

In Re: Ambalal

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Court : Chennai

Decided On : Apr-29-1966

Reported in : 1967CriLJ1521

Judge : Natesan, J.

Appellant : In Re: Ambalal

Judgement :

ORDER

Natesan, J.

1. The petitioner has been convicted by the Fifth Presidency Magistrate, Eg-more, Madras, for an offence under Section 304-A I.P.C. and Section 116 of the Motor Vehicles Act, and sentenced to R. I, for six months under Section S04-A, I.P.C. No separate sentence has been awarded under Section 116 of the Motor Vehicles Act. The case for the prosecution is that the petitioner on 15-4-1965 rashly or negligently drove his car MSP 6788 at about 9-30 A. M. on the Mount Road and knocked down one Dhandapani aged 13 years who was riding a cycle. The injuries sustained by the boy in the impact resulted in his death at about 9-45 a. m.

2. Certain basic facts which may be taken to be beyond controversy, may first be set out. The scene of accident is on the Mount Road in the locality known as Round Tana between two pedestrian crossings which according to P. W. 7, Reserve Sub Inspector attached to D.2 traffic station, is separated by a distance of

about 125 ft. There is a slight turn of the road there. The cyclist was proceeding from south towards north at the extreme left side of the road. The motorist was also proceeding in the same direction. At about 50 ft. from the northern pedestrian crossing, the front left portion of the car hit the rear of the cycle and the cyclist was thrown off and he fell on the cement railings fixed to the edge of the pedestrian platform. The cycle also fell down and the car stopped after proceedings about 50 ft. just at the northern pedestrian crossing. P. W. 7 speaks to have witnessed the accident from a distance of 25 ft. In the car of the petitioner his two children were sitting by his side in front and it appears he was taking them to their school. It is seen from the record that the boy was immediately taken to the General Hospital and the Casualty Medical Officer, examined as P. W. 3 states that the boy was brought to the hospital by the owner of the car involved in the accident. The petitioner immediately returned back to the scene of accident the boy dying in 15 minutes. There is no doubt that the boy died of the accident. P. W. 4, who conducted the postmortem, states that the injuries found on the body of the boy could have been caused by his being knocked down by a car and violently thrown off on any hard surface. It is nobody's case that the car actually ran over the boy. The impact of the car had thrown the boy and the cycle on the cement railings.

3. The learned Magistrate, on an examination of the evidence, conclude's that the petitioner could have avoided the boy being knocked down by his car and that he had not exercised the care in driving his car which the circumstances and situation demanded of him. He would therefore hold him criminally liable far causing the death of the boy.

4. It will be convenient to set out the statement of the petitioner at this stage. This is what he states:

After passing the pedestrian crossing in front of Chellarams in Mount Road (Southern pedestrian crossing) I applied the brakes. They did not act. They had suddenly failed. I had therefore to swerve and bring to a stop. I was driving only cautiously. On my right there were vehicles proceeding ahead coming along and behind my vehicle. I therefore swerved a little to the left and switched off the engine. After repeatedly applying the brakes the vehicles travelled a distance of a

few feet and stopped on the western side of the road. Before coming to a dead stop it bumped against a cycle which was proceeding ahead and the cyclist and the cycle fell down.

5. In his statement, he denies driving the car at full speed and states that the accident was the result of sudden failure of the brakes. He says he tried his best to avoid hitting against the cycle which was proceeding ahead of him.

