

In Re: Ponnuswami

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Court : Chennai

Decided On : Oct-19-1949

Reported in : AIR1950Mad308

Judge : Panchapakesa Ayyar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304 and 304A

Appeal No. : Criminal Revn. Case No. 1064 and Cri. Revn. Petn. No. 1004 of 1948

Appellant : In Re: Ponnuswami

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : S. Rangaswami Iyengar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. This is a petition to interfere in revision with the conviction ,of. the petitioner under Section 304A, Penal Code and the sentence of six months simple imprisonment awarded on him.

2. The facts are briefly these. The petitioner was a lorry driver. On 10th October 1947, at about 6.45 p. m., on the road between Tambaram and Vandalur, he was driving his lorry, M. S. P. 3163, at a fast and dangerous pace. He was taking furniture to a School. He wanted to overtake three bullock carts heavily laden with hay, and with that object, first swerved swiftly to the right and then quickly to the left, with the inevitable consequence that the deceased, a man aged 30 going along the road in the opposite direction, and a bit tipsy, got knocked down and killed. Both the lower Courts, after exhaustive discussion of the evidence, have come to the conclusion that the petitioner was certainly guilty of rash and negligent driving, and brought about the death of the deceased by such driving, and especially the swift turn to the right and then to the left in an attempt to overtake the three heavily laden bullock carts. I see no reason to differ from their conclusion.

3. The learned counsel for the petitioner urged that the petitioner should not have been convicted as the deceased was under the influence of some intoxicant and was walking along tipsily and had brought the accident on himself and was guilty of contributory negligence, and that if the deceased had not been tipsy, and staggered unexpectedly two feet towards the lorry, he would not have been hit and killed. I cannot agree. Contributory negligence, in the strict sense of the term, has no place in criminal law. If the petitioner was not guilty of negligence, he would not be liable under Section 304A Penal Code. The fact that the victim also contributed a little by his negligence is absolutely immaterial where there is ample proof that the petitioner had brought about the accident by his own negligence and rash driving, and attempt to overtake at that point. He could and should have avoided the accident by his care and caution.

4. The road was straight at that point, as even D. w. 2's evidence showed, and the petitioner and D. w. 2 saw the deceased tipsy and staggering along in the opposite direction, Suppose a little child stands in the middle of the road and contributes to the accident, its negligence will be of no avail. So too, this drunkard's. The main thing for consideration in a criminal case under Section 304A, Penal Code, is whether the accused in the case has caused the death of any person by doing any rash or negligent act not amounting to culpable homicide. Once that is proved, but

the little contributory negligence on the part of the victim and the accused's good military record are irrelevant except for the purpose of sentence. Driving a lorry in peace times rashly in the country side knocking down and killing a civilian, is not to be judged by the same standard as driving an armoured car against the enemy in war and killing an enemy.

5. It is next urged that both the lower Courts had used the sketch of the road which was not quite correct. But their conclusions were based not merely on a perusal of the sketch but also on a discussion of the entire evidence, including the evidence of D. W. 2. Nor was the sketch proved to be wrong in material particulars or to have contributed to any wrong conclusion.

6. I, therefore, confirm the conviction of the appellant. But, taking all the circumstances into consideration, and the petitioner's good military record, I reduce the sentence, after hearing the learned Public Prosecutor also on the point, to the period of imprisonment already undergone (about 21 days) and a fine of Rs. 80 or in default, further simple imprisonment for two months. Time for payment of the fine till 11 A. M. on 15th December 1949. The lower Court will take steps to realise the fine only after the time fixed now has expired.

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