In Re: Ratnam Mudaliar

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SooperKanoon Citation : sooperkanoon.com/787052

Court : Chennai

Decided On : Jan-08-1934

Reported in : (1934)66MLJ318

Appellant : In Re: Ratnam Mudaliar

Judgement :
ORDER

Bardswell, J.

1. The petitioner has been convicted by the District Magistrate of Chittoor of an offence punishable under Section 304-A, Indian Penal Code and sentenced to six months' rigorous imprisonment. On appeal the conviction and sentence have been confirmed by the Sessions Judge. The case originally came before the Sub-Divisional Magistrate of Chittoor who discharged the accused. The District Magistrate thereupon took the case up on his own motion under Section 436, Criminal Procedure Code and after notice to the accused decided that a further enquiry should be held and that that enquiry should be held by himself. After the enquiry he framed a charge against the accused and convicted him. It has not been said that there was anything improper in the action of the District Magistrate in directing the further enquiry. But Mr. Connell has argued that the District Magistrate should have done no more than frame a charge against the accused and then should have had the case tried by another Magistrate and that by Section 436 all that the District Magistrate is empowered to do so is to hold 'any further

enquiry'. On these grounds he contends that it is not proper for the District Magistrate after the charge has been framed to proceed to try the case. Section 436 indeed says nothing about any trial. It is equally silent as to this whether the further enquiry is to be made by the District Magistrate himself or it is to be ordered by him to be made by some Magistrate who is subordinate to him. In these circumstances it seems clear to me that the commonsense point of view is to be adopted, namely, that when the further enquiry is made, whether by the District Magistrate, or by a Magistrate subordinate to him, the Magistrate who holds that enquiry can, if he finds sufficient grounds for so doing, not only frame a charge but also proceed to hold a trial. This very thing has been decided in Narayana-swami Naidu, In re I.L.R. (1909) Mad. 220 : 19 M.L.J. 157 to which Mr. Connell has directed my attention and is expressly stated in the judgment of Sankaran Nair, J. although that learned Judge differed on other points from the other two learned Judges, who constituted the Full Bench, that were responsible for that decision. The petition must therefore fail on that point. I should mention that no objection was made to the further enquiry being made by the District Magistrate. On the contrary a preference was expressed that he should hold it if he found any further enquiry necessary.

2. As to the facts, the petitioner (accused) was driving a motor car which belonged to his master, P. W. 2. P. W. 2 was in the back seat and a clerk of P. W. 2 was in the front seat besides the accused who was driving the car. The car had left Bangalore at 6-30, i.e., in the evening, and after a short halt at Kolar went on to Chittoor in the centre of which near the Post Office the accident occurred. This was at 12-30 a.m. At this point the car went off the road and dashed headlong into a tree with the result that the clerk Venkatramiah was killed. The learned Judge in the appellate judgment has put the matter as follows:

I take it that a person driving a motor car is under a duty to control that car, and that he is prima facie guilty of negligence if the car leaves the road and that it is for the person driving the car to explain the circumstances under which the car came to leave the road. Those circumstances may be beyond control, and may exculpate him, but in the absence of such circumstances, the fact that the car left the road is evidence of negligence on the part of the driver.

3. That this is a proper statement of the case and should be so regarded is not disputed and it is in my view perfectly correct. Now the explanation given by the accused is that the lights suddenly went out and that the car left the road and dashed into the tree before he had time even to apply the brakes. This explanation I find it impossible to accept. It was not given by the accused immediately after the accident, although he was perfectly able to speak. It was not forthcoming till two days later. There is nothing to suggest that there was anything wrong with the lighting of the car. As has been shown by a photograph that has been exhibited, the road at the point where the accident took place is a broad road and the accused's own statement is that the car was going about 25 miles an hour. P. W. 1 who gives evidence as an expert made some statement to the Sub-Divisional Magistrate that when the car was going at that speed and lights suddenly went out such an accident as that which had happened might occur in the twinkling of an eye. But this statement he did not adhere to before the District Magistrate. There he said that

at 25 miles per hour, I could bring a car to a halt in its own length if it had 4 wheel brakes in good order

and this is a fact that must be well known to any one who is accustomed to driving a car. There is no question here of the brakes being otherwise than in good order. The explanation therefore given by the accused cannot be accepted. The result is that it must be taken that the car went off the road and that a fatal accident occurred owing to the negligent way in which he was driving it, probably owing to the fact that he was very sleepy. There is some evidence that soon after the accident he was smelling of drink and there was a bottle of whisky in the car. But there is no reason whatever to suppose that he was the worse for drink and if he had taken any whisky, it was probably merely to fortify himself in his tired condition.

5. I take it then that it was a case of negligent driving and that drink does not come into the question. The negligence has been established and the convictions therefore perfectly correct and has to be confirmed. There are, however, some extenuating circumstances. During each of the two previous days the accused had

driven fairly long distances. On one day he had driven 141 miles and on the next day he had driven 153 miles from Tirupathi to Bangalore only arriving at Bangalore at 2-30 a.m. At the time of the accident he had driven about 110 miles and it was past midnight. It may well be that he was very sleepy and tired; but when he was in such a condition he ought to have declined to drive the car and should have stopped. There is, however, some reason for thinking that he was afraid of doing so as his master P. W. 2 might get angry. They were on their way to Tirupathi, 40 miles or so from Chittoor, and naturally P. W. 2 would have been anxious to get home as soon as possible. In these circumstances I reduce the sentence to one of four months' rigorous imprisonment and otherwise dismiss this petition.