6. Among the eye witnesses to the accident, reference may be made to the evidence of P. W. 1 and P. W. 2, P. W. 1 was sitting in the shop of one Venugopal at about the place of the accident. He speaks to the boy proceeding on his cycle and the car coming behind and dashing against the rear wheel of the cycle which the boy was riding, opposite to the police, where he was seated. He states that the car then proceeded on to about 60 ft. and come to a stop near the pedestrian crossing opposite to the Elphinstone theatre. It is elicited from him that there was heavy traffic in Mount Road at 9-30 a. m. P. W. 2 is the proprietor of the shop outside which P. W. 1 was sitting. His evidence also is to a similar effect so far as the accident is concerned. In corroboration of the statement of the petitioner that there was a sudden failure of brakes. D. W. 1 has been examined. He is a partner of a hotel in the City who knows the petitioner for over 20 years. On getting a telephonic call from the petitioner, he came to the scene of the accident at about 11 a. m. He speaks to the presence of brake fluid on the road in front of Kishinchand Chellaram (near the pedestrian crossing in the south) and states that the brake fluid had dripped to a distance of about 30 yards upto Ice Cream Parlour (the place where the car ultimately stopped). He speaks to the car having been towed in the evening to the Commissioner's office. A mechanic was examined as D. W. 2 to speak to the condition of the brakes, namely, that they were faulty and not in order. He has attended on the brakes after the accident. But the learned Magistrate has not accented his evidence. It is needless to refer to the same. P. W. 5 is the Motor Vehicles Inspector. He examined the car on 19-4-1965, that is four days after the accident. He states that he found both the foot brakes and handbrake efficient as required by the Act. His evidence is that if the car had come to a stop after travelling a distance of 106 ft. after the application of brakes, the speed of the car should have been 33 miles per hour. I shall be referring to this

part of the evidence later. This officer admits that he did not open the braking system of the car, and did not observe the condition of the master cylinder; nor did he remember the system of the brake. He would state that he did not remember if the car was towed down to the traffic office

7. P. W. 7, who was on traffic duty at the spot about whom reference has been made already, states that the car did not stop after hitting the cycle, but proceeded on and stopped opposite to the Elphinstone theatre that is at the northern pedestrian crossing. He admits in cross-examination that the car was removed by pushing in to the traffic island. He would state that he had no idea how the car was taken from that place afterwards. He admits that the petitioner tried to stop the car and the petitioner might have tried to stop the car from the place of accident. He did not notice any brake fluid at the scene of occurrence but he does not deny its presence. P. W. 3, the Sub Inspector of police, Traffic Investigation admits in cross-examination that the car was removed in the evening and that it was only towed.

8. P. W. 1 in the statement recorded from him at about 11 a. m. on the date of the accident, has stated that the person in the car applied brakes but that the car proceeded without stopping and halted in front of the Shop, near about the northern pedestrian crossing,

9. The question for consideration is whether the death of the boy caused by the rash or culpable negligence of the petitioner. It is contended by learned Counsel for the petitioner, Sri V. Rajgopalachari, that the approach of the Magistrate to the consideration of the question is wholly faulty in that favourable aspects in the prosecution evidence are completely overlooked and ignored. It is submitted that the defence case has not been examined in the light of the evidence adduced by the prosecution and that an unprejudiced examination of the prosecution evidence on record would completely corroborate the statement of the petitioner. Having been taken through the entire records, I find much force in this contention. In a case of this kind, when the life of a young boy is snuffed in a trice, very likely the mind gets prejudiced. Quite often and generally if the bystanders are illiterate the prejudice is against the motorist. The behaviour of the motorist may also provoke

it. Occasionally if there happen to be knowledgeable persons there is a tendency on their part to become biased in favour of the unfortunate motorist, with woe begone countenance who may not harm or think of hurting a fly. This prejudice is often reflected in the evidence and may even invade the examination of the culpability of the accused unless one is wary and colour the judicial vision. In cases of this kind, it is therefore very necessary that the Court must ward off and keep out of this prejudice and examine the evidence on record in the light of circumstantial evidence and probabilities and dependable oral evidence, which gets probalised by circumstances.

We have to start examining the evidence in this case with one premises, that it is not the case of the prosecution that the motorist started on his drive with brakes which were patently defective taking a chance of there being no accident. Nor do I find from the record of the case that the motorist has by excessive speed disabled himself from putting up and bringing the vehicle to a stop to prevent the accident. It is not a case where the boy darted in front of the vehicle and the motorist who should have expected it and who had an opportunity to avert it by applying brakes, failed to do so or could not avert the accident by reason of excessive speed in relation to the locality. Here is a case where the motorist hits the cycle on the extreme left of the road from behind. We have, therefore, to consider whether the version of the accident as given by the petitioner is likely or probable. The question for examination is whether the facts and circumstances emerging from the evidence establish or at least probalise the version of the petitioner, or whether they are wholly inconsistent with the version of the petitioner that his version must be discarded as puerile, improbable or false. Now what is the case of the motorist-petitioner? His case is that the failure of tames was sudden and totally unforeseen, noticed just before the accident and that he acted in a manner in which one could be expected to act in such circumstances. He switched off the engine and swerved to the left and proceeded as cautiously as possible. He applied the brakes which of course did not act. In spite of his efforts, his car had hit against the cycle going in front and the boy was thrown off. The plea is that from the moment the brakes failed he was an involuntarily actor having no control over the vehicle. It was a perilous and unfortunate position in which he round himself not by any act or omission of his, not from any want of circumspection on his part.

