

Sarwar Khan Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Jul-26-1967

Reported in : AIR1968AP290; 1968CriLJ1338

Judge : Mohamed Mirza, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304A; [Motor Vehicles Act, 1939](#) - Sections 116; [Evidence Act, 1872](#) - Sections 101 and 104

Appeal No. : Criminal Revn. Case No. 442 of 1966 and Criminal Revn. Petn. No. 386 of 1966

Appellant : Sarwar Khan

Respondent : State of Andhra Pradesh

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : R. Venugopal Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. The petitioner is a driver of jeep No. MYV 514. It is alleged that on 28-8-19(i4 on the Kuppam-Palamaner road he drove the jeep rashly and thereby caused the death of one Guruswamiah At a place called Thummsi, the petitioner Rave lift to

some people, including P. W. 2. the deceased, grand-father of P. W. 2. and P W. 9. He is alleged to have driven the jeep in a rash and negligent manner with the result that it left the road and dashed against a tree. The deceased, Guruswamiah, fell down from the jeep and sustained injuries, and later died. It is also said that two other person? to whom the petitioner was giving a lift refused to travel further after the occurrence, but the petitioner continued the journey towards Kuppam after lifting the injured into his jeep. After going about two furlongs, the petitioner, on some pretext, made P. W. 2 sit down on the road along with the deceased and then drove on. On these facts he was convicted by the trial Magistrate and was sentenced to undergo rigorous imprisonment for a period of six months On appeal, this conviction and sentence was confirmed.

2. I feel that the learned appellate Judge was more influenced by the fact that the petitioner acted in an inhuman and ruthless manner by asking P. W. 2 to get down and placing the deceased on the ground and then driving away. The real question that has to be considered is, whether the petitioner drove the car in a rash or negligent manner The learned Judge also has observed that accepting the testimony of P. Ws 2 and 9, the petitioner drove the jeep in a rash and negligent manner. But these two witnesses have not said a word with regard to the rash or negligent driving of the petitioner. The trial Court convicted him with reference to a decision of the Madras High Court reported in Ratnam Mudaliar v. Emperor, AIR 1934 Mad 200, in which the following observation that was made by the Sessions Judge was approved by the Madras High Court:

'A person driving a motor car is under a duty to control that car; he is prima facie guilty of negligence if the car leaves the road and dashes headlong into a tree and it is for the person driving the car to explain the circumstances under which the car came to leave the road. Those circumstances may be beyond control, and may exculpate him, but in the absence of such circumstances the fact that the car left the road is evidence of negligence on the part of the driver.'

From this observation, the learned Magistrate, inferred that the burden of proof had shifted to the petitioner to prove under what circumstances the car that he was driving left the road, and then dashed against the tree. It will be seen that in this

case the petitioner did not try to explain the circumstances which culminated in the accident, but simply denied having committed the offence. Therefore, the learned Magistrate thought that the burden of proof has not been discharged by the appellant. This observation is not such as to wholly absolve the prosecution from proving its case. The accused may refuse to enter any plea. He may refuse to give an explanation, and he may refuse to examine any witnesses on his behalf. But still none of these facts can be taken into consideration to assess the guilt of the accused. The burden of proof never shifts, and it is for the prosecution to prove its case. Explanation of an accused, or the plea entered by him, or the evidence adduced by him, may succeed in making the case of the prosecution somewhat doubtful, and to that extent the plea, or the explanation, or the evidence may be taken into account by the Court. But beyond that it is not for the accused to set up and prove his own case, in a manner the prosecution is bound to do. In this particular case, I find that there is no evidence at all on behalf of the prosecution to hold that the petitioner had acted in a rash or negligent manner. When the prosecution has not succeeded in bringing home the guilt to the accused, it is hardly possible to convict him only on the ground that he had failed to give any explanation. In these circumstances, I think, the evidence for the prosecution, is not sufficient to SUSTAIN the conviction of the petitioner, and it is, therefore, set aside.

3. In the result, the petition is allowed and the petitioner is acquitted.

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