

Gur Narain Vs. Emperor

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Court : Allahabad

Decided On : Nov-02-1927

Reported in : AIR1928All191

Appellant : Gur Narain

Respondent : Emperor

Judgement :

Dalal, J.

1. The applicant, a driver of a motor-lorry, was once convicted of an offence under Section 5, Motor Vehicles Act 8, 1914 for reckless driving. The reckless driving resulted in the lorry knocking against the chabutra on which one Kallu butcher was sitting and fracturing the bones of his left leg. He is now being prosecuted under Section 279 for rash driving and causing grievous hurt by doing any act so rashly or negligently as to endanger human life and the personal safety of others.

2. It is submitted here as it was in the Court of Session, that the applicant's further prosecution is barred under the provisions of Section 403 (1), Criminal P.C. A person, who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have

been convicted under Section 237. In my opinion the argument will apply to one set of cases and not to the other. Under Section 235 (1) an accused person may be charged with, and tried at one trial for, every offence which he may have committed, if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person. Under Section 403 (2), Criminal P.C., the provisions of Section 235 (1) are not made applicable to those different offences committed in one series of acts. In the present case the one series of acts of the applicant consisted of rash and negligent driving and of knocking against a human being and thereby causing hurt to him. The learned Counsel for the applicant argued that there was only one act and not a series of acts. I cannot agree on this point. The one act was the act of rash driving, and even if the applicant's lorry had not knocked against the chabutra and had not injured the butcher, he would still have been liable for reckless driving. There was not only one act of reckless driving, but a subsequent act of knocking against a man during such rash driving. It is clear to me, therefore, that his conviction for rash driving cannot protect him from prosecution for the consequences of such rash driving either under Section 325 or Section 338, I.P.C.

3. The trial is still pending and has not been concluded, so this Court is not in a position to give any opinion as to what offence has been committed. It is true that the provisions of Section 403 (1) would cover an offence under Section 279, because at the former trial on the same fact of rash driving the applicant could have been prosecuted under Section 279 for rash driving on the public road so as to endanger human life. I do not think that the offence of rash driving which is dangerous to the public, and rash driving so as to endanger human life can be separated though these offences are punishable under different acts. I am of opinion that the applicant could no longer be tried for an offence under Section 279 or any offence circumscribed by the rash driving. As to the result of the rash driving the applicant must stand his trial for the grievous hurt caused to the butcher. It seems to me that the Magistrate took the same view that the applicant could still be tried under Section 338, I.P.C. That is the correct view and the trial should proceed under Section 338, I.P.C., and not under Sections 279 and 325, I.P.C. Obviously the learned Sessions Judge had not noted this point when he wrote a paragraph of good advice to the trying Magistrate. I dismiss this

application in which also reference is made only to Section 338, I.P.C. It would, however, be more proper to give a farther order and to state that the applicant may be prosecuted under Section 338, I.P.C., and not under Sections 279 and 325, I.P.C.

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