

In Re: M. Ganesan

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Court : Chennai

Decided On : Apr-08-1949

Reported in : AIR1950Mad71

Judge : Somasundaram, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 116; ; [Indian Penal Code \(IPC\), 1860](#) - Sections 338

Appeal No. : Criminal Revn. No. 303 and Cri. Revn. Petn. No. 274 of 1948

Appellant : In Re: M. Ganesan

Advocate for Def. : Public Prosecutor for the Crown Prosecutor

Advocate for Pet/Ap. : Basi Reddi, ; A.C. Muthanna ; and B. Ramchandra Reddi, Adv.

Judgement :

ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted by the Chief Presidency Magistrate of offences under Section 338, Penal Code, and Section 116, Motor Vehicles Act, and sentenced to three months rigorous imprisonment for the offence under Section 338, Penal Code, and one month rigorous imprisonment

under Section 116, Motor Vehicles Act, the sentences to run concurrently.

2. The case relates to an accident which happened at about 11 A.M. on 22nd October 1947 and the facts are these. On the day of occurrence, a tram car proceeding towards Mylapore stopped at the tram stop opposite the Willington cinema. A bus, M. S. C. No. 8751, was also going towards Mylapore. The petitioner was the driver of that bus. A head constable who was traveling in the tram was trying to get down through the front left passage of the tram. As he was attempting to alight keeping his legs on the foot board, the rear right side body of the accused's bus dashed against the foot board of the tram and as a result, the constable was injured in the leg. He was taken to the hospital and it was found that four bones in the left leg had been fractured. Tea days later he died on account of pneumonia and weak heart. According to the medical evidence, the injuries would not have been fatal but for the other two complications that the constable had. The injuries were therefore grievous in nature. The accident, as stated already, happened while the tram was stationary at the Willington stop. It is in evidence that paint from the rear right side of the body of the bus was scraped to an extent of about one foot long and four inches broad and some paint from the bus was also found sticking to the left front side of the tram. At the time of the accident some hand carts laden with charcoal were going on the left side of the road in the same direction as the tram and the bus. The evidence is not quite clear at what distance from the tram these hand carts were going. But there is evidence that there was a line of cars parked on the left side of the road. On the evidence and according to the admission of the accused, the Chief Presidency Magistrate finds that

'there was only just enough space for his bus to pass' and that 'he should not have taken the risk of elbowing his way along the interspace.' He did so at his risk, and if such a course should result in an accident, which really happened, he must answer for it.'

3. In cases of accidents as pointed out by Mukerji J. in *Smith v. Emperor* : AIR1926 Cal300 :

'The difficulty is to keep out of one's mind the prejudice that inevitably creeps in by reason of the fact that lives have been lost and the responsibility for the same

ultimately rests with none else but the accused. This prejudice is bound more or less to reflect on the question of the culpability of the accused and give rise to false issues which tend to cloud judicial vision.'

The task no doubt of keeping out the prejudice is a difficult one but it has got to be performed. Keeping this observation of Mukerji J. in mind, it, has to be seen how far the petitioner in this case is guilty of the offences of which he has been convicted.

4. As stated already, the finding of the Chief Presidency Magistrate is that 'there was only just enough space for his bus to pass' and that 'he should not have taken the risk of elbowing his way along the interspace.' The question is whether the act of the accused in the circumstances falls within the scope of the provisions of Section 116, Motor Vehicles Act and Section 338, Penal Code. I will first deal with Section 116, Motor Vehicles Act, as in my view, if the petitioner is not guilty of the offence under that section, he would not be guilty of the offence under Section 338, Penal Code.

5. Section 116, Motor Vehicles Act runs as follows:

'Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable... .'

This section is practically a reproduction of Section 11, Road Traffic Act, 1930 of England which runs as follows :

'If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable ...'

A reading of these two sections will show, that except (or the words, 'if any person drives a motor vehicle on a road recklessly' word for word, Section 116, Motor Vehicles Act, is practically the same as Section 11, English Act. It is significant that the words, 'if any person drives a motor vehicle on a road recklessly' found in Section 11, English Act are omitted in the Indian Act. It is obvious therefore, that driving a motor vehicle on a road recklessly, per se is not punishable under the Indian statute. Apart from this, under the English Act, there is another provision which makes careless driving punishable and it is found in Section 12 of that Act. That section is as follows :

'(1) If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence.'

