It may also be mentioned that the respondent (accused) has pleaded guilty to charge. This is an extenuating circumstance in the case which will be taken into consideration in passing the sentence. The mahazar prepared in this case discloses that there are foot-paths on either side of the road but the deceased, instead of walking on the foot-path, was walking on the narrow tarred portion of the road. Taking all these circumstances into consideration, I am of opinion that a sentence of imprisonment is not called for in this case and that a fine of Rs. 750/- for the offence under Section 304-A, I. P. C. would meet the ends of justice.

6. I, therefore, alter the sentence of fine of Rs. 250/- imposed by the learned Magistrate for the offence under Section 304-A, I. P. C. to one of Rs. 750/- (Rupees seven hundred and fifty) only, in default to undergo simple imprisonment for three months. I am of opinion that this is a fit case for awarding compensation under Section 545 of the Code of Criminal Procedure to the father of the deceased, Mohamed Hussain alias Hassan. I direct, that sum of Rs. 500/- (Rupees Five Hundred) out of this fine of Rs. 750/-, if collected from the respondent (accused) be given as compensation to the said Mohamad Hussain

alias Hassan, father of deceased Ameer.

7. Sentence enhanced.

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