

In Re: Parthasarathy

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Court : Chennai

Decided On : Dec-30-1957

Reported in : AIR1959Mad497; 1959CriLJ1344

Judge : Ramaswami, J.

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

Appeal No. : Criminal Revn. Case No. 876 of 1957 and Criminal Revn. Petn. No. 853 of 1957

Appellant : In Re: Parthasarathy

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : S. Vaidyanathan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. This is a Revision Case sought to be preferred against the convictions and sentences by the learned Sub Divisional Magistrate, Cheyyar, in C.C. No. 183 of 1957 which convictions were confirmed hut the sentences reduced by the learned

Sessions Judge of North Arcot at Vellore in C.A. No. 98 of 1957.

2. The case for the prosecution is that the accused, motor driver, drove the bus MDJ 1122 on 28-8-1957 at 10-30 a.m. in Pernamallur village causing thereby the death of two children and injuries to two other persons, P.Ws. 3 and 5.

3. The locality in which this occurrence happened may be briefly sketched. In the village of Pernamallur there is a road running from north to south called Bazaar street. There is a street called Vanniar street branching off west from the Bazaar street. There is a shop of one Jeevendra Nainar in the Bazaar street in its eastern row, just north of junction. There is a soda shop of one Perumat Chetti in the eastern end of the southern row of Vanniar street. The evidence in this case shows that the bus was coming in the Bazaar street from north to south and it swerved to the right at the junction and hit against the portia tree just in front of the soda shop of Perumat Chetti and proceeded further and dashed against the roof and the pillars of the verandah in front of the soda shop with the result that the wall collapsed.

4. How this incident took place was in this) wise. In front of the shop of Perumat Chetti, P.W. 3 one of the injured and surviving was making images of Sri Ganesa, that being Vinayaka Chaturthi day. A group of children were around him witnessing the making of these images. P.W. 5, the other injured man, was sitting on the pial of the shop of Perumat Chetti. Then at that juncture, viz., at about 10-30 a.m. the bus ran over two children who were around P.W. 3 and who subsequently died of the injuries caused to them. P.Ws. 3 and 5 were also injured. It is unnecessary to describe the injuries in detail because there is no dispute that as a result of this tragic occurrence injuries were caused to P.Ws. 3 and 5 and to the two dead children.

5. The case for the accused was that he was driving the bus on the date of occurrence and that P.W. 3 was sitting in front of the shop of Perumat Chetti, that the bus dashed against the deceased children and P.Ws. 3 and 5. He further stated that the hand-brake was not effective and the foot-brake could be effective only if it was pushed twice, that the bus sustained damages and that the children died due to the fall of the wall and that he did not run over the children.

6. The accused examined D.W. 1 whose evidence was that his child ran across the north-side road towards west, that the driver of the bus whom he did not notice swerved the bus to the west and the bus dashed against a tree and a wall.

7. The learned Magistrate found that this darting of the child across the street spoken to by the accused in his statement under Section 342, Cr. P. C. and which was sought to be buttressed by the evidence of the interested D.W. 1 was false and that even assuming that the evidence of D.W. 1 was acceptable, this darting across the road of a child on a Vinavakachathurthi Day in the Bazaar Street which legitimately can be expected, should have been foreseen and would have been seen and avoided by this accused by pulling up or slowing down and his not doing so would show that he was negligent for which proposition the learned Magistrate relied upon Russel on Crimes (1950 Edition) page 641 and Gulamsaeed v. State, AIR 1954 Madh-B 41 and Kanshi v. Emperor, 1927 Cri LJ 351: AIR 1927 Lah 165.

The last mentioned decision lays down 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. The learned Magistrate deduced further that inasmuch as the efficiency of the brakes was 62 per cent if the accused had applied the brakes in time he could have averted this catastrophe and in fact he had lost all control of the vehicle which dashed against the tree, the deceased children and the injured P.Ws. 3 and 5 and also caused damages to the shop of Perumal Chetti. In fact the barks of the trees have been peeled off and the deceased children were run over as deduced by the Doctor from the injuries sustained by them and the walls have given way as a result of which there was a heap of debris in front) of the shop.

In other words, the learned Magistrate has found that the negligent conduct of the accused consisted in driving the bus at a greater speed than the circumstances warranted viz., driving in a narrow village Bazaar street on a Vinayaka Chaturthi Day with people all over the place and failing to stop in time to avoid the obstruction discernible within the driver's length of vision ahead of him and failing to apply the brakes in time, and as a matter losing his head and all control over the

vehicle with the result that he had madly careered and wrought the destruction mentioned above. Therefore, he convicted the accused under Section 304A, I.P.C. (two counts) and under Section 337, I.P.C. (two counts) and sentenced him to a total imprisonment of nine months.