There is no corresponding provision in the Indian Statute. The absence of a provision similar to Section 12, English Act, is not without significance, particularly when our laws relating to motor traffic are modelled on English statutes. The only inference that could be drawn from the absence of a provision in the Indian Statute similar to Section 12, English Act is that under the Indian law careless driving as such is not made punishable. The reasons for not introducing such a provision in the Indian Statute may be manifold; but it is unnecessary for me to go into that question. Suffice it to say that there is a distinction between dangerous driving mentioned in Section 11 and careless driving mentioned in Section 12, English Act both of which are made punishable under the English Law whereas under Section 116, Motor Vehicles Act, only dangerous driving is made punishable. Even reckless driving is excluded from the purview of Section 116. Apart from the class of cases which fall within the scope of Sections 11 and 12, English Act, which may be stated to be (1) reckless driving, (2) dangerous driving, and (3) careless driving, there is a class of cases which fall under category of what is called 'guilty of error of judgment.' Acts which fall within the last class, viz., guilty of error of judgment are not punishable. As it is not an offence it could not find a place in the statute book, but it is only laid down in decisions of English Courts. In John Joseph Howell, Cri. Ap. Rep. Vol. XXVII, 5, on a trial for manslaughter, the Judge when dealing with a possibility of a conviction of dangerous driving, directed the jury : 'If

you think that (the prisoner) was guilty of a mere error of judgment, then you should find him not guilty.' But when the foreman of the jury stated that the jury found the prisoner not guilty of manslaughter, the Clerk of the Assize asked him : 'Do you find the prisoner guilty or not guilty of dangerous driving?' to which the jury replied : 'Yes, we find him guilty of dangerous driving owing to an error of judgment.' The Judge then asked whether they found him guilty or not guilty of dangerous driving and the foreman replied : 'Guilty of dangerous driving.' The Lord Chief Justice held that the jury meant to find that the prisoner was guilty of a mere error of judgment and therefore was in no other sense guilty of dangerous driving. In paraphrasing the verdict of the jury the Lord Chief Justice stated as follows :

'In other words, the jury meant to say : 'We know, when we look at the consequences and see the results of the event, that the driving was in fact dangerous, but, so far as the driver is concerned, we impute to him no more than a mere error of judgment.' '

The Lord Chief Justice then held that on that verdict, the accused was entitled to be acquitted and he was acquitted.

6. The question now in this case is under what category does the present case fall. It is clear from the evidence that the major portion of the bus had passed through and it is only the rear right side that hit the foot board of the tram. It is well known that when the front portion of the bus can pass through a passage, the rear portion also could pass through and unless something happens which turns the car or bus, there need be no occasion for the rear portion to touch any other body when the front portion had gone through without touching it. The finding of the Chief Presidency Magistrate also is to the effect that there was just enough space for the bus to pass. Only, according to him, he should not have taken the risk of elbowing his way along the interspace. In the circumstances, in my opinion, the act of the petitioner falls properly within that class of cases, viz:, guilty only of error of judgment. This is not a case where the petitioner acted

'with the consciousness that the mischievous legal 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 that happening.'

I should say that the petitioner thought that he could get the bus through the interspace and the fact that the major portion of the bus went through the interspace without hitting against any alien body, supports him in his judgment. But if in spite of it this accident took place, he is not to blame. I therefore find the petitioner only guilty of error of judgment and not guilty of dangerous driving under Section 116, Motor Vehicles Act. If he is not guilty under this section, I do not see how he can be guilty under Section 338, Penal Code. I refrain from referring to the English decisions on this question as the Crown Prosecutor has fairly conceded in this case that it may be difficult to sustain a case under Section 338, Penal Code, I find him not guilty under Section 116, Motor Vehicles Act and Section 338, Penal Code. The convictions and sentences are set aside and the petitioner is acquitted.

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