

State Vs. Gulam Meer

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Court : Madhya Pradesh

Decided On : Nov-20-1955

Reported in : 1956CriLJ624

Judge : Dixit, ;Chaturvedi and ;Samvatsar, JJ.

Appellant : State

Respondent : Gulam Meer

Judgement :

Chatubvedi, J.

1. After stating the facts given above his Lord. ship proceeded.
2. The question referred to the Full Bench is: Whether a person guilty of rash and negligent driving on a public road in such a manner as to endanger human life, cannot be convicted for the offence under Section 279, I.P.C., if in course of, or by reason of, such driving, hurt is also caused to some person?
3. In other words, it is suggested that we should reconsider the decision of a Division Bench of this Court (Mehta and Khan JJ.) reported in 'Madh.-B. LR 1952 Cri 302 (A)'.
4. At page 303, it was observed by Mr. Khan, J. (Mehta J. concurring) that if any injury is not caused but the act was rash or negligent, the proper Section under

which an indictment would lie is Section 279, I.P.C. But if a result of a rash or negligent act injury has been actually caused, the appropriate Section under which a person should be tried is Section 337, I.P.C.

A reference has been made in that judgment to page 881 of Gour's Penal Law of India (5th edition), where in Note 2924 it is stated that a person convicted of a major offence, that is an offence under Section 337 or Section 304, I.P.C. cannot be convicted of this offence (Section 279, I.P.C.) as well,

In his Penal Law of the British India (1936 edition). Sir Harisingh Gour makes a reference to 'L. F. Collett v. Emperor' 1929 Mad WN 395 (B) in support of this proposition. The facts of that case were that on one night the appellant Collett was drunk and was driving a car which hit from behind four Muslims, who were carrying an empty bier. Owing to the impact, the four persons, received injuries on account of the seriousness of which two of the pall bearers died subsequently in the General Hospital, Madras.

The Second Presidency Magistrate, Madras, convicted the appellant under Sections 279, 337 and 304A, I.P.C. He was sentenced to six months' rigorous imprisonment under Section 279, I.P.C. another six months' rigorous imprisonment under Section 337, I.P.C. and two years' rigorous imprisonment under Section 304A, I.P.C. He was also directed to pay a fine of Rs. 500 and in default to suffer an additional six months' rigorous imprisonment. The sentences were ordered to run one after another.

Against this order, the appellant filed an appeal in the High Court, which was heard by a Division Bench consisting of Waller and Anantha. krisha Aiyar, JJ. Nowhere in the lengthy and elaborate judgment of their Lordships the question has been discussed whether an accused convicted under Section 337, I.P.C. can also be convicted under Section 279, I.P.C. Only in the end at page 414 in the judgment of Ananthakrishna Aiyar J... we find the following:

The learned Crown prosecutor admits that the conviction under Section 279, I.P.C. separately could not stand in the circumstances, if the accused is convicted under Sections 337 and 304A, I.P.C. Accordingly, the conviction under Section 279,

I.P.C. and the sentence of 6 months' rigorous imprisonment, merit passed under that Section are quashed.

5. It will be obvious from the above extract that as the Crown prosecutor in that case had conceded that the accused could not be convicted under Section 279, I.P.C. so there was no necessity for any discussion of the main question that has now arisen before us. It follows that the observations in Sir Harisingh Gour's Penal Code based on this case can carry us nowhere,

6. I, therefore, thought it better to refer to the recent edition of Ratanlal's Law of Crimes. There at page 642 in his commentaries on Section 279, I.P.C. we find the following: 'If actual hurt is caused the case would come under Section 337 or Section 338; and if death is caused under Section 302 or Section 304A, I.P.C.' No reference is made to case-law and so the observation made above is of no assistance to us. But on the same page further down it is mentioned:

Where a foot passenger was injured owing to the rash and negligent driving on not a narrow road, there being ample space for the driver to have passed the passenger, and after having knocked him down left him where he was, it was held that the driver was guilty of a serious offence punishable under this Section and Section 337.

The case referred to is - 'Emperor v. Aghan' AIR 1927 Oudh 441 (2) (C). It was a reference from the District Magistrate, Lucknow for enhancement of sentence passed upon Aghan and the sentence was enhanced to three months' rigorous imprisonment, As usual there is no discussion of the question raised before us.

7. In this connection, I have also referred to Dr. Nandlal's Penal Code (1921 edition), in a note to Section 279, I.P.C. at page 1270, the learned author makes reference to the following cases:

Where a person by allowing his cart to proceed Unattended along a road runs over a boy who is sleeping on the road, he cannot be convicted under this Section (i.e., Section 279, I.P.C), but must be convicted under Section 337 or Section 338, I.P.C. - ('Government of Bombay v. Malkaji - Rat. Un. Cr. C. 198 (D)', though there

is authority to the contrary also - 'Queen Empress v. Bali-Rat. Un Cr. C. 396 (E).