8. On appeal the learned Sessions Judge came to the same conclusion as the learned Magistrate but placed the accent for the occurrence not so much on speed and controlling the vehicle in such a way as to avoid the obstruction discernible within the driver's vision ahead of him, but on the driver not applying the brakes at all. But the learned Sessions Judge agreed with the learned Magistrate that it was false to say as the accused alleged that the bus was travelling at a low speed as the speed of a jutka. On the other hand he held that it must have been travelling fast enough to account for the above collision. The learned Sessions Judge like the learned Magistrate did not accept the contention of the accused that the brakes failed or that the injuries to the children were caused by the falling of the wall. In fact as rightly pointed out by the learned Sessions Judge :

'It is clear that even if the children died only as a result of the debris falling on them, the reason for the debris falling on them was the negligent driving of the bus by the appellant'.

He properly relied upon the decision of Beaumont, C. J. and Wassoodew, J. in Emperor v. Khanmahomed, AIR 1937 Bom 96, wherein the learned Chief Justice observed :

'I think it would be very dangerous to attempt to distinguish in cases under Section 304-A, I.P.C. between the proximate and ultimate cause of death due to a rash and negligent act'.

In fact that the medical evidence in this case shows that the bus actually ran over the children. Therefore, the learned Sessions Judge confirmed the convictions but reduced the sentences to three months Rule 1, in all. Hence this revision.

9. On a review of the entire circumstances of the case I have come to the same conclusion as the Courts below that the accused was guilty of the offences under

Section 337, I.P.C. (causing hurt by an act which endangers human life etc.) and Section 304-A, I.P.C. (causing death by rash and negligent act). Here are my reasons.

10. Crime is the general conduct of a physical and mental element, or in the words of the maxim 'actus non tacit reum nisi mens sit rea'. The nature and degrees of these two elements may be thus expressed :

|Physical Action Or Non-Action

|Element _____|_____

|||||

| Intended Not Intended Intended | Not Intended

|||||

| |_____ Omission |Negative (The Mental

|| | _____|_____ |element here is negative

| Voluntary Rash | | |belong the neglect to think

Crime-| Voluntary Rash |about the set which ought

| |to have been dobe)

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| _____|

|Mental according to the nature of the mental attitude

|Element towards the consequences of the act or omission.

Thus, all crimes consist of voluntary acts or omissions; rash acts or omissions; or negligent non-action; or, adopting the language of the Indian Penal Code, which makes 'act' include 'omission', crimes consist of voluntary acts; rash acts; or negligence.

11. The great majority of crimes consists of voluntary acts, since the very consequences of the agent's conduct constitute his primary motive for the crime; and of these the large majority are the product of acts or positive conduct, and not of omissions or negative conduct, for most crimes can be effected only by doing something, and not by leaving something undone.

Rashness and negligence accompanying an act or omission are punishable, under the following provisions of the Code;

(1) Irrespectively of any consequences, if their effect is to endanger human life or the personal safety of other persons (see Section 336, I.P.C.) If the act or omission is one connected with certain prima facie dangerous occupations (riding and driving, navigation, use of poisons, combustibles, explosives, machinery, the building or pulling down of buildings, and the care of animals) then the rash or negligent conduct is punished more severely (see Sections 279 to 289 I.P.C.) .

(2) If hurt (Section 319) is the result of rashness or negligence which renders an act or omission dangerous to human life or the personal safety of others then the offence falls under Section 337; and if grievous hurt (Section 320) be the result, then the offence is punishable under Section 338.

(3) Finally, if death is caused by any rash or negligent act, the offence falls under Section 304-A.

12. What constitutes negligence has been analysed in Halsbury's Laws of England (Hailsham edition) volume 23, paragraph 823 (pages 568-570) as follows :

'Negligence in a legal sense is a negative rather than a positive term, and in any given circumstances is the failure to exercise that care which those circumstances demand. What amounts to negligence depends on the facts of each particular case and the term 'negligence' is, therefore, not susceptible of any precise

definition which will be of universal application. It may consist in doing something which ought either to be done in a different manner or not at all, or in omitting to do something which ought to be done. Where there is no duty to exercise care at all, negligence in the popular sense has no legal consequences.

Where there is a duty to take care, reasonable care must be taken to avoid acts or omissions which it can be reasonably foreseen would be likely to injure persons who are reasonably likely to be affected. The degree of care required in the particular case depends on the accompanying circumstances, and may vary according to the amount of risk to be encountered and to the magnitude of the prospective injury. The same act or omission may accordingly involve liability as being negligent in some circumstances, although in other circumstances it will not do so.

