

**Raju Vs. State**

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**Court :** Chennai

**Decided On :** Dec-14-1989

**Reported in :** 1991ACJ951

**Judge :** Padmini Jesudurai, J.

**Appeal No. :** Crl. Revision No. 700 of 1986

**Appellant :** Raju

**Respondent :** State

**Advocate for Def. :** K.C.G. Mallika, G.A.

**Advocate for Pet/Ap. :** G. Krishnan, Adv.

**Disposition :** Revision allowed

**Judgement :**

**Padmini Jesudurai, J.**

1. The accused who has been convicted for an offence under Section 304-A, Indian Penal Code, 1860 and sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs. 500/- which conviction was confirmed in appeal with a modification in the sentence to imprisonment for period of one month and a fine of Rs. 1,000/- has filed the present revision challenging the conviction and

sentence.

2. The accused was convicted for the above offence on the allegation that on 30.6.1983 at 4.55 p.m., at Thirupapuliur, Lawrence Road, he drove bus No. TNF 9633 in a rash and negligent manner and caused the death of Ramesh aged 15 years who was riding as a pillion rider on a bicycle.

3. The prosecution case was that the deceased was studying in a school at Cuddalore, staying with PW 1 who was a B.A. III year student. On the date of occurrence, PW 1 took the deceased on the carrier of his bicycle and was returning home from school when the chappals worn by the deceased got entangled in the back wheel of the cycle and fell down and the deceased jumped down from the cycle and when he went down to pick up the chappals, the bus driven by the petitioner in a rash and negligent manner dashed against the deceased and crushed him to death on the spot. The occurrence was witnessed by PWs 2, 3 and 5 who were nearby. PW4, the father of the deceased, on receipt of information, went to the police station and laid Exh. P-1 statement. PW 7, the Inspector of Police, registered Exh. P-1 as Crime No. 459 of 1983 for an offence under Section 304-A, Indian Penal Code and took up the investigation. He visited the scene of occurrence and prepared plan Exh. 4, observation mahazar Exh. P-2 and held inquest over the dead body between 5.30 p.m. and 8.00 p.m., as per Exh. P-5, inquest report and then sent the body for post-mortem and the vehicle to PW 6, the Motor Vehicles Inspector who gave the opinion as per Exh. P-3 that the vehicle did not have any mechanical defect. Exh. P-7, post-mortem certificate marked by consent, shows that the death was due to shock and haemorrhage due to the injury sustained in the vital organ of the brain, which could have been caused as a result of impact in the accident. The charge-sheet was laid by PW 7, the Investigating Officer.

4. During trial on behalf of the prosecution PWs 1 to 7 were examined and Exhs. P-1 to P-7 marked. When the accused was questioned he denied having driven the vehicle in a rash and negligent manner. He has no evidence to offer, either oral or documentary. The trial court accepted the prosecution case and convicted and sentenced the accused, when conviction was confirmed in appeal with the

modification in the sentence as shown above, against which the present revision has been filed.

5. Mr. G. Krishnan, learned counsel appearing for the accused/petitioner, would urge that even according to the prosecution case, the accident had occurred as a result of the deceased suddenly jumping from the vehicle in order to pick up the fallen chappals and that it was the deceased who was solely responsible for the accident which could not be attributed to any rash and negligent driving on the part of the accused. Learned counsel laid emphasis on the fact that the road being an east-west road and the vehicle proceeding from east to west was found stationed four feet north of the southern edge of the road, the total width of road being 28 feet. It was also pointed out that the appellate court had rendered a positive finding that the deceased had also contributed to the accident, which would rule out a conviction under Section 304-A since the concept of contributory negligence is totally alien to criminal law.

6. Learned Public Prosecutor met the above contentions with reference to evidence adduced.

7. As rightly pointed out by the learned counsel for the petitioner, it is the prosecution case that the accident had occurred as a result of the deceased suddenly jumping down from the cycle in order to pick up his fallen slippers. The bus was driven on the correct side of the road being 4 feet north on the southern side of the road. The dead body was found between the left front wheel and left back wheel and the evidence is uniform that the vehicle was brought to a halt immediately. PW 6, the Motor Vehicles Inspector, would state that the vehicle could have been driven at a speed of 10.8 km. These facts had actually been placed before the courts below. However, the trial court after considering these features had observed that even if the deceased had suddenly jumped from the bicycle, the accused should have noted it and should have either applied the brakes immediately so as to stop the vehicle within four feet of the boy or should have swerved to the right side and averted the impact. This reasoning is totally erroneous in criminal proceedings. Learned Sessions Judge who heard the appeal was also quite conscious of this fact. He had acted on the admission of PW 5 who

had stated that if the deceased had not jumped from the cycle, this accident would not have happened. However, learned Judge winds up the conclusion by saying that though the deceased had also contributed to the accident by his negligence it is the accused who should have driven the vehicle applying the brakes with great care and caution. In short, learned appellate Judge holds the accused guilty, even after giving a positive finding that the deceased also had contributed by his negligence to the accident, but that despite the negligence of the deceased the accused in some manner should have averted it.

8. It is in this context that the learned counsel for the petitioner would make a legal submission that contributory negligence is unknown to criminal law. The prosecution has to prove that the accident was solely due to the rash and negligent driving by the accused and death was caused not due to the intervention or the negligence of anyone else. Reliance is placed upon the decision of the Supreme Court in *M.H. Lokre v. State of Maharashtra* 1972 ACJ 185 (SC), wherein the Supreme Court held that when a pedestrian suddenly crosses a road without taking note of the approaching bus, there is every possibility of his dashing against the bus without the driver becoming aware of it. The bus driver might not be able to avert the accident however slowly he might be driving. That position of law is well settled. Though the concept of contributory negligence is available under the law of Torts, it is unknown to criminal law and the accident should be attributable solely to the rashness and negligence of the accused.

9. Learned Public Prosecutor, however, would place reliance upon a decision of this court in *In Re: Ponnusami* (1949) II MLJ 819 where on the facts of that case, the learned Judge held that when it had been positively established that the driver was driving the vehicle in a rash and negligent manner and suddenly swerved to the right in order to overtake some bullock-cart and then suddenly turned to the left and hit the deceased, the mere fact that at that time the deceased was drunk, would not save the accused and the little contributory negligence on the part of the victim was irrelevant except for the purpose of the sentence. The facts of that particular case are totally different and those observations were made in the context of the circumstances of that case. In the instant case, however, the accused was driving keeping to the correct side of the road and coming at a

normal speed. His act of driving was not rash or negligent. The accident had occurred, even according to PW 5, due to the deceased jumping down suddenly from the cycle to pick up his chappals. As observed by the Supreme Court in the decision cited above, even if the driver was coming at a moderate speed, it would be impossible for him to avert the impact when the victim suddenly gets into the way of the vehicle and the accident occurs.

10. In view of the circumstances and the evidence in this case, it is not even possible to hold that the accused was driving the vehicle in a rash and negligent manner. The observation of the Supreme Court in the aforesaid decision would apply to the facts of this case. The accused has necessarily to be acquitted.

11. In the result, this revision is allowed, the conviction and sentence are set aside. The fine amount, if paid, shall be refunded to him.

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