The prosecution version is seen from the evidence of P. W. 7. P. W. 7 would state that the car was proceeding from south to north in good speed. I am unable to understand what He meant by good speed in the context unless it be that there was no perceptible slowing down. The witness is a Reserve Sub Inspector attached to the traffic station. Does the witness ' mean by that expression that it was excessive speed or speed which ought not to have been taken in that locality? This is not made clear. But we shall examine his evidence in the light of the evidence of P. W. 5. As already stated, P. W. 5 categorically states that if the car had come to a stop after travelling a distance of 106 ft. after the application of brakes, .the speed of the car should have been 33 miles per hour. But the distance, from the scene of impact to the place where the car had stopped, is according to P. W. 7 about 50 ft. and according to P. Ws. 1 and 2, about 60 ft. More or less we may take it as 50 ft. Thus the brakes in this case if they were acting must have been applied about 66 ft. before the accident had happened. This takes us more or less to the spot opposite to Kishinehand Chellaram, a few feet off the southern pedestrian crossing. If the evidence of P. W. 5 is accepted, it comes to this that the brakes had been applied to this car immediately after the southern pedestrian crossing. That is the version of the petitioner in his statement with this addition that the brakes failed to act. The road there was taking a slight turn. One pedestrian crossing had been passed and another pedestrian crossing was in front; there was heavy traffic. Very likely the motorist applied the brakes then it may be in the usual course of driving. He could not have been going very fast at the pedestrian crossing. Even if he had, he would have applied brakes 60 ft. from the scene of accident. We find on the evidence of P. Ws. 1 and 7 that the motorist applied brakes immediately after the accident. In fact P. W. 7 states that the petitioner tried to stop the vehicle. The vehicle had not stopped.

If these facts are read in the light of the evidence of D. W. 1 and the presence of brake fluid on the road it probabalises the case of the petitioner that when he applied the brakes first he found suddenly that they had failed. I have not been shown any piece of evidence on the side of the prosecution which improbabilities this statement of the accused. The learned Public Prosecutor would have me discard the statement of P. W. 5 that the car must have travelled 106 ft. before it came to a stop and also the statement of P. W. 7 that he remembered the

petitioner trying to stop the vehicle, I see no reason for such a course except that they are favourable to the accused. Apart from these features there is one other aspect to be considered. The car had been towed from the place where it had stopped to the parking island in the locality. This might be ignored. But from the parking island to the Commissioner's office in the evening the car was towed. P. W. 8 states that on suspicion it was towed. How did the suspicion arise? Possibly an attempt must have been made to run the car and the brakes must have been found defective. Strong reliance is placed on the deposition of P. W. 5 that the brakes were found efficient as required by the Act. Comment on this piece of evidence by learned Counsel for the petitioner is that the examination by P. W. 5 was on 19-4-1965. Whatever it might be, he cannot explain and the suggestions in the cross-examination of P. W. 5 is to make out that either the examination was perfunctory or the identity of the car was not maintained. The fact remains that there must have been failure of the brakes on 15-4-1965 at about 9-30 A. M.. when they were applied immediately after the southern pedestrian crossing.