Where an act or omission is negligent, it may involve a greater or less degree of moral culpability, but so far as any legal result is concerned, a classification on this basis will at most afford a ground for awarding greater or smaller damages. The material considerations are the absence of the care due in the circumstances of the case on the part of the defendant and injury suffered by the plaintiff, and a demonstrable relation of cause and effect between the two.

Knowledge, or the opportunity of knowledge, that a particular course is fraught with danger does not necessarily render its adoption negligent, but such knowledge or opportunity of knowledge is frequently an ingredient of negligence, because a man may reasonably be expected to take extra precaution on account of better knowledge of the facts. In every case it is a question of fact whether conduct which disregards such knowledge or opportunity of knowledge, amounts to negligence or not.

Knowledge that a particular risk will be incurred may render a defendant liable for negligence if he persists in incurring the risk, even though it is incurred in doing what he contracted to do.' (See the leading English decisions : *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex 781; *Bourhill v. Young* (1942) 2 All E.R. 396; *Rothschild v. Royal Mail Steam Packet Co.* (1851) 18 L.T. 334; *Fardon v. Harcourt-Rivington* (1932) 146 L.T. 391; *Grant v. Sun Shipping Co.* (1948) 2 All E.R. 238;

London Passenger Transport Board v. Upson, (1949) 1 All E.R. 60

13. The American and Australian concepts are the same. 'Negligence,' says the Re-statement of the Law of Torts published by the American Law Institute (1934) Volume I, Section 282, 'is conduct which falls below the standard established for the protection of others against unreasonable risk of harm.' This standard of conduct or care has been examined with great thoroughness in a recent Australian Publication (1957) 'The Law of Torts' by Fleming at page 124 and following. It is stated that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances.

The behaviour of individuals is so incalculable in its variety, and the possible combinations of circumstances giving rise to a negligence issue so infinite, that it has been found undesirable, if not impossible to formulate precise rules for all conceivable conduct, depending upon the moral qualities, knowledge, skill, physical, intellectual and emotional characteristics, age, etc., which vary from individual to individual. In order to ensure a high degree of individualisation in the handling of negligence cases the law has adopted an abstract formula that of the reasonable man. In order to objectify the law's abstractions like 'care,' 'reasonableness' or 'foreseeability' the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform. The 'reasonable man' has been described by Greer L.T., as the man in the street, or the man in the Clapham omnibus, or as I recently read in an American author, 'the man who takes the magazines at home, and in the evening pushes the lawn mower in his shirt sleeves' : Hall v. Brooklands Auto-Racing Club (1933) 1 K.B. 205. He is the embodiment of all the qualities which we demand of the good citizen, a device whereby to measure the defendant's conduct by reference to community valuations.

13a. The Indian Law is the same; In re Nidamarti Nagabhushanam, 7 M.H.C.R. 119; Empress of India v. Idu Beg, ILR 3 All, 776; H.W. Smith v. Emperor, : AIR1926 Cal300 ; Chhote Lal v. Emperor : AIR1945 All16 ; State v. Mangal Singh, : AIR1953 Pat56 ; Chammanlal v. State : AIR1954 All186 ; Jumman v. Emperor, ILR (1944) Nag. 732: AIR 1944 Nag. 285; Emperor v. Abdul Latif, AIR 1944 Lah.

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14. Negligence in this case consists of two factors (a) speed and (b) failure to apply the brakes' in time.

15. Gibb and Millner in their 'Trial of Motor Accident Cases' (Third edition) at page 39 (Section 40) have the following to say regarding reasonable speed:

'It is the duty of every motorist to drive at a reasonable speed at all times. What is a reasonable speed depends upon all the surrounding circumstances and will, therefore, vary with each case and is usually a question for the jury

The following facts are important in attempting to determine what is a reasonable speed in a given case :

(1) The place, as, whether at a street-crossing, turning a corner, or curve, near a school, etc:

(2) The highway, its width, and condition, and nature and amount of traffic at that place.

(3) The atmospheric conditions; darkness* lights on car and street lights; time of day.

(4) The nature of the car, noises and other warnings; and

(5) Any other relevant circumstances and dangers to be anticipated.'

16. In considering speed in cases of collision with pedestrians, another ancillary problem is the duty of the driver when the pedestrian was first seen. The driver is required to keep a reasonably careful lookout for other road-users, including, of course, pedestrians. In this connection there are the following three possibilities to be considered viz. that the pedestrian was (1) seen by the driver at a distance; (2) not seen until immediately before the impact; and (3) not seen until after the impact.

