

M. Shafi Goroo Vs. State

M. Shafi Goroo Vs. State

SooperKanoon Citation : sooperkanoon.com/697003

Court : Delhi

Decided On : Feb-29-2000

Reported in : 2000IIIAD(Delhi)542; 2000CriLJ2172; 85(2000)DLT245;
2000(53)DRJ194

Judge : M.S.A. Siddiqui, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304-A

Appeal No. : Cri. R. No. 42/99

Appellant : M. Shafi Goroo

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Sushil Dutt Salwan, Adv

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. This revision is directed against the order dated 16.12.1998 passed by the Metropolitan Magistrate, Delhi directing framing the charge under Section 304-A IPC against the petitioner.

2. Briefly stated, the prosecution case is that on 26.4.1996, while playing Golf at the Army Golf Course, the petitioner played a stroke in a rash and negligent manner, causing the fatal injury on right parieto-temporal region of his Caddie, namely, Amit James. Immediately thereafter, Amit James was removed to Safdar Jung Hospital. On 2.5.1996, the deceased succumbed to the said injury in the hospital. On 27.4.1996, deceased's father Soloman Jamesh lodged the FIR at the P.S. Delhi Cantt. regarding the alleged incident. Investigation pursuant thereto culminated in submission of a charge sheet under Section 304-A IPC against the petitioner. By the order dated 16.12.1998, the learned Magistrate explained particulars of the offence to the petitioner in the form of a charge under Section 304-A IPC. Aggrieved thereby, the petitioner has come up in revision before this Court.

3. Learned counsel for the petitioner has strenuously urged that the impugned order has not only resulted in manifest injustice meted out to the petitioner but the same is patently illegal, improper and unjustified. It is worth-mentioning that the facts relevant to this particular case are hardly in dispute. Negligence in this case consists of two factors (a) playing the stroke with considerable velocity and (b) failure to exercise reasonable care to ensure that the deceased caddie was not exposed to any danger. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (page 3), as follows:

'Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is

owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances, involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.'

4. In this context, I may usefully extract the following passage from Kenny's *Outlines of Criminal Law*, 19th Edition (1966) at page 38: _

'Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful; if harmful the question rises whether there is legal liability for it. In tort (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realized the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages. But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two states of mind which constitute *mens rea*, and they are intention and recklessness. The difference between recklessness and negligence is the difference between advertence and inadvertence : they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. The common habit of lawyers to qualify the word 'negligence' with some moral epithet such as 'wicked', 'gross', or 'culpable' has been most

unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself'.

5. 'Negligence' says the Re-statement of the law of Torts published by the American Law Institute (1934) Vol. 1, Section 28, 'is conduct which falls below the standard established for the protection of others against unreasonable risk of harm'. It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the Circumstances, In Director of Public Prosecutions v. Camplin, (1978) 2 All E.R. 168, it was observed by Lord Diplock that 'the reasonable man' was comparatively late arrival in the laws of provocation. As the law of negligence emerged in the first half of the 19th century he became the anthropomorphic embodiment of the standard of care required by law.' In order to objectify the law's abstractions like 'care', 'reasonableness' or 'foreseeability' the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

6. Bearing these principles in mind, I proceed to examine facts of this case on the scale of law with a view to finding out whether they disclose the existence of all the ingredients constituting the alleged offence. The game of golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules. Rule 11 of the Rules of Golf defines caddie as under :

'A Caddie is one who carries or handles a player's clubs during play and otherwise assists him in accordance with the rules.

When one caddie is employed by more than one player, he is always deemed to be the caddie of the player whose ball is involved, and equipment carried by him is deemed to be the player's equipment, except when the caddie acts upon specific directions of another player, in which case he is considered to be that other player's caddie'.

(Quoted from 'Decisions on the Rules of Golf' published by United States Golf Association and The Royal and Ancient Golf Club of St. Andrews, Scotland, 1999

Edition.)

