

Jiwan Ram Vs. State

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Court : Rajasthan

Decided On : Oct-29-1951

Reported in : 1952CriLJ1236

Judge : Atma Charan, J.C.

Appellant : Jiwan Ram

Respondent : State

Judgement :

ORDER

Atma Charan, J.C.

1. Heard the parties.

2. The accused-applicant stands convicted under Sections 304(A) and 338 of the I.P.C. and sentenced in the aggregate to undergo six months' R.I. The main contention of the counsel for the accused-applicant before the Court is that the accused-applicant at the time in question was not driving the lorry rashly or negligently. The evidence on the record of the trial Court goes to show that at the time in question the lorry was being driven at a speed of 30-35 miles an hour. The site plan on the record of the trial Court goes to show that at the place where the accident took place the road turns sharply towards the right. The words 'rashly' or 'negligently' mean doing an act without due diligence and caution. It is accordingly to be seen whether at the time of the accident in question the accused-applicant

was driving the lorry with due diligence and caution or not.

3. A lorry is more difficult to control than a car. The site-plan shows that at the place of the accident in question the road turns sharply towards the right. The very fact that the lorry left the pucca road and went on the kuchha 'patri' shows that there was no due diligence and caution in driving the lorry at the time. This rashness or negligence on the part of the accused-applicant is further enhanced by the fact that the lorry not only remained on the kucha 'patri' but went down the 'khud' and came to a stop after somersaulting several times. It was 4-30 p.m. at the time. The road was empty and the accused-applicant must have had a clear view of the road and the adjoining land. It is not denied by the counsel for the accused-applicant that, if the lorry went down the 'khud' because of the own action of the accused-applicant, then he could not be held to have been driving with due diligence and caution.

4. The case of the defence is that at the time in question the right hand of the Naib Tehsildar fell on the steering wheel and thus the accused-applicant could not control the lorry, which he could have easily controlled otherwise. The statement of the Naib Tehsildar runs as below:..About a furlong from the place of accident, Sardar Harcharan Singh, asked the accused to drive the truck slowly, as there was a curve ahead. The truck however, did not slow down and the truck reached the curve. The truck left the metalled road and the truck leaned over the side that Tehsildar Sahib was sitting. The door broke and flew out and fell about two yards away. The Tehsildar slipped out through the open door. I, also, due to the truck leaning over to one side, leaned by force towards Tehsildar Sahib, and my left hand fell on the Bench. The Driver was not inside the truck at that moment. Then I began to fall and I stretched out my right hand and fortunately caught which I think, was the steering wheel....

5. The deposition of the Naib Tehsildar clearly shows that it was only at a late stage that his right hand fell on the steering wheel. The lorry would have leaned towards one side only after it had dropped down the 'khud' and not while it was on the kuchha 'patri' or on the pucca road. The words rashly or negligently are comparative words. A speed of 30-35 miles an hour may not be rash or negligent

at one place, while at another place at a curve with hillocks on one side and a 'khud' on the other side it may be rash or negligent. The appellate Court below, in the circumstances, has rightly held that the accused-applicant was driving the lorry at the time in question rashly or negligently and that this rash or negligent act on the part of the accused-applicant caused the death of the Tehsildar and grievous injuries to some passengers. The accused-applicant, in the circumstances, has rightly been convicted under Sections 304(A) and 338 of the I.P.C. The sentence certainly is by no means excessive.

6. The application in revision accordingly is dismissed: the accused-applicant is on bail-he is to surrender to bail-bond forthwith, and in no case later than 19.11.1951.

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