

Ashgar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-09-1972

Reported in : 1972WLN580

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Revision No. 198 of 1972

Appellant : Ashgar

Respondent : State of Rajasthan

Judgement :

L.S. Mehta, J.

1. On July 4, 1970, at about 1-30 p.m., Gulam Hussain and Mohammed Yasin (deceased) were going on a bicycle from the side of Collectorate towards Churu town. When they reached somewhere near Ratna Devi Sethia's house, shown in the site-plan Ex. P 18, in the vicinity of the city bus stand, bus No. RJP 1488, coming from Jhunjhunu, unexpectedly over took them. Its driver was Ashgar. It is alleged that he was moving the bus rashly and negligently and he took it towards the wrong side of the road. Cyclist Gulam Hussain took his bicycle towards the 'Kachcha' side of the way Despite that they were run over by the bus, The vehicle was stooped after covering some distance. Both Gulam Hussain and Mohammed Yasin, as a result of the accident died on the spot. Ashagar left the vehicle near

the bus stand and made good his escape First information report of the event (Ex P. 17) was lodged by Mohammed Yasin, son of Allauddin Teli, with the police station, Churu. The police registered a case and took over investigation. Post-mortem examinations of Gulam Hussain and Mohammed Yasin were conducted by Dr. I.D. Kachawah, Medical Officer, Incharge, Bhartiya Hospital. Churu. He noticed external and internal injuries on the corpse of Mohammed Yasin. In the opinion of the Doctor Yasin died of laceration of brain, multiple fractures and shock because of bleeding. The Doctor also conducted autopsy of the dead body of Gulam Hussain He found 8 external and 6 internal injuries The cause of death, according to the judgment of the Doctor, was intra-cranial heamorrhage of brain. After the investigation was completed, the police put up a challan in the court of Munsiff-Magistrate, Churu. Accused Ashgar was indicted on August 19, 1970, under Section 304A., I P C to which he pleaded not guilty. In support of its case the prosecution examined 7 witnesses The accused in his statement, recorded under Section 342, Cr. P.C. denied to have driven the vehicle with excessive speed. He also repudiated the allegation that his vehicle knocked down deceased Mohammed Yasin and Gulam Hussain The vehicle was standing at the motor-stand. In his defence he examined one witness Puran Mal. The trial court, by its judgment, dated December 16, 1971, held Ashgar guilty under Section 304A I.P.C and sentenced him to 18 months' rigorous imprisonment and to pay a fine of Rs. 1000/-, in default of payment of which to suffer further rigorous imprisonment for three months The court also ordered that Rs. 800/-, out of the amount of fine, if recovered, should be paid to the heirs of the deceased.

2. Against the above verdict, an appeal was taken in the court of Additional Sessions Judge, Churu. Learned Additional Sessions Judge gave a finding that the bus was driven at a terrific speed with defective brakes and horn, as it could not stop immediately. It went ahead and stopped after covering some distance. The appellate court further found that the accused ran away after the accident. It was on account of rash and negligent driving that 2 persons were trampled under a wheel of the bus and lost their lives. With the above finding Ashgar's appeal stood dismissed.

3. Ashgar has now filed this revision-petition against his conviction and the sentence. The only point which was pressed by learned Counsel for the petitioner is that this is not the case of rashness. The wheels of the bus did not pass over deceased Mohammed Yasin and Gulam Hussain. The driver was on the right hand side of the road. The victims collided against the bus towards the left side, when it was not possible for the driver to have seen the deceased. In these circumstances, learned Counsel submits, the sentence of three months and 10 days, rigorous imprisonment, which the accused has already undergone, should be deemed sufficient. Learned Deputy Government Advocate supported the conviction and the sentence awarded by the trial court.

