

Deota Misir Vs. Emperor

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Court : Allahabad

Decided On : May-17-1931

Reported in : AIR1931All708

Appellant : Deota Misir

Respondent : Emperor

Judgement :

Boys, J.

1. Deota Misir has upon a complaint by Bishnath Lal of an offence under Section 304, I. P.C. (causing death by doing a rash or negligent act not amounting to culpable homicide) been convicted and sentenced to three months' rigorous imprisonment and a fine of Rs. 50 or in default six months' rigorous imprisonment.

2. The accused was the driver of a motor lorry, and was charged with having caused the death of a person, in that on the Gaghra to Gorakhpur road he was driving his lorry fast as he was trying to outstrip another motor lorry, with the result that the lorry of the accused collided with a tree which stood on the right hand side of the road. The lorry overturned, one of the passengers was killed and some injured. The accused denied that he was driving fast or that he was trying to outstrip any other lorry or that he was guilty of any negligence. His case was that he saw two bullock carts coming towards him in the middle of the road, he intended to pass on his own left in the ordinary way, but the bullock-cart drivers

took their carts one to the right and one to the left, and being unable to pass on his own left he swerved in order to try and pass on the right, and so struck the tree. It will be seen therefore that he puts the blame for the accident on the bullock-cart drivers. The Magistrate found that the prosecution witnesses had proved to his satisfaction that the accused was driving the lorry fast as he was trying to outstrip another lorry and that he did not even blow his horn; that he, the Magistrate, was doubtful whether there were any bullock-carts there, but, even if there were, there was sufficient space for the accused to have kept his lorry away from the tree; that the accused had disregarded the rules of the road and taken his lorry on the wrong side; that even assuming that the bullocks of one of the carts shied off there would have been no accident had the accused stopped his lorry.

3. The second Additional Sessions 'Judge in appeal found it established that there was another lorry travelling in front of the accused; that the accused was travelling fast; that he was guilty of a negligent act in trying to pass on the right. He does not find that there were bullock-carts as stated by the accused and his witnesses, and the Magistrate, while doubting this point, did not definitely hold that there were no bullock-carts. I should therefore in any case give the accused the benefit of this doubt and deal with the case on the assumption that there were bullock-carts. This is indeed almost certain, for there is no other cause to account for the accused having swerved off to the right so far as to strike a tree on the path on the right hand side. The facts therefore which must be taken to be found are that the accused saw ahead of him two bullock-carts coming towards him in the middle of the road; that whether because the drivers themselves saw the accused's lorry approaching or because they saw him upon his sounding his horn-and I give him the benefit of the doubt that he sounded his horn as that fact is not found against him-they endeavoured to get out of the way; that instead of both going to their own left from the middle of the road, as they should have done, one went one way and one the other; that finding he could not pass on his own left hand, as he should have done, he made a swerve hoping to get through on the right hand side, and struck the tree. It is found as a fact that there was another lorry going ahead of the accused, but it is not found how far ahead the other lorry was, and the fact is only of importance as suggesting that the accused had a motive for driving too fast. I do not think any importance can be attached to this suggested motive in the state of

the evidence. The other lorry must, at any rate, have been some distance ahead, or we should not find the bullock-carts, according to the accused's own statement in the middle of the road. The question, then, is whether the accused brought about the accident by rash and negligent driving. In my opinion no other conclusion is possible. Every driver in India knows that villagers are not sufficiently alive to the rules of traffic. He knows that he may at any moment find drivers of bullock-carts or carts on the 'wrong side of the road, particularly on country roads, and he knows that bullock-cart drivers may turn on to their wrong side of the road when they see traffic approaching. In the circumstances of the present case there is no suggestion whatever that the negligent act of the bullock-cart driver who swung his cart on to the wrong side of the road was so sudden that it was impossible for the accused to avoid an accident. It is manifest that there are cases when a driver cannot possibly be reasonably expected to avoid the consequences of somebody else's negligence. A pedestrian or the driver of another vehicle may be negligent and there may be no sufficient time for another person to avoid the consequences of that negligence. In the present case it is clear that had the accused been driving at a pace at which he had his lorry under proper control he should have been able to stop it at any time to avoid an accident without resorting to the dangerous expedient of swinging his car off to the wrong side of the road. In my opinion therefore while there was negligence undoubtedly on the part of one of the bullock-cart drivers, the accused, if he had had his lorry under proper control, should have been able to avoid the consequences of that negligence. His negligence therefore was the negligence that substantially caused the accident. That he was therefore rightly convicted is in accordance with the principles laid down in the latest and very important case of *Sivalingam v. Cooper* [1930] W. N. 204. Their Lordships in that case (it was of course a civil case) said:

The crucial question on which liability depended, was whether either party could, by the exercise of reasonable care, have avoided the consequences of the other's negligence; if he could, then that party was legally responsible for the accident.

4. The idea is unfortunately very prevalent in a vague way in the minds of many drivers that it is sufficient to absolve them from the consequences of rash driving merely to show that the person to whom or to whose property they have caused

injury was himself negligent. It is not so and the sooner rash drivers appreciate the fact the better.

5. In the present case the injury was actually caused to persons who were in no way negligent; but the accused's responsibility would have been just the same if he had caused the injury to the negligent bullock cart driver.

6. I see no reason to interfere with the conviction and sentence, and the application is dismissed.

7. The applicant will surrender to his bail.

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