In Re: P. Appayya

In Re: P. Appayya

SooperKanoon Citation : sooperkanoon.com/425700

Court : Andhra Pradesh

Decided On : Apr-11-1956

Reported in : 1957CriLJ627

Judge : Bhimasankaram, J.

Appellant : In Re: P. Appayya

Judgement :
ORDER

Bhimasankaram, J.

1. The petition was charged with offences under Section 429 of the Indian Penal Code and Section 116 of the Motor Vehicles Act and convicted and sentenced to two months' rigorous imprisonment under each count, the sentences to run concurrently.

2. On the evening of 2-7-1955, the prisoner was driving a lorry on the road from Piduguralla to Sattenapalli. The first witness for the prosecution as well as the first witness for the defence were seated in the lorry beside the petitioner. At about 7-30 p.m. the lorry reached the outskirts of the village of Dhulipala when it met a drove of cattle moving in the opposite direction. The lorry ran into the animals and the result was that four lie-buffaloes died on the spot while two others seriously injured. The accused pleaded not guilty to the charge framed and explained that the night was cloudy, that there was a drizzle, that as the front lights of the lorry

were not in good order, the visibility was poor and that when he saw the buffaloes moving forward, he applied his brakes though in vain because by that time the animals were too near the lorry to enable it to stop without causing damage.

3. There were three eye-witnesses to the incident who were examined on behalf of the prosecution, P.W. 1 who was in the lorry at the time and P.Ws. 2 and 3, the drovers in charge of the cattle. The other passenger in the lorry was examined as D.W. 1. Then there was the evidence of P.W. 4, the Veterinary Assistant Surgeon, Guntur as to the cause of the death of the buffaloes that died and the cause of the injuries to the two other animals that were injured. P.W. 5 who is the Motor Vehicles Inspector, Guntur gave evidence that he inspected the lorry soon after the incident and noticed several defects in the lorry, which in his opinion, could have been caused by violent impact with the animals. One of the defects noticed by him was that the head-light on the right side of the lorry was completely out of order.

He added that if only one head-light was working, the driver cannot see properly the road ahead. On this evidence, the learned Trial Magistrate found the petitioner guilty of both the offences with which he was charged and passed the sentences referred to above. The accused took the matter in appeal to the Sessions Court and it was disposed of by the Additional Assistant Sessions Judge, Guntur who confirmed both the convictions and the sentences. The present criminal revision case impugns the correctness of the conclusion reached by the lower courts.

4. Mr. T. V. Sarma for the petitioner raised four principal contentions before me. He contended in the first place that there could be no conviction under Section 429 of the Indian Penal Code, without a finding as to either the intention or knowledge of the character mentioned in Section 425 of that Code. In the circumstances of the case, he urges that there could be no intention to cause wrongful loss or damage to any person. That much, I think, may be conceded, and the lower courts have not recorded such a finding. But the learned Additional Assistant Sessions Judge has stated that to the petitioner must certainly be imputed the knowledge that when he was driving a heavy vehicle like a lorry with hopelessly poor lights, he is likely to cause wrongful loss or damage to any person. The Trial Magistrate

also recorded a similar finding. I therefore think that there is no substance in this point,

5. It has been next contended for the petitioner that the conviction under Section 116 of the Motor Vehicles Act is at any rate, unsustainable. Learned Counsel for the petitioner sought to fortify his argument by reference to a decision of the Madras High Court reported in Ganesan, In re, : AIR1950 Mad71 (A). It was there held that the driver of a motor vehicle who is guilty of a mere error of judgment is not guilty of an offence under Section 116 of the Motor Vehicles Act or under Section 338, Cr. P. C. Mr. Sarma argues that the facts in this case establish no more than a mere error of judgment such as was the case in the ruling cited. Somasundaram J., who decided that case compared 8, 116 of the Motor Vehicles Act IV of 1939 with Section 11 of the Road Traffic Act, 1930 of England which, so far as it is material for the present purpose, reads thus:

If any person drives a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable....

Section 116 of the Motor Vehicles Act was also quoted by the learned Judge for the purposes of comparison and in order to appreciate his reasoning, it is necessary to extract the relevant portion thereof which is hereunder;

Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable.

After extracting these two sections, the learned Judge proceeded to remark:

A reading of these two sections will show, that except for the words 'If any person drives a motor vehicle oil a road recklessly' word for word, Section 116 of the

Motor Vehicles Act, is practically the same as Section 11 of the English Act, It is significant that the words 'if any person drives on a road recklessly' found in Section 11 of the English Act are omitted in the Indian Act, It is obvious therefore that driving a motor vehicle on a road recklessly, per se is not punishable under the Indian Statute.

He then referred to Section 12(1) of the English Act which is as follows:

If any person drives a motor vehicle on road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence

and proceeded to say:

There is no corresponding provision in the Indian Statute, The absence of a provision similar to Section 12 of the English Act is not without significance, particularly when our laws relating to motor traffic are modelled on English statutes. The only inference that could be drawn from the absence or a provision in the Indian Statute similar to Section 12 of the English Act is that under the Indian law careless driving as such is not made punishable. The reasons for not introducing such a provision in the Indian Statute may be manifold; but it is unnecessary for me to go into that question.

