

Ghisa Vs. the State

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Court : Rajasthan

Decided On : Apr-15-1950

Reported in : 1950CriLJ1289

Judge : Oak, J.C.

Appellant : Ghisa

Respondent : The State

Judgement :

ORDER

Oak, J.C.

1. This is a revision by Ghisa, who has been convicted Under Section 304, Penal Code for causing death as a result of rash and negligent driving. According to the prosecution the applicant was driving a lorry from Nasirabad towards Ajmer on the evening of 15th April 1918. One girl Ishwari aged about 10 years was walking on the right side of the road. The lorry passed over the girl, who was consequently severely injured. She died at the hospital during the night. The accused was therefore prosecuted for rash and negligent driving, He pleaded not guilty. He was however convicted by the trial Court, and was sentenced to rigorous imprisonment for six months- In appeal the learned Sessions Judge upheld the conviction Under Section 304A, Penal Code, but reduced the sentence to rigorous imprisonment for two months. Now Ghisa accused has come to this Court in

revision.

2. The main witnesses examined for the prosecution were Sobhraj (P.W. 2), Murari Lai (P.W. 1) and Hukumat Rai (P.W. 3). According to the prosecution, the lorry was being driven on the wrong side of the road, and was going very fast. The learned Sessions Judge held that, the lorry was not being driven fast, Further, it was not being taken through the right side of the road. After referring to the statement of Sobhraj (P.W. 2) the learned Sessions Judge observed:

This necessarily indicates that the girl could not have been on the right side of the road. It further indicates that the lorry was not being taken through the right side of the road.

It is not clear how Sobhraj's statement leads to the conclusion that, the lorry was being driven on the left side of the road. But two defence witnesses stated that, the lorry was being driven on the left side of the road. So the findings of the learned Sessions Judge that, the speed of the vehicle was not excessive, and that the lorry was being driven on the left side of the road may be accepted in revision,

3. According to the prosecution, the girl was walking on the right side of the road. But Sobhraj (P.W. 2) stated that, the girl along with 3 or 4 other children was playing on the road itself. This statement indicates that, the girl was playing near the centre of the road. Sobhraj (P.W. 2) further stated the girl was run over by the left wheel of the lorry. This statement indicates that, the girl was on the left side of the lorry at the time of the accident.

4. In *Sat Narain v. Emperor* A.I.R. (20) 1933 ALL. 232 : 34 Cr.L.J. 1013 it was held that to impose Criminal liability Under Section 304A it is necessary that death should have been the direct result of rash and negligent act of the accused. Where a death is caused due to a collision, in order to impose criminal liability on the accused it must be found that, the collision was mainly due to the act of the accused. In *Kansi Ram v. Emperor* 28 Cr. L. J. 851 : A.I.R. (14) 1927 Lab. 165 it was held that, a person driving a car should always keep it in a state of control sufficient to enable him to avoid running into any passenger who may fail to step off the road, however annoying the dilatoriness of the foot passenger may be to

him. In *Pidin Behary v. Emperor* 30 Cr.L.J. 402 : 116 I. C. 96 (cal.) the accused was driving a motor lorry when a boy apparently in crossing the road came in contact with the lorry, and his left foot was fractured. It was found that, the speed was moderate, and the accused was driving on the correct side of the road. It was held by the Calcutta High Court that, the accused could not under the circumstance be convicted Under Section 338, Penal Code.

5. In the present case, it has been found that, the speed of the motor vehicle was not excessive, and that the lorry was being driven on the left side of the road. In these circumstances it is difficult to say how the accused can be said to be guilty of rashness or negligence. According to the prosecution, the girl was originally on the right side of the road. There is reason to suppose that, she was to the left side of the vehicle at the time of the accident. There is some evidence that, she was playing with other children on the road. It is not clear how the girl passed from the right side to the left side of the road, It has not been suggested by the prosecution that, the road was not wide enough to permit the passage of the lorry if the girl kept to the right side of the road. The prosecution did not place the circumstances of the case before the Court correctly. When a person is run over by a motor vehicle and is thereby killed, spectators are frequently prejudiced against the driver of the vehicle. In such cases it becomes difficult for the Court to ascertain the circumstance of the incident. It is just possible that, the present avoidant took place, because the girl ran from the right side to the left side of the road. The speed of the lorry was moderate. The lorry was stopped at a distance of about seven paces from the place of the accident. The accused cannot be blamed for the avoidant if the girl unexpectedly crossed the road from the right side to the left side. Circumstances of the incident being somewhat doubtful, the accused is entitled to the benefit of doubt. I therefore allow this revision petition, set aside Ghisa's conviction and sentence Under Section 304A, Penal Code, and acquit him. his bail bonds are discharged.