In Re: Intoor John

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Court : Chennai

Decided On : Dec-12-1950

Reported in : AIR1953Mad774; (1951)IIMLJ54

Judge : Somasundaram, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 304A

Appeal No. : Criminal Appeal No. 469 of 1950

Appellant : In Re: Intoor John

Advocate for Def. : The State Prosecutor

Advocate for Pet/Ap. : M. Damodharan Naidu, Adv.

Judgement :

Somasundaram, J.

1. The appellant in this case has been convicted by the Second Presidency Magistrate for an offence under Section 304A and sentenced to nine months' rigorous imprisonment.

2. The appellant is a cart driver employed by the Madras Corporation for driving double bullock rubbish cart. On 21-1-1950 at about 10-30 A.M. the appellant and D. W. 1 another bullock cart driver of the Corporation were driving the carts along

the Kathiavakkam High Road. They were driving at a terrific speed racing with one another one trying to overtake the other. The evidence of P. Ws. 1 and 3 who are eye-witnesses shows that the two drivers were not only driving bullock carts at terrific speed and racing with one another but the appellant let loose the reins of the bulls and was whipping the animals with a view to overtake the other bullock cart. Suddenly a cry was heard 'child, child' and then when the bullock cart was made to stop, they found a child under one of the wheels of the accused's cart. It was taken out and it died within a few minutes thereafter. The appellant himself made a statement to the police which is Ex. P-2 in the case. In it, without admitting his reckless and rash driving, he speaks to other facts in the case as to how the child came and hit itself on the right side of: the wheel and that the right wheel of the cart ran upon the child from the hip to the breast, P. W. 2 the doctor who conducted the post mortem examination found the following injuries :

'(1) An abrasion over the inner aspect of the left wrist 2 inches by one inch,

(2) There was extravasation of blood over left side of the skull on the head. There was a fissured fracture of the left side of the temporal bone extending to the base of the skull. The stomach was empty. In my opinion the deceased would appear to have died of basal fracture of the skull. The injury to the skull is necessarily fatal. The injury could have been caused by being hit and knocked down by a cart.'

In cross examination he says that there was no evidence of any cart wheel having run over the body either on the skull or over the chest of the boy. His opinion regarding the death of the child is that it is due to the basal fracture of the skull and that the mere hitting of the cart might not have caused the fracture but it is the consequential fall that would have caused it. On these facts the learned Second Presidency Magistrate convicted the appellant of an offence under Section 304A.

3. It is contended by learned counsel for the appellant that the medical evidence shows that the wheel could not have run over the body of the child as the basal fracture was due to the fall of the child and not directly due to the hitting and the appellant cannot be convicted under Section 304A, It is further contended that the witnesses would not have seen the accident but were drawing on their imagination. Taking the second point first the witnesses are disinterested and

nothing was suggested in their cross-examination as to why they should depose differently from what they have seen. Their evidence is consistent and I agree with the appreciation of their evidence by the learned Magistrate. In my opinion, their evidence sufficiently establishes this fact namely, that the two drivers were racing with one another at terrific speed and that the appellant had let loose the reins of the bulls and was whipping the animals with a view to overtake the other. This shows that he was not only rash but was also negligent. The degree of negligence that is required in such cases has been laid down by Lord Atkin in --'Andrews v. Director of Public Prosecutions', (1937) A. C. 576 (A). After approving the principle laid down in --'Rex v. Bateman', (1925) 19 Cr. App. Rep. 8 (B), Lord Atkin says at page 583 :

'The principle to be observed in cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough : for purposes of the criminal law there are degrees of negligence : and a very high degree of negligence is required to be proved before the felony is established. Probably of all epithets that can be applied 'reckless' most nearly covers the case. It is difficult to visualize a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for man daughter,'

4. There can be no doubt that in this case the driving of the cart by the appellant falls clearly within this principle of reckless driving. That at that part of the day when the road was likely to be used frequently by others the driving by letting loose the reins of the bulls amounts not only to rashness but also to negligence on his part is clear. Therefore that this act amounted to rash and negligent driving cannot be disputed and this point must be found against the appellant.

5. As regards the Question whether the death was caused by this act of the driver, as already stated, the main contention on behalf of the appellant is that basal fracture was caused not by the hitting of the wheel but by the fall. Any hitting of the child by the wheel of such a cart would necessarily involve a fall and it is really a miracle as to how the child when it was taken out by pushing one of the wheels did not sustain more serious injuries. It can only be attributed to mystery and accident.

There can be no doubt that on account of the hitting of the wheel the child fell down and died. Death is therefore directly attributable to the act of the driver. The offence, therefore, of causing death by rash and negligent driving has been made out and the appellant has been rightly found guilty of the offence under Section 304-A, Penal Code.

6. As regards the sentence the conviction no doubt involves the dismissal of the driver from his employment. Taking that into consideration a sentence of six months in my opinion, will meet the ends of justice. I, therefore, reduce the sentence to six months rigorous imprisonment. With this modification the appeal is dismissed.