

S.V. Subbarao Vs. State

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Court : Andhra Pradesh

Decided On : Oct-24-1952

Reported in : 1953CriLJ643

Judge : Jaganmohan Reddy, J.

Appellant : S.V. Subbarao

Respondent : State

Judgement :

ORDER

Jaganmohan Reddy, J.

1. This is a revision petition filed against the judgment of the Sessions Judge, Secunderabad, convicting the accused of rash and negligent driving under Section 304A, Penal Code, and imposing a fine of Rs. 125/- It also appears that a revision petition for enhancing the fine was filed before the District Magistrate of Hyderabad City District by the prosecution and a reference has been made by the said District Magistrate for enhancing the sentence. This judgment will govern both these petitions.

2. It appears that on the date of the incident, i.e., on the 24th May, 1950, the accused was driving a Road Transport bus at about 5 p.m. in the Afzalgunj area. It was a rainy day and it is stated that the bus driver by his rash or negligent driving

knocked down a cyclist coming in the opposite direction as a result of which the 'cyclist received injuries and ultimately died. The defence is that there was a rickshaw coming in the opposite direction and the cyclist tried to overtake the rickshaw and in doing so, hit against the right side of the mud-guard of the bus, fell down on the road and was injured. The defence witnesses had given their statements to the Road Transport authorities immediately after the accident and since they have not been produced on behalf of the prosecution their evidence was adduced on behalf of the defence. The learned Fifth City Magistrate who tried this case, after discussing the entire evidence of the defence witnesses does not give a finding as to whether he believes or disbelieves their evidence but merely states that what they say-has not been borne out by the prosecution witnesses; as such the presence of the rickshaw at the time of the accident becomes doubtful. Later in the judgment however he admits the presence not only of the rickshaw, but the fact that the cyclist over-took the rickshaw. The learned Sessions Judge has not, in my opinion, directed his mind to this fact. The vital question in this case is as to what constitutes negligence for the purpose of conviction under Section 304A of the Indian Penal Code. Negligence for the purposes of a criminal liability has been clearly stated by Lord Atkin in *Andrews v. Director of Public Prosecutions* (1937) AC 576 at p. 583 where he observed:

Simple lack of care such as will constitute civil liability is not enough: for purposes of the criminal law there are degrees of negligence: and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers the case. It is difficult to visualize a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter: but it is probably not all-embracing, for 'reckless' suggests an indifference to risk whereas the accused may have appreciated the risk and intended to avoid it and yet shown such a high degree of negligence in the means adopted to avoid the risk as would justify a conviction.

This dictum has been cited with approval in several cases in India viz. in *Emperor v W.S. Priestley* AIR 1944 Sind 124 and *Tika Ram v. Rex* : AIR1950 All300 . In both these cases, a similar view has been adopted citing with approval the dictum

of Mukherjee, J. in-H.W. Smith v. Emperor AIR 1926 Cal 300, where he laid down that the question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. This then is the test of a rash or negligent act for the purposes of Section 304A.

3. In view of the fact that both the lower Courts have not properly directed their minds to the facts of the case from this aspect of law, relating to the act of the accused being rash or negligent, the evidence in the case has got to be looked into for the purposes of assessing liability, if any, of the accused.

4. From a perusal of the evidence of defence witnesses there can be no doubt (and even the learned Magistrate was compelled to admit it in his judgment later) that there was rickshaw coming from the opposite direction which the deceased cyclist tried to overtake and in trying to do so, he dashed against the mudguard of the bus. It is also further established from the evidence that the bus driver had to bring his bus to a stand-still 150 yards before the accident took place because there was a cart obstructing his way. After the obstruction had cleared, he again set his bus in motion, and after proceeding 100 yards or so this other accident took place. This fact by itself would establish (and there does not seem to be any reason why this testimony should be doubted) that the bus was not travelling at a high speed but at a reasonable speed, which one of the defence witnesses puts it at 7 miles an hour.

5. No reasons have been shown why the eye-witnesses produced on behalf of the defence should not be believed. One of them was a passenger in the bus who had a clear view of the accident. The prosecution witnesses also have testified to the fact that the cyclist struck the mud-guard and fell down. The question is whether it was the bus that struck the cyclist or the cyclist that struck the bus. This is important for the purposes of assessing the liability of the driver. In such cases as observed by Mukherjee, J. in-H.W. Smith v. Emperor AIR 1926 Cal 300, already referred to, it is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is so dominant a factor in accident cases. Having regard to

all these facts, it is not possible for me to hold that the accused was driving his bus in such a rash or negligent way as would bring him within the ambit of Section 304A. On the other hand it appears to me and is clear from the defence evidence which I believe, that there has been negligence on the part of the cyclist who in attempting to overtake a rickshaw dashed against the mudguard of the bus. The learned Government Advocate also was unable to satisfactorily support the judgments of the lower Courts except to say that there were concurrent findings of fact. When the lower Courts have not considered the evidence from the aspect of rashness or negligence as set out above, the concurrent findings have no particular significance. I therefore allow the revision petition, set aside the conviction and sentence of the accused. If any fine has been paid, it shall be returned.

6. In view of this, the reference made by the District Magistrate for enhancing the sentence does not arise and consequently it is not necessary to answer it. A copy of this order may be affixed in the reference filed.