

**State Vs. Hari Singh**

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**Court :** Rajasthan

**Decided On :** Mar-22-1968

**Reported in :** AIR1969Raj86; 1969CriLJ445

**Judge :** L.S. Mehta, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 304A; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 417 and 423

**Appeal No. :** Criminal Appeal No. 626 of 1966

**Appellant :** State

**Respondent :** Hari Singh

**Advocate for Def. :** O.P. Chhangani, Adv.

**Advocate for Pet/Ap. :** A.K. Mathur, Asst. Govt. Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**L.S. Mehta, J.**

1. In the city of Jodhpur towards the West there is a highway known as Umaid Hospital Road. This road is fed by traffic from the south-eastern feeder roads, namely, Chopasani Road, 5th Road Sardarpura, and Pal Road. On its northern

side, traffic emerges from Siwanchi Gate. On September 5, 1965, at about 1-15 p. m., accused Hari Singh, aged about 60 years, was driving bus No. RJQ 2694. He arrived on Umaid Hospital Road from the side of Pal. At that time Kumari Indu, a girl of about 16 years, also came on the said road on a bicycle from the side of Siwanchi Gate. She suddenly collided against the said bus somewhere near point marked O in the site plan Ex. P-9. She was run over by the rear right-wheel of the bus, as a result of which she sustained fatal injuries and died instantaneously on the spot.

After this accident Hari Singh stopped the bus after plying the same upto a distance of about 7 ft. First information report of this mishap was lodged that very day by the accused Hari Singh himself at the Police Station, Sardarpura, at about 1.35 p. m. On receipt of the report Ex. P-8, a case was registered under Section 304A I. P. C., and investigation followed. The Police prepared a site plan Ex. P-9. Autopsy of the dead body of Kumari Indu was conducted by Dr. Har Govind, P. W. 9, Medico-Jurist, Mahatma Gandhi Hospital Jodhpur, on the date of the accident at 5.20 p. m.

Following injuries were found on her person:--

- (1) Crush injury on skull, bones fractured brain flowing out, face compressed from before backward.
- (2) Lacerated wound 1' x 1/4' x bone deep about the left eye brow.
- (3) Clotted blood over lips in teeth left upper teeth fallen, maxilla left side fractured, so also mandible nasal bone fractured.
- (4) Abrasion 3/4' x 3/4' on the dorsum of right middle finger.
- (5) Irregular abrasion on the right side wall of abdomen.
- (6) Lacerated wound 4 1/2' X 1 1/2' muscle deep on the left glatal region near midline, stood passed.
- (7) Abrasion 3/4' x 1/2' on the dorsum of left foot terminal part.

In the opinion of the Medico-Jurist, cause of death was crush injury on the skull and brain of Kumari Indu.

After the investigation was over, the Police put up a challan in the court of learned Additional Munsiff-Magistrate No. 1, Jodhpur City. The accused pleaded not guilty to the charge under Section 304A, I.P.C. In support of its case the prosecution examined 9 witnesses. In his examination under Section 342, Cr. P. C., the accused admitted the unfortunate mishap, but stated that the accident did not take place because of his rashness or negligence. According to him it was Kumari Indu who collided against his bus. The accused further said that Indu came towards the wrong side of the road. He also stated that the bus was not being driven with excessive speed, which was hardly to 5 to 7 miles an hour. The accused also pointed out that the brakes of the bus were in proper working order and there was no free-play therein. In the end, he said that he had made every endeavour to save Kumari Indu's life by trying to take the bus towards the extreme foot-path of the road. In his defence, he examined 3 witnesses. The trial court disbelieved the prosecution evidence and reached the conclusion that the prosecution failed to prove that Hari Singh acted rashly or negligently. It, therefore, acquitted the accused of the offence under Section 304A I. P. C. Aggrieved against the above judgment, the present appeal has been filed on behalf of the State Government.

2. Learned Assistant Government Advocate has argued that there is cogent and convincing evidence on the record to suggest that the accused acted rashly and negligently. He has further urged that there was free travel paddle play, in more than 1/2' (which was out of measurement) and that the hand-brake was also not in working order. That shows that Hari Singh was driving the vehicle with defective brake and, therefore, he was grossly negligent in plying the bus on the high-way. Learned counsel for the respondent supported the judgment of the trial court.