Suffice it to say that there is a distinction between dangerous driving mentioned in Section 11 and careless driving mentioned in Section 12 of the English Act both of which are made punishable under the English Law, whereas under Section 116 of the Motor Vehicles Act, only dangerous driving is made punishable. Even reckless driving is excluded from the purview of Section 116. Apart from the class of cases which fall within the scope of Sections 11 and 12 of the English Act, which may be stated to be (1) reckless driving (2) dangerous driving, and (3) careless driving, there is a class of cases which fall under category of what is called 'guilty or error of judgment'. Acts which fall within the last class, viz. guilty of error of judgment, are not punishable.

6. Then the learned Judge went on to refer to the decision in In Johu Joseph Howell, 27 Cr. App. Rep. 5(B) : in which it was held that the accused was entitled to an acquittal as the Jury had meant to find that he was guilty only of a mere error of judgment. For the present, I am only concerned with the reasoning of the learned Judge in regard to Section 116 of the Motor Vehicles Act as compared with Section 11 of the English Road Traffic Act, With great respect to the learned Judge, I must point out that he has failed to notice what seem to me another very vital difference between the two provisions and that such a failure has vitiated his reasoning.

While Section 11 of the English Road Traffic Act uses the word 'road', Section 116 of the Motor Vehicles Act used the word 'place'. A 'road' is obviously a high-way for traffic and where a person drives a heavy motor vehicle on a road open to the public, in a reckless way, surely, it is difficult to say that he is not driving it in a manner dangerous to the public, having regard to all the circumstances of the case, (A road, it may be noted, is defined in the Road Traffic Act of 1930 as meaning any highway and any other road to which the public has access, and including bridges over which a road passes).

'The circumstances of the case' includes the nature, condition and the use of the road and certainly also the nature and the condition of the vehicles. If a person drives a motor vehicle recklessly in his own private grounds, he is completely immune in England while he may still be exposed under given circumstances to punishment under the Indian Statute. As the English section speaks only of a 'road', I think, it is merely by way of abundant caution, that the word 'recklessly' is also used, because I cannot see how there can be reckless driving along a public road which is not, at the same time, describable as driving in a manner which is dangerous to the public.

In these days, we are familiar with motor vehicles which can run on any or even on no track and not necessarily on a road and the public is therefore entitled to protection from dangerous driving of such vehicles in any place, as provided by the Motor Vehicles Act. The English Road Traffic Act is concerned only with traffic on 'roads'. It is true that mere driving without due care and attention or without

reasonable consideration for the convenience of other persons using the road is not punishable in India. But, that is a different matter.

I am convinced that the scope of Section 116 of the Motor Vehicles Act Which covers driving in all places in much wider than the scope of Section 11 of the English Road Traffic Act which deals only with driving on a road. It is not quite correct to say, as the learned Judge observes that 'driving a motor vehicle on a road recklessly per se is not punishable under the Indian Statute,' It may be correct, of course, to say that driving the motor vehicle along a place recklessly is not in itself an offence. But, it does not necessarily follow that driving a motor vehicle recklessly on a 'road' it not hit at by Section 116 of the Motor Vehicles Act.

As I have stated already, it seems to me that nobody can drive a motor vehicle recklessly along a place open to public traffic, i. e., a road, without potential danger to the public. I must confess my inability to appreciate the point made by the learned Judge in the decision quoted supra. If I had thought a ruling on the point necessary to decide the present case, I should have adopted the course of referring it to a Division Bench. But, in the circumstances I content myself with making the above observations.

7. As regards the suggestion that in this case there was merely an error of judgment, it seems to me that such an error can only arise when a person is confronted with a choice not occasioned by his own conduct, that is by his own reckless act or omission.

One cannot get into a situation which a man using reasonable care, could not have got into and justify the consequences that followed as resulting from an error of judgment. On the present facts, it is impossible to hold that the tragedy was caused by an error of judgment : I have no doubt that the driving in the instant case was, in the circumstances, (i. e., having regard to the type of the vehicle, the nature of the place, the hour of the day, the darkness intensified, as it was, by the overcast skies, the poor condition of the headlights and the fact that the lorry was hearing a village at the time) such as to justify the conclusion that the vehicle was being driven in a manner dangerous to the public. I, therefore, reject the second contention also urged on behalf of the petitioner,

8. It was then argued that under Section 26 of the Indian General Clauses Act, a conviction under both the general and special law could not be sustained. The section referred to runs thus:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable, to be punished twice for the same offence.

9. But, I do not think that this section applies. The act or omission constituting an offence under Section 116 of the Motor Vehicles Act is different from the act or omission constituting an offence under Section 429 of the Indian Penal Code. The act or omission constituting the manner of driving is punishable under the former section while under the latter it is the result of any such act or omission, that is, the fact that wrongful loss or damage is caused which is made punishable. Each is, by itself, a separate and distinct offence. Hence, I cannot uphold the contention that Section 26 of the General Clauses Act invalidates the simultaneous conviction under both the Sections.

10. The fourth and the last contention of Mr. Sarma was that the questions put to the accused under Section 342 of the Criminal P. C., do not satisfy the requirements of law and that they are vague and misleading. I must confess that I am not satisfied that the questions have been put in an altogether satisfactory manner. But, in my opinion, the petitioner has not suffered thereby, I therefore, overrule this contention also.

11. In the result, the convictions are upheld but the sentences are reduced to the period of imprisonment already undergone.