

In Re : Natarajan Alias Natesan

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SooperKanoon Citation : sooperkanoon.com/806874

Court : Chennai

Decided On : Oct-29-1965

Reported in : 1966CriLJ1147

Judge : Anantanarayanan, J.

Appellant : In Re : Natarajan Alias Natesan

Judgement :

ORDER

Anantanarayanan, J.

1. This revision proceeding raises an interesting question of the circumstances under which rashness and negligence can be presumed, against the driver of a motor vehicle, with regard to the scope of Section 304-A, I.P.C. The facts are that the revision petitioner, Natarajan, alias Natesan, has been convicted by the courts below of the offence under Section 304-A, I.P.C. and the substance of this charge being that he drove lorry MDJ 3715 on the Tindivanam-Tiruvannamalai road near mile stone 34/4 at about 3 a.m. on 12.1.1962, in such a rash and negligent manner that he dashed it against a culvert, resulting in the capsising of the lorry, and the sudden fall to the ground of the proprietor, one Moosa Sahib, who was then sitting on the top of lorry. This Moosa Sahib received fatal injuries, due to the fact that the iron articles with which the lorry had been loaded fell upon him, and occasioned those injuries.

2. The facts are within a very brief compass, and I have to agree with learned Counsel for the revision petitioner, that, on the facts of the record, the conviction cannot be possibly sustained. I may point out, initially itself, that there appears to be no reason why Section 304-A, I.P.C., should be any exception to the general maxim of criminal jurisprudence. It is for the prosecution to establish the guilt of an accused person beyond reasonable doubt, and the ingredients necessary to show that a particular offence was committed must be made out by the evidence adduced in prosecution. There is no initial burden on the accused to prove his innocence, and certainly there is no presumption that a man drove a lorry in a rash and negligent manner, merely because there was an accident. Section 304-A, I.P.C. is no exception to the general principle that, with regard to offences in the Indian Penal Code, at least, apart from special statutes which might embody special presumptions, the innocence of a person has to be assumed, till guilt is established.

3. There is a marked paucity of evidence in this particular case. Part of it is hearsay, in character and is not even admissible. P.W. 3, who was the proprietor of a rice mill in this Locality, came to the scene of accident, after hearing the noise of the accident, and he extricated the revision petitioner, who himself had been pinned underneath the lorry. This was with the help of a jack appliance, which was borrowed from another lorry. There were iron articles that had fallen down from the vehicle and underneath them was found the body of the unfortunate victim, Moosa Sahib. P.W. 5, one Natarajan, states that P.W. 1, the cleaner of the lorry, told him that the driver (accused) had slept and that it was on account of this that the lorry had capsized. This is merely hearsay evidence, and, further, P.W. 1 (the-cleaner) did not corroborate this in his evidence. On the contrary, he claimed that he was himself sleeping at that time, owing to over-work, and the prosecution treated him as a 'hostile' witness, because his evidence was at variance with his first report Ex. P-1. Since the evidence of P.W. 1 does not show that the revision petitioner fell asleep while driving the lorry, and the supposed statement of P.W. 1 to P.W. 5 is really hearsay, and not admissible at all, there is no residue of legal evidence, upon which it could be presumed that the revision petitioner had been rash and negligent. The learned Sessions Judge in the criminal appeal seems to have been aware of this particular difficulty. He observes, 'The learned Magistrate should not

have taken it for granted that P.W. 1 stated that the appellant (here revision petitioner) was sleeping'. But, extra-ordinarily enough, immediately after this, the learned Sessions Judge seems to assume that the appellant must have been sleeping while driving the lorry. As I pointed out, this is not based on legal evidence, and in the absence of legal evidence, such a conclusion of fact is not warranted.

4 This apart, the learned Sessions Judge also appears to found the conviction on certain observations of Bardswell, J. in *Ratnam Mudaliar v. Emperor* 1934 MWN 30 Leaving aside, for a moment, the facts of that case, the dicta on which reliance is placed¹ would appear to be those of the learned Sessions Judge disposing of the criminal appeal, and are not the observations of the learned Judge (Bardswell, J.) himself. A passage is extracted from that appellate judgment, in which it is stated that a person driving a motor car is under a duty to control that car, 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. It is further observed that there may be circumstances exculpating the driver, but in the absence of such circumstances, the fact that the car left the road was evidence of negligence.

5. I am afraid that, with great respect, to the learned Judge (Bardswell J.), this statement of the law cannot be accepted, particularly as no authority is cited in support of such a wide proposition. Surely, whether a man is guilty of rash and negligent driving, or not, is a question of fact, depending on the totality of the circumstances in the individual case. There could be no general presumption that the fact that a car leaves a road, is evidence of rash and negligent driving. A motor vehicle may leave the road, and proceed on the margin, or collide against some fixed structure of the margin, under a variety of circumstances. Some of those circumstances, certainly, may probabilise rash and negligent driving, but many other circumstances I may not. There can be no burden on an accused to prove that he was not driving the vehicle in a rash and negligent manner, merely because the prosecution proves the fact that the car left the road. For instance, as is the case with regard to all mechanisms, there may be innumerable circumstances of defect not even within the knowledge of the driver of the vehicle,

The road may be wet, slippery, or in some manner unsafe. The connection between the steering mechanism and the propelling mechanism in the car, might have been broken, or put out of gear, owing to a large variety of causes. In such a situation, the driver himself may not know why the car suddenly behaved in that manner fraught with such danger to the driver himself and to the other occupants of the car. It is difficult to appreciate how the driver could establish or prove a fact, such as the disconnection of a particular mechanism, of which he himself might have been genuinely unaware.

6. I am hence unable to hold that there is any presumption in law of rash and negligent driving, merely because the car leaves the road. In the decision earlier referred to, on the facts of that case, the inference of rash and negligent driving would seem to be totally justified, and that is what the Court actually observed. Hence, the single dictum of Bardswell, J. that what the learned Sessions Judge said in his appellate judgment was 'a proper statement' must be construed as obiter and not as laying down any