1. The duty to look implies the duty to see what is in plain view. If, therefore, the driver saw the pedestrian at a distance he has clearly fulfilled his duty to look. This, however, is not sufficient to free him from liability. Having seen the pedestrian, the question naturally arises why he did not avoid striking him. If the pedestrian was not negligent in any way, the motorist will be liable for running him down. It may be, however, that at the moment when he was first seen by the driver, the pedestrian was perfectly safe but subsequently acted in such a way as to place himself in danger. The driver may assume that a pedestrian will not suddenly leave his place of safety and place himself in the way of the car and make an accident unavoidable. So the driver could not be required to anticipate that a person standing on the pavement will suddenly step out in front of the vehicle. Where, however, the pedestrian was in danger and the driver observed his danger in sufficient time to avoid it and negligently failed to do so, the motorist will be liable -- either, in whole or in part -- for the injury caused to the pedestrian. A driver is not entitled to assume that a pedestrian is young and quick, rather than elderly and slow. A driver is not entitled to assume in an area infested with children, that the children will not dart across the road.

2. It often happens that the motorist does not see the pedestrian until he is close upon him and there is no time to do anything to avert the collision. In such a case it is necessary to know whose fault it was that the pedestrian was not observed sooner. It may be due to a fault on the part of either the pedestrian or the motorist, and the liability will vary accordingly. The driver of the car may be negligent because of his failure to see the pedestrian as soon as he should, but on the other hand, the fault may lie with the pedestrian, if, for example, he suddenly and unexpectedly darts in front of the car. However, the claim that the accident was unavoidable by the defendant might fail if the negligent driving or excessive speed of the car made it impossible for the driver to avoid the accident or if the driver saw or should have seen the pedestrian is not enough to avoid the injury (sic).

3. The motorist will probably be held negligent if he fails to see the pedestrian with whom he collides, especially if the pedestrian was in front of his car and in plain view. If conditions in the street obscure his vision it is his duty to take such conditions into consideration and to have his car under proper control so as to

avoid injury to one who is thus obscured from view. The motorist, having no duty to look to the rear, will not be considered negligent for failing to see that pedestrians keep clear of the rear end of the car, except while backing it.

17. To sum up, both as regards the civil and criminal liability the rate of speed which will be considered dangerous varies with the nature, condition and use of the particular highway and the amount of traffic which actually is or may be expected to be on it. The driver of a vehicle must drive at a speed that will permit of his stopping or deflecting his course within the limits of his vision and if he strikes a person or object without seeing that person or object, he may in the circumstances be placed in the dilemma that either he was not keeping a sufficient lookout or if he was keeping a lookout he was driving too fast, in view of the lookout that could be kept. It is the duty of the driver to drive his vehicle at a speed which will not imperil the safety of others using the road.

18. Duty to use the brakes : The driver is under a duty of using whatever means are at hand to avoid a threatened collision. The most obvious means of avoiding the collision is the brakes with which the car must be equipped. By statute a motor car is required to have certain equipment. Elaborate provisions are made as to the brakes which must be fitted. It will constitute culpable negligence if a driver drives a vehicle with patently defective brakes or fails to apply the brakes in time.

19. Bearing these principles in mind if we examine the case on hand on the facts set out above, we find that by reason of the criminal negligence in driving his car at a speed which the circumstances existing at the time of the collision did not warrant and secondly, by not keeping a lookout to avoid collision and thirdly, by failing to apply the efficient brakes which he had in time and which braking would have averted the collision, the accused, as concluded by the courts below was plainly guilty of the offences under Sections 304-A and 337 I.P.C. The convictions are correct.

20. In regard to the sentence it is quite true that we must keep out false prejudices in cases of accidents. The difficulty is to keep out of 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 : per Mukerjee J. in : AIR1926 Cal300 . The task no doubt of keeping out the prejudice is a difficult one but it has got to be performed : per Somasundaram, J, in In re Ganesan, : AIR1950 Mad71 .

The trial Magistrate without any demonstrable prejudice has awarded a punishment proportionate to the gravity of the offences and to ensure that road-hogs of the description of the accused are taught a deterrent lesson. The learned Sessions Judge, however, has thought fit to reduce the sentence for reasons which do not appear to me to be apparently adequate. But I do not wish to interfere with the learned Sessions Judge's assessment of the sentence and give notice for enhancement. The sentences certainly err on the side of liberality rather than severity. The sentence reduced merits no interference and this Revision, devoid of merits, is dismissed.

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