Some of the features noticed are consistent only with the theory of sudden failure of brakes. It is found in the evidence of P. W. 1 and of P. W. 7 that the petitioner did apply brakes. P. W. 5 also states that if brakes had acted, skid marks must have been found on the road. He also admits that there should be skid marks if brakes were applied and the car travelled to a distance and then stopped. Now we have one or other of two alternatives in this case. Either the brakes had been applied and they had acted or the brakes had been applied and they did not act at all. If the brakes had acted, there must be skid marks. Nobody speaks to the presence of skid marks on the road. It is likely, therefore, that the brakes had been applied and they did not act at all. This is in conformity with the case of the petitioner. P. W. 7 has stated that he whistled to the petitioner as the car was 'running in good speed and that he remembered that the petitioner was trying to stop the vehicle. Though on behalf of the petitioner, it is suggested that he did not whistle, I am prepared to accept the statement of P. W. 7 that he whistled to the petitioner to stop the car. It is likely that he would have whistled when he found that the car had not stopped after the accident and was proceeding. He would not have been aware of the difficulties in which the motorist was placed and his inability to stop the car. The next answer brings out of P. W. 7 in a way the case of

the petitioner. P. W. 7 states that the petitioner might have tried to stop the car from the place of the accident. On the above discussion of the evidence for the prosecution and in the circumstances made out, it is a reasonable inference that the petitioner's explanation must be true and that there was a sudden unanticipated and unforeseeable failure of brakes.

10. The question then for consideration is whether it can be said that the petitioner caused the death of the boy by doing a rash and negligent act so as to constitute an offence under Section 304-A, I.P.C. Is the accident consequent upon any culpable rashness or criminal negligence on the part of the petitioner, is the question for decision. While rashness is acting in the hope that no mischievous consequences will ensue though aware of the likelihood of such consequences, negligence is acting without the awareness that harmful or mischievous consequences will follow, but in circumstances which show that had the actor exercised the caution incumbent on him he would have had awareness of the consequences of his act. Negligence, as such, had not been defined in the Indian Penal Code, however, we get an idea of the degree of negligence that would make the act criminal if we refer to the words of Section 279 I.P.C. namely, 'whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person...'

Rashness Or negligence should be of the kind to endanger human life or likely to cause hurt or injury to any other person. Negligence in this context has generally been understood as conduct which falls below the standard established for the protection of others against unreasonable risk of harm - the standard of conduct ordinarily measured by what a reasonable man of ordinary prudence would do under the circumstances. I would put 'it, the standard of negligence must be rated in terms of the circumstances, be such, as would be accepted as criminal, negligence by an intelligent and sensitive community. Is there a callous disregard of consequences or a lack of elementary caution or ordinary circumspection? But the negligence that may give rise to civil liability will not be enough for the purpose of establishing the crime under Section 304-A I.P.C.

11. There has been no negligence on the part of the boy. He has not contributed in any way to the accident. We have therefore to consider, could the motorist in this

case have avoided the accident by any precaution which he could have taken ahead, or at or before the moment of collision acting as a reasonable man. On the evidence which has been considered by me, no act or omission has been suggested which the man at the wheel could have taken or made, that would have avoided the accident in the instant case.

12. In the circumstances, learned Counsel for the petitioner is perfectly justified in the comment that he has made on the judgment of the learned Magistrate. Rightly it is contended that the tell-tale features which are in favour of the petitioner have been ignored. It must be noticed that the learned Magistrate does not discredit D. W. 1 when he states that brake fluid was seen on the road. What the Magistrate would say is that having rejected the evidence of D. W. 2, the evidence of D. W. 1 could not be relied upon conclusively to hold that the patch and the drops were of the brake fluid. Again and again, overlooking material evidence, the magistrate would remark that P. W. 5 had stated that the car was mechanically perfect and the brakes were in order. The evidence in the prosecution version which probalilises the petitioner's case is substantial, at any rate the petitioner is entitled to the benefit of doubt which to say the least is present. It is not contended, as it cannot be, that if there is a sudden and unforeseeable mechanical break down not related to any rashness or negligence on the part of the driver as a result of which the event happens, the case would fall under Section 304-A, I.P.C.

13. In the above circumstances, I hold that it has not been made out that the accused is guilty of an offence under Section 304-A, I.P.C. No offence under Section 106 of the Motor Vehicles Act is proved. The conviction and sentence of the petitioner are therefore set aside and the petitioner is acquitted. The revision is allowed. The bail bond will stand cancelled.