

Jose Vs. State of Kerala

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Court : Kerala

Decided On : Jul-20-1993

Reported in : 1994ACJ544

Judge : K.T. Thomas, J.

Appeal No. : Crl. R.P. No. 384 of 1992 and Crl. Appeal No. 304 of 1993

Appellant : Jose

Respondent : State of Kerala

Advocate for Def. : K.I. Abdul Rasheed, Public Prosecutor and; Mathew Zachariah, Adv.

Advocate for Pet/Ap. : K. Divakaran and; P.K. Asokan, Advs.

Judgement :

K.T. Thomas, J.

1. A tragic fusion of two events snuffed the life of a young boy aged 15 in a trice on 3.9.1983. Drivers of two vehicles--a car and a lorry--were responsible for the tragedy and both were prosecuted in the same trial for rash or negligent driving. The driver of the car was acquitted. Aggrieved by the acquittal of the car driver and also the order by which lenient sentence was awarded to the lorry driver, deceased's father filed this revision. In the meanwhile, the lorry driver filed an

appeal before the sessions court challenging the conviction and sentence passed on him.

2. When the revision came up for arguments, it was felt that the appeal pending in the sessions court and this revision should be heard together and hence the appeal has been withdrawn to this court. Arguments of counsel for all parties including the Additional Public Prosecutor were heard. Parties can be referred to as they are ranked in the revision.

3. The events concatenated into the tragedy are the following. On the fateful day around noon a Fiat car was driven by the 3rd respondent along the National Highway from north to south. He stopped the car on his left side at a place called Potta and he abruptly opened the left front door of the car. It was the time when the deceased boy who was riding his bicycle from north to south reached just near the car. The abrupt spreading of the door of the car knocked the cyclist down. The boy fell on the tarred road, but alas! just then the lorry driven by the 2nd respondent from north to south had also reached there. The lorry ran over the cyclist. He was removed to the nearest hospital, but only to be pronounced that he was dead.

4. Second and third respondents were first charge-sheeted separately in two different cases. But, on a motion made by the Assistant Public Prosecutor assisted by the counsel appearing for the deceased's father, learned magistrate allowed the two cases to be clubbed together and jointly tried. The conjunction of the two cases was sought to be justified under the cover of Section 223(d) of the Code of Criminal Procedure (for short 'the Code'). But at this late stage, no looking back on that aspect is worthwhile, for even if there was misjoinder of charges, there is no invalidity in view of the principles enunciated in Section 464 of the Code.

4A. Third respondent who opened the door of the car was acquitted on the flimsy ground that eyewitnesses did not specifically speak of his negligence. There is overwhelming evidence to show that the cyclist fell down as the door of the car was flung open abruptly and that it was the 3rd respondent who opened the car door. While unfolding the door of the car it spread widely out and if the side of that particular door abuts on the main road, the man who opened it had the duty to see

that by such spreading, there was no imminent danger. The fact that opening of the door coincided with collision between the door and the cyclist who emerged from behind is prima facie indicative of the fact that the man who opened the door did it recklessly and being indifferent to consequences. Criminality lies in running the risk of doing such an act with recklessness or indifference as to consequences. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

5. Learned magistrate was absolutely wrong in holding that the act of the third respondent in opening the door so recklessly or indifferently is not criminal negligence.

6. Then the question is as to whether third respondent is liable for the death caused to the boy. Learned counsel for the revision petitioner contended that but for the opening of the car door, the boy would not have died and hence the man who opened the door is liable for all its consequences. It is true that if the first act of opening the car door had not taken place, the accident itself would not have happened. But that alone is not the criterion to decide whether the man is guilty of negligence in causing the death of the deceased. It is admitted by all concerned that death would not have ensued if the lorry had not reached the spot at that very moment. So death can be attributed to the supervening event of emergence of a different vehicle at the scene.

7. It is now well-settled that in causing death by negligence, death should have been the direct result of the negligent act of the person concerned. In the celebrated words of Sir Lawrence Jenkins, 'It must be the causa causans; it is not enough that it may have been the causa sine qua non' [Emperor v. Omkar Ramanpratan, (1902) 4 Bombay LR 679]. Learned Judge has further observed that the act of the accused 'must be the proximate and efficient cause without the intervention of another's negligence'. The aforesaid legal proposition gained approval by the Supreme Court in Mohammedali Rangawalla v. State of Maharashtra, AIR 1965 SC 1616 and in Suleman Rehiman Mulani v. State of

Maharashtra 1968 ACJ 51 (SC) and in A.D. Bhatt v. State of Gujarat, AIR 1972 SC 1150.

8. Legal position being thus, the 3rd respondent cannot be convicted of the offence under Section 304A of the Indian Penal Code. He can only be convicted of the offence under Section 337 of the Indian Penal Code.

9. Now I have to look at the liability of the lorry driver (2nd respondent). True, some witnesses said that he drove the vehicle at good speed. One cannot overlook the situation that it was on a National Highway and an automobile is not expected to be driven slowly along a straight highway. Merely because the lorry was driven speedily, the speed alone is not the measuring scale to determine whether he was rash or negligent. Nobody has a case that there was any requirement to slow down the speed of vehicles at the particular place, either on account of situation of any school or hospital or any such public institution. As for the lorry driver, the fall of the boy from the cycle just in front of his speeding vehicle would have been a totally unforeseen and abrupt event. Even if he had instinctively and impulsively applied brake the vehicle could not have been brought to a sudden stop.

10. From the above, I am unable to find the lorry driver guilty of criminal negligence. In the result, I set aside the conviction and sentence passed on the second accused and I acquit him. But, I set aside the order of acquittal of the 3rd respondent and convict him under Section 337 of the Indian Penal Code. I sentence him to pay the maximum fine prescribed by the provision Rs. 500/-, in default of payment of which he shall undergo simple imprisonment for one month.

The revision and the appeal are disposed of as above.

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