I have gone through both these cases. The first case i. e., - 'Government of Bombay v, Malkaji (D)', is a case of 1884, and the appeal was decided by Kendall and Birdwood JJ. It was decided that where a person by allowing his cart to proceed unattended along a road runs over a boy who is sleeping on the road, he cannot be convicted under Section 279, I.P.C., but must be convicted under Section 337 or Section 338, I.P.C.

The next case - ('Queen Empress v. Bali (E)' Is of 1888, It is a criminal review decided by a Division Bench consisting of Birdwood and Parsons, JJ. It was laid down in this case that where the accused is alleged to have been negligent either in rashly driving or in leaving his bullocks to go along the road unattended, and a child is run over by the toullocks and killed, he ought to be tried under Sections 304A, 289 and 279, I.P.C.

In both these cases, the orders are very brief and no reasons are given for the view whether the conviction can be maintained under Section 279, I.P.C. or not. Neither from the extract in Dr. Nandlal's Penal Code nor from either of the case, any assistance or help can be derived

8. It will, however, be useful to refer to some of the recent cases. The first case is - 'Gur Narayan v. Emperor' AIR 1928 All 191 (P). a criminal revision, decided by Justice Dalai. The applicant in this case, a driver of a motor-lorry, had been, convicted of an offence under Section 5 of Motor Vehicles Act (No. 8 of 1914) for reckless driving. The reckless driving resulted in the lorry knocking:.. against the 'chabutara' on which one Kallu butcher was sitting and caused fracture in the bones of his-left leg.

The driver was then prosecuted under Section 279, I.P.C. 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. It was held by his Lordship chat the applicant could no longer be tried for an offence under Section 279, I.P.C. or any offence circumscribed by the rash driving. In deciding this case his Lordship made the following observations:

In the present case the one series of acts of the applicant consisted of rash and negligent driving and 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.

One act was the act of rash driving, and even if applicant's lorry had not knocked against the 'chabutara 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.

It will be clear from these observations that in his Lordship's opinion an accused could be convicted both under Sections 279 and 338, I.P.C. as the two offences were distinct; but the offence of reckless driving under the Motor Vehicles-Act and under Section 279 being one and the same, he could not be convicted under the latter when once he had already been convicted of the former.

9. In - 'Raghoprasad v. Emperor' AIR 193S' Pat 388 (G), a criminal revision decided by Justice Agarwala, the head-note runs as follows:

Section 279 makes rash driving or riding on a public road punishable if such rash driving or riding endangers human life or is likely to cause hurt or injury to another person. Where the rash or negligent driving actually results in grievous hurt being caused to any person, an offence under Section 338 is committed, and accused can be convicted under Section 338, but not both under Sections 279 and 338, I.P.C.

In my opinion, this head-note is misleading, as will be apparent from a perusal of the order which is a brief one and which I reproduce below,

The only question is whether in these circumstances he should have been sentenced under both (Sections 279 and 338. The former Section makes rash driving or riding on a public road punishable if such driving or riding endangers

human life or is likely to cause hurt or injury to any other person. Where the rash or negligent driving actually results in grievous hurt being caused to any person, an offence under Section 333 is committed.

In - 'Champa Pasin v. Emperor' AIR 1928 Pat 326 (H), a Division Bench of this Court held that the imposition of separate sentences was not justified where the acts constituting two different offences form part of the same transaction against the same accused. That observation appears to apply to the facts of this case and I would, therefore, set aside the sentence under Section 279, I.P.C.

The conviction and sentence Under Section 338 will remain.

It will be manifest that what his Lordship meant was that an accused can be convicted for both offences i. e., under Section 279 and Section 338, I.P.C. but that there should be only one sentence.

10. In - 'State of Bihar v. Mangalsingh : AIR1953 Pat56 the respondent had been tried and convicted under Section. 121 of Motor Vehicles Act, and he was again 'challaned' under Sections 279, 338 and 304A, I, P.C. The Sub-Divisional Magistrate acquitted him on the ground that according to his view the only evidence against the respondent was that he was driving the bus at a great speed.

It was found by the High Court that the respondent was driving the bus with defective brakes and other defects at such a high speed that when he made an attempt to apply the foot-brakes, on being signalled to stop, he was completely unable to control it. Two of the wheels had already gone into a 'mala' by the side of the road and the bus, after having swerved to the right and to the left, ultimately capsized on the road with the result that the body of the bus went into pieces. One of the passengers died there and then and one got his spine broken. Many others received other injuries.