7. In the instant case, it is undisputed that the deceased was the petitioner's caddie. Rule 6-4/10 (at page 98 of the said Publication) lays down the following acts, which a caddie may perform. Rule 6-4/10 is as under :_

'While the Rules do not expressly so state, the following are examples of acts which the caddie may perform for the player without the player's authority:_

1. Search for the player's ball as provided in Rule 12-1.
2. Place the player's clubs in a hazard exception 1 under Rules 13-4.
3. Repair old whole plugs and ball marks. Rules 16-1a (vi) and 1 C.
4. Remove loose impediments on the line of putt or elsewhere - Rules 16-1a and 23-1.
5. Mark the positions of a ball, without lifting it. Rule 20-1.
6. Clean the player's ball. Rule 21.
7. Remove movable obstructions-Rule 24-1 (Revised).'
8. Rule 6-4 (at page 84 of the said publication) provides that for any breach of a rule by his caddie, the player incurs the applicable penalty. The rule quoted above clearly shows that a caddie assists the player in the game of Golf. In this context, I may usefully excerpt the following decisions on the Rules of Golf from the publication mentioned above (at pages 248 and 249).

'16-1f/1. Caddie Deliberately Positioned Off Putting Green on Extension of Line of Putt Behind Ball.

Q. A player preparing to play a stroke on the putting green positions his caddie off the green on an extension of the line of putt behind the ball, so that the caddie may assist him in alignment while putting. If the caddie remains in this position when the player putts, is the player in breach of Rule 16-1f?

A. Yes. Rule 16-1f applies when the ball lies on the green. The position of the caddie in terms of whether he is on or off the green is irrelevant.

16-1f/2. Caddie Inadvertently Positioned on Extension of Line of Putt Behind Ball

Q. A player's caddie inadvertently stood on an extension of the player's line of putt behind the ball when the player made a stroke on the putting green. The caddie was on the edge of the green watching another player drive from the next tee. Neither the player nor the caddie was aware that the caddie was so positioned. Was the player subject to penalty under Rule 16-1f?

A. No. The main purpose of Rule 16-1f is to prohibit a caddie from positioning himself behind the player while the player putts to advise the player on alignment or otherwise assist him. In this case, the caddie was not so positioned.'

9. Rule 8-1/15 (at page 128) provides that the caddie can swing the club to show player how to play shot. Rule 8-1 provides that a player may always seek and accept advice from his caddie. Rule 19-2 (at pages 300) provides that if a player's ball is accidentally deflected or stopped by himself, his partner, or either of their caddies or equipment, he shall lose the hole. Rule 19.3 (at page 301) provides that if a player's ball is accidentally deflected or stopped by an opponent, his caddie or his equipment, no penalty is incurred. Rules 19-2/3 and 19-2/4 (at page 307) provide that if a player's ball accidentally strikes his caddie standing out of bounds and comes to rest in bounds or out of bounds, he shall lose the hole.

10. It has to be borne in mind that no player hits the golf ball with the intention that it should go and hit his caddie. Of course, a caddie, as a professional player, runs the risk of being hit by accidentally deflected ball. However, even with the best of players of any game involving user of a ball, there is always a chance that accidentally a ball may bounce off or get deflected. In such a situation, there is no error of judgment on the part of the player but it is accidental missing of the stroke.

11. It is significant to mention that the game of Golf is not a dangerous sport. In this game there is no absolute warranty of safety but still reasonable care to ensure safety is used. What is reasonable care would depend on the perils which

might be reasonably expected to occur, and the extent to which a caddie or player might be expected to appreciate and take the risk of such perils. Illustrations are the risk of being hit by a cricket ball at the ground where a player or an umpire expects and takes the risk of a ball being hit with considerable force. A player or an umpire at the cricket ground cannot complain if he is hurt by a cricket ball, which is hit with considerable force or velocity. Similarly, a caddie or player takes upon himself the risk of an unlikely and improbable accident at the Golf course.