4. It is not disowned by learned Counsel for the petitioner that Mohammed Yasin and Gulam Hussain, when they were moving on a bicycle, collided against the bus No. RJP 1488. It is also not denied that both Mohammed Yasin and Gulam Hussain died as a result of this unfortunate accident. The crucial point that merits consideration is whether or not the prosecution has succeeded in establishing that at the time of occurrence Ashgar was driving the bus in a rash or negligent manner or so rashly or negligently as to endanger human life or personal safety of others.

5. The prosecution has tried to establish that Ashgar was driving the bus at a high speed. P.W.1 Mohammed Yasin states that Bus No. RJP. 1488, came from Jhunjhunu to the place of the occurrence. Gulam Hussain was paddling a bicycle and his brother Yasin was sitting on the same vehicle. The bus came from the front side. It was driven by accused Ashgar. It went towards the wrong side and collided against Gulam Hussain. Both Gulam Hussain and Yasin fell down. The bus ran over them. It stopped after covering a distance of 15 to 20 ft. P.W. 2 Mohammed Sadique has also, more or less, made identical statement. P.W. 4 Ranjeet Singh, M.T.O. Police Lines, Churu, examined the bus. He found that its hand brake was not in working order. The foot brake was also not effective. The horn too was not serviceable. After careful scanning of the whole evidence on the record the trial court reached the conclusion that the petitioner was driving the bus with careless indifference and rashness as a result of which two lives were lost. The appellate court also concurred in the views of the original court. From the

facts established it is clear that the conduct of the petitioner was not that of a reasonable or a prudent man. He failed to discharge the duty imposed on him by law and that culminated in the death of two persons. He has, therefore, rightly been convicted under Section 304A I.P.C.

6. This takes me to the question of sentence, Both the court below thought that because two human lives had been lost, deterrent sentence should be imposed on the accused. The courts have, however, lost sight of the fact that causing of death is a necessary ingredient of an offence under Section 304A, I.P.C. The legislature in its wisdom left it to the discretion of the court to penalise the delinquent under that section either with imprisonment or fine or with both. The court must, in passing the sentence, keep out the prejudice that inevitably creeps in the case of loss of life. The legislature did visualise the possibility of an offence falling under that part of the provision, under which an offender can be penalised by a mere fine. It is indubitably regrettable that the accident in question resulted in the death of two young persons, but the court cannot allow itself to be prejudiced by that circumstance. A reference in this connection is made to a recent decision of the Supreme Court reported in *Bhalachandra Waman v. The State of Maharashtra* 1968 ACJ 38. It may also be pointed out that one has to remember that driving of motor cars has become an essential part of the human activity in the modern age and it is difficult, if not impossible, to avoid a certain number of accidents. In that situation, it is no part of the duty of the court to punish with savage sentence every motorist, who has the misfortune to cause an accident, resulting in loss of life, even though the accident may be due to an error of judgement.

7. In the cases of motor accidents one has to consider whether the act of the driver was rash or negligent which has occasioned the death or whether it shows callousness on the part of the driver as regards the risk to which he was exposing the other persons. The severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the driver. An offence under Section 304A., may be committed by committing a negligent act or a rash act. There is a distinction between a rash act and a negligent act. The definition of negligence most often given is that by Alderson B. in *Blyth v. Birmingham Water Works Co.* (1956) 11 Q.B 781, which runs:

The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulates the conduct of human affairs, would do, or doing something which a prudent and a reasonable man would not do.

The most formally scientific analysis of negligence or rashness is that of Austin: see Lectures on Jurisprudence, Lecture 29 He draws a distinction between negligence and rashness. In case of negligence the party performs not an act to which he is obliged: he breaks a positive duty In case of rashness the party does an act from which he is bound to forbear; he breaks a negative duty. In the case of negligence he adverts not to the act which it is his duty to do In case of rashness he adverts to the consequence of the act; but by reason of some assumption, which he examines insufficiently, he concludes that these consequences will not follow the act. Williams J. in Ex. P. Clarke (3) has observed that negligence, as a juristic word, in practice connotes only default in duty. How the default arises is immaterial. A duty is to be performed; but the person obliged to perform it fails so to do Sir James Stephens defines negligence in A General View of the Criminal Law of England, Second Edition P. 76, thus:

The omission to perform a duty imposed by law

Criminal negligence, according to the learned author, is negligence in such circumstances that it imposes an obligation remissible by the State. In the case of rashness the culprit adverts to the act with consciousness that the mischievous and illegal consequences may follow. Straight J., in *Empress of India v. Idu Beg* 7 MHCR 119 observed:..criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with racklessness. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and probable care and precaution to guard against injury either to the public generally, or to an individual in particular, which, having regard to all the circumstances out of which the change has arisen, it was the imperative duty of the accused person to have adopted.

Again, in Bidamarti Nagabhushanan's case 7 MHCR 119, it has been explained that culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent the happening. The immutability arises from acting despite the consciousness (Luxuria) Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow. This immutability arises from the neglect of the civic duty of circumspection.

9. As between rashness or negligence, as has been pointed out, rashness is a graver kind of offence. It is now to be seen whether on the facts and circumstances of this case the petitioner can be held to have been guilty of rashness or negligence. P.W 1 Mohammed Yasin, and P.W 2 Mohammed Sadique have not stated precisely and unequivocally that the bus was moving with excessive speed. It is in the prosecution evidence that the bus, after the accident, stopped at a distance of 15 to 20 ft. The most important fact is the distance within which the bus stops after the impact. The distance determines the speed at which the vehicle was travelling, although it is not conclusive on the question. See P 82, Trial of Motor Car Accident Cases, by A.D. Gibb, 2nd Edition. There is a very valuable table showing the distance covered in one second at various speeds in Bingham's Motor Claims Cases, 4th Edition, P 139. The table indicates that if the speed is 10 miles per hour, the distance covered per second will come to 14.66 ft. If the speed is 15 miles per hour, the distance covered will be 22 ft. per Second. In the present case the distance covered by the bus after the accident was about 15 to 20 ft. That means that the bus was travelling at a speed of about 10 miles an hour. It cannot, therefore, be said that the bus was travelling at an excessive speed. Had there been a high speed, the bus could not have been stopped after travelling only 15 ft. It is also in the evidence of P.W. 6 Ram Mehar Singh, Station House Officer, Churu, that he reached the spot soon after the accident and he saw the bus standing at a distance of 11 M. 20 Cm and no fresh blood marks were found on the wheels of the bus. This evidence reflects that the bus did not run over the bodies of Mohammed Yasin and Gulam Hussain. Again, a careful examination of the site-plan demonstrates that the bus had already taken a turn from the main road towards the corner near Ratna Devi's house. It is at this course that the two

victims, who were going on the bicycle, collided against the bus. The victims struck against the bus towards its left side. The driver was obviously sitting on the right hand-side of the vehicle. Thus, the driver, under the circumstances, cannot be said to have acted rashly. No other circumstances were pointed out to show that he was driving in a headless and reckless manner. He cannot be said to have been running the risk of doing an act with reckless and indifference as to the consequence or that he has broken a negative duty. However, he was undoubtedly guilty of negligence. He had a duty to look ahead and see whether there was a pedestrian or a cyclist. Law imposed that duty to him. An ordinary human prudence also required him to do so. In other words, the petitioner failed to exercise the caution enjoined on him. His culpable negligence or failure to exercise that reasonable and proper care and caution as was required of him has resulted in the death of two unfortunate persons.

10. I accordingly partially allow this revision-petition and order that the sentence of imprisonment for a term of three months and ten days, which the accused has already suffered, is the proper sentence in the case under Section 304- I.P.C. He shall, however, be required to pay a fine of Rs. 1000/-, in default of payment of which he shall undergo three months' further rigorous imprisonment. Out of the amount of fine, if recovered, Rs. 800/-, would be given to the heirs of the families of the two deceased half and half.