It was held that though the respondent had been tried and convicted under Section 121 of Motor Vehicles Act which punishes a person who drives a defective motor vehicle, yet having regard to Sub-section (2) of Section 403, Criminal P.C. that conviction would not stand in the way of the conviction under Penal Code, and so

the respondent was held guilty of offences under Sections 279, 338 and 304A, Penal Code. The State appeal was, therefore, allowed and conviction recorded under these Sections.

11. In - 'Raghavan Pillai v. State' AIR 1954 Trav.-C. 25 (J), the accused was driving a lorry along the centre of a straight road at a High speed in order to keep pace with railway train running parallel to the road. The lorry was loaded with several bags of paddy upon the top of which two persons were sitting. Three bullock carts were seen coming in opposite direction along the correct side of the road.

The accused suddenly swerved towards the right to allow carts to pass, with the result that the lorry overturned causing death of one person and grievous hurt to another who was sitting on the top of the bags. It was held that the accused was guilty under Sections 279, 304A, 337 and 338, I.P.C.

12. In both the Patna and Tra.-Co. cases, there is no discussion of the question whether the offences under Sections 279 and 337 or Section 338, I.P.C. are distinct and whether an accused can be convicted for both these offences; but the convictions are clearly based on the assumption that an offence under Section 279, I.P.C. is distinct from that under Section 337 or Section 338, I.P.C. That, in my opinion, will also be manifest from the wording of Sections 279, 337 and 338 which are reproduced below:

Section 279:

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both. Section 337:

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or

with fine which may extend to five hundred rupees, or with both. Section 338:

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which, may extend to two years, or with fine which may extend to one thousand rupees, or with both.

13. It will be apparent from the punishments prescribed for the offences under Sections 279 and 337, I.P.C. that even the Legislature did not think that circumstances in an offence under the latter Section in any way aggravated the offence under the former. In other words, no enhanced punishment is prescribed under Section 337, I.P.C. On the other hand, an offence under Section 279 is punishable with a heavier fine. It may also be noted that Section 279, I.P.C. occurs in Chapter XIV of the Penal Code which contains Sections 268 to 294A and deals with offences affecting the 'PUBLIC HEALTH SAFETY CONVENIENCE, DECENCY, AND MORALS'.

It will be useful to refer to some of the Sections of this Chapter which: make some of the rash and negligent acts, in themselves, punishable. Section 277 makes fouling water of public spring or reservoir punishable. Section 278 punishes persons making atmosphere noxious to health;- Section 280 makes rash navigation of vessel punishable.

Then there are other rash and negligent acts enumerated which have been made punishable: e. g., Section 282 dealing with conveying person by water for hire in unsafe or overloaded vessel; Section 283 relates to causing danger, obstruction or injury to any person in a public way or public line of navigation; Section 284 to Section 289 deal with negligent conduct with respect to poisonous substance, fire, combustible substance, explosive substance, and also with respect to machinery, building and animals.

14. Section 337, I.P.C. occurs in Chapter XVI which deals, with offence 'AFFECTING HUMAN BODY'. Section 319 to Section 338 are placed under the sub-heading of 'HURT'.

15. It will be seen that there are some rash and negligent acts which without anything more, are themselves offences. It is the rash or negligent manner of driving or riding that constitutes an offence under Section 279; it must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

But for an offence under Section 337, rash or negligent driving or riding is not at all necessary. Any act which if done so rashly or negligently as to endanger human life or the personal safety of others, will make the doer of the act punishable under Section 337, I.P.C. if by that act any hurt is caused to some person. The rider or driver may be guilty of an offence under Section 279 from the very start of his journey, the hurt may be caused to some person after half an hour or after he had gone a distance of two to five miles.

In such a case, an offence under Section 279 would be complete much before the time when actual hurt is caused to somebody. Therefore, in my opinion, the two offences are quite distinct from one another and cannot be held to be related as genus and specie. I am, therefore, of opinion that a person can be convicted of an offence under Section 279 as well as of an offence under Section 337, I.P.C. at the same time.

Of course, if the two offences are committed in the same transaction, the assessment of punishment will be governed by the provisions embodied in Section 71, I.P.C.

16. The following answer to the reference may, therefore, be sent to the Division Bench:

An offence under Section 279, I.P.C. is distinct from an offence under Section 337 or Section 338, I.P.C. and, therefore, a person convicted of an offence under Section 337 or Section 338, I.P.C. can also be convicted for an offence under Section 279, I. P.C. If, however, the two offences are committed in the same transaction, Section 71, I. P. C will govern the assessment of punishment. The case reported in - 'Madh.-B. LR 1952 Cr. 302 (A)' does not lay down correct law on this point.

Dixit, J.

17. I agree.

Samvatsar, J.

18. I agree.

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