12. In the instant case, the prosecution case hinges solely on the evidence of Punnu and Alpa Swami, who in their case diary statements, opined that had the petitioner played the stroke with care and caution, the ball would not have hit the deceased. The question for consideration is whether the opinion of the said witnesses, who are to be examined as expert witnesses, measures up to the well accepted principles for judging the credibility of such an evidence. There is nothing in the statements of the said witnesses to show or suggest that they had made any scientific study or research in respect of the game of Golf. No doubt, as caddies they might have acquired some experience in the game of Golf but that is not sufficient to make them as experts in the said game and to give the label of 'expert evidence' to their evidence. That apart, one fails to understand what is care or caution which could have been exercised by the petitioner in playing the offending stroke. It is not that the deceased caddie was standing in the line of the stroke and that petitioner should not have hit the ball till the caddie moved out of the way. It is worth mentioning that the site plan prepared by the Investigating Officer clearly shows that at the relevant time the deceased Amit James was not near or around the petitioner. On the contrary it indicates that there was sufficient distance between the two. It also indicates that the deceased caddie was out of the line of the stroke. In these circumstances, the petitioner's act of playing the offending stroke did not create an obvious or real risk of harmful consequences resulting from it. While playing the offending stroke, the petitioner was not taking any risk in difference to the consequences. That being so, this circumstance of playing the stroke did not bespeak negligence or dereliction of duty to exercise due care and caution.

13. In *Syed Akbar Vs . State of Karnataka*, : 1979 CriLJ1374 , it was held that 'where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions*, simple lack of care such as will constitute civil liability, is not enough, for liability under the criminal law ' a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case.'

14. According to the dictionary meaning 'reckless' means 'careless, regardless, or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences, but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it. In *R. v. Briggs*, (1977) 1 All ER 475, it was observed that 'a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.

In *R. v. Caldwell* (1981) 1 All ER 961, it was observed that :_

'..... Nevertheless, to decide whether someone has been 'reckless' whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequences, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility, nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as 'reckless' in its

ordinary sense if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave.) So to this extent, even if one ascribes to 'reckless' only the restricted meaning, adopted by the Court of Appeal in *Stephenson and Briggs*, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are seldom solved by simply asking whether the test is subjective or objective.'

15. The decision of *R. v. Caldwell* (supra) has been cited with approval in *R. v. Lawrence* (1981) 1 All ER 974 and it was observed that :_

'..... Recklessness on the part of the doer of an act does pre-suppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it.'

16. Applying the aforesaid principles to the facts of the present case, I find that there is nothing on the record to show that at the relevant time the petitioner did not exercise reasonable care to ensure that the deceased caddie was not exposed to any danger or that the petitioner had played the offending stroke in such a manner as to create an obvious or serious risk of causing physical injury to some person who might happen to be present in the Golf course and that in playing the stroke in that manner the petitioner did so without having given any thought to the possibility of there being any such risk or having recognized that there was some risk involved, had nonetheless gone on to take it. It appears that the stroke played by the petitioner had accidentally deflected causing fatal injury to the deceased

caddie. No reasonable player could be expected to anticipate the extraordinary event that happened on the day in question and led to consequences that could not reasonably be anticipated. An error of judgment of the kind, such as the one in the instant case, which comes to light only on post-accident reflection, but could not be foreseen by the petitioner in that fragmented moment before the accident, is not a sure index of culpable negligence within the meaning of Section 304-A IPC.

17. For the foregoing reasons, I am of the opinion that there is no prospect of the case ending in conviction and the valuable time of the trial court would be wasted for holding the trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. That being so, the trial of the petitioner would only be an exercise in futility or sheer waste of time. Consequently, it would be appropriate to truncate or snip the proceedings at this stage.

18. In the result, the revision is allowed, the impugned charge framed against the petitioner is quashed and the petitioner is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com