3. In this case the most important witnesses are P. W. 2 Ranjeet Mal and P.W. 5 Mohanlal. Ranjeet Mal has stated that the bus was moving at a high speed of about 30 miles an hour. According to him, the driver did not blow the horn. He has further said that when Kumari Indu was coming from the northern side and when she turned towards the right, she gave a signal with her hand. Nevertheless the

bus collided against her and the right hind wheel of the vehicle ran over her body. The trial court did not place reliance upon the testimony of this witness. It has given reasons for doing so. The witness has made inconsistent statements as to when he actually saw the accident. In the Police statement Ex. D-1 at portion marked A to B he said that he had already left the bicycle shop when he saw the accident. Before the trial court he deposed that at the time of the mishap he was standing on the bicycle shop, and was about to leave it. The witness has failed to clarify the distance between the bus and the place where the injured girl was lying. The witness is also unable to show as to which wheel of the bus ran over the bicycle of the deceased. The witness has also stated that there were no marks of the wheel on the road. This version stands negated by the site inspection memo Ex. P-9, and the statement of the S. H. O. Shaktidan P. W. 8. The witness was admittedly a distant relation of the deceased. His natural conduct demanded of him that after the mishap he ought to have taken requisite care for the victim or he ought to have endeavoured to seek prompt immediate medical aid. So much so he even did not go to the nearby Police Station to lodge a report. The trial court, which watched his demeanour, found his testimony incredible. The basis for discarding his evidence does not appear to be superfluous. Unless there exists substantial reasons, this Court feels hesitant to take contrary view in the matter.

4. P. W. 5 Mohanlal admittedly saw the occurrence after its actual happening. He has stated that he could not say positively whether or not the driver blew the horn. He, on the other hand, has stated that the driver took the bus towards the extreme left of the Kachha road. According to him the bus was being driven at a speed of about 25 miles an hour, which was normal.

5. From the testimony of the above two eye-witnesses Ranjeet Mal P. W. 2 and Mohanlal P. W. 5 it is not clear that the accused Hari Singh was driving the bus so rashly and negligently as to endanger the life of a pedestrian. On the other hand, it is plain from the prosecution evidence itself that the bus was being driven with a normal speed and towards the correct side of the road. It is also manifest from the prosecution evidence that Kumari Indu, who was coming on a bicycle from the northern side of the road, did not wait till the bus passed off and took a turn on her right side of the road. The fact that she was knocked down by the rear wheel of the

bus and not by the front wheel or mudguard further indicates that the mishap was not the result of negligence or rashness on the part of the driver. It is further plain from the prosecution evidence itself that the driver stopped the bus, after taking it towards the extreme left, at a distance of about 7ft. from the actual place of the accident. According to Rule 145 of the Motor Vehicles Rules, when the bus moves with a speed of 20 miles an hour, it can be stopped by the application of brakes at a distance of 45 ft. From this fact also it is apparent that the driver took requisite care, as a man of ordinary prudence would do.

6. In order that a person may be guilty under Section 304A, I. P. C., rash and negligent act should be the direct or a proximate cause of the death. I may in this connection refer to Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679 in which Sir Lawrence Jenkins made the following observation:

'To impose criminal liability under Section 304A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*.' This view has been approved by their Lordships of the Supreme Court in *Kurban Hussein Mohamedalli Rangwalla v. State of Maharashtra*, AIR 1965 SC 1616. The mere fact that a fatal accident took place would not by itself be enough to make the accused liable under Section 304A, I. P. C. To bring home an offence under this section, it must be proved beyond reasonable doubt by the prosecution that the death of the victim was the direct result of rashness or negligence on the part of the accused. Such evidence is lacking in this case. The death in this case does not appear to be the direct result of rash or negligent act on the part of the respondent, without the intervention of another's negligence.

7. Learned Assistant Government Advocate argued that Hari Singh was driving the bus at an excessive speed and, therefore, rashness or negligence should be attributed to him. For the finding that Hari Singh was driving the vehicle at an excessive speed, I can find no real justification in the evidence led by the prosecution. It would not seem that the witnesses Ranjeet Mal and Mohanlal, in

the first place, would be real judges of speed. Their evidence is extremely vague. Ranjeet Mal has said that he saw Hari Singh driving the bus at a high speed. Mohanlal, on the other hand, has deposed that the accused was driving the bus at a speed of about 25 miles an hour, which was normal. The witness could not have any exact idea of the speed of the bus at which it was being driven. It is very probable that these witnesses were unable to give estimate of the exact speed at which the bus was travelling.

That apart, it does not appear that on a straight and open road, like that of the Umaid Hospital, Road, such a speed can be described as excessive or rash. There can be little doubt that the accused, who is aged 60 years, must have been an experienced and skilful driver. It is impossible to believe that he would lose control of his vehicle at a speed of about 25 miles an hour on such a spacious and straight road. In this case, the death of Kumari Indu was caused due to a collision. In order to impose criminal liability on the accused, it must be found as a fact that the collision was entirely or at least mainly due to rashness or negligence on the part of the accused. It is not sufficient if it is only found that the accused was driving the vehicle at a fast speed. In this connection, a reference is made to Ram Sewak v. Emperor, AIR 1933 Oudh 391. In that case a Division Bench of the Oudh Chief Court consisting of Smith and Allsop JJ., observed that on a straight and open road a speed of 30 miles cannot necessarily and of itself be described as an excessive and rash speed.

8. Learned Assistant Government Advocate argued that from the statement of P. W. 6 Guman Singh it is proved that there was free travel paddle play more than 1/2', indicating that the brakes of the vehicles were not in perfect condition. He has stated that the hand-brake of the bus was out of order as its linkages were disconnected. In the cross-examination, motor mechanic Guman Singh has stated that the free-play could result, even when the vehicle was in motion, and that in that event it would take hardly a fraction of a second to apply the brake. The witness has further pointed out that the hand-brake in a heavy vehicle like a bus could not have been made use of at the time when it was in motion and that the linkages in the handbrake could also result when the vehicle was in motion. From the above evidence it is not clear that there existed any material defect in the

vehicle at the time when it was put on the road. The defect in the hand-brake was of no consequence as such a brake, according to the expert, could not have been applied by the driver while the vehicle was in motion. The defect of free-play according to the expert could possibly occur even when the vehicle was in motion.

When there was no rashness or negligence on the part of the bus driver, for having killed the girl, so far as the use of the road and the manner of driving the bus was concerned, the fact that the vehicle of the accused had free-play cannot be taken into consideration in convicting the accused under Section 304A, I. P. C., though it can be made the subject of prosecution under the Motor Vehicles Act, when it is clear that the defect in question was not in any way responsible for the accident. I am fortified in my view by the case reported in *Emperor v. Akbar Ali*, AIR 1936 Oudh 400. I further get support in this view from a Division Bench decision of this Court reported in *State v. Chater Singh*, ILR (1962) 12 Raj 103. In that case there was no evidence on the point that the accused knew of the defect. It was also not brought out that he had been driving the vehicle for a long time, so that knowledge of the defect could be imputed to him. If the defect was such that it could not be detected without meticulous examination of the machinery, it cannot be laid down that criminal liability could be fastened on the accused on that ground. In this case the defect was such that it could not be detected without thorough examination of the machinery. It cannot be suggested that the accused Hari Singh should have undertaken such an examination before starting the vehicle. In that view of the matter also, no criminal responsibility can possibly be imputed to the accused,

9. It may also be stated here that from the evidence as pointed out above, it has not been found that the vehicle was being driven with rashness or negligence. On the other hand, there is the evidence to suggest that the bus was moving towards the extreme left side of the road. According to the prosecution, the girl turned towards the right side of the road. It is not clear how the girl suddenly turned towards the right side. When a person is run over by a bus and is crushed on the spot, the spectators are prejudiced against the driver of the vehicle and in such a case it becomes difficult for the court to ascertain the circumstances of the case. It is possible that the present mishap took place because the girl abruptly paddled

from the left side of the road towards its right, without knowing its consequences. The lorry stopped at a distance of about 7 ft. away from the place of the accident. In that circumstance, the accused cannot be held liable for the accident. Thus, circumstances of the accident being doubtful, the trial court rightly gave benefit of the doubt to the accused.

10. Before I part with this case, it may be observed that the powers of the appellate court in an appeal from acquittal are not different from an appeal from conviction. The High Court is at perfect liberty to accept the evidence disbelieved by the trial court or to reject the evidence accepted by the original court. But at the same time it has got to be borne in mind that the accused is entitled to argue that presumption of innocence should be made against him. I had had the relevant evidence of the prosecution witnesses read to me and after careful consideration I am not satisfied that it is consistent, convincing and credible for bringing home the charge under Section 304A, I. P. C., against the accused. Consequently it cannot be said that the finding of the trial court is erroneous.

11. In the result, this appeal having no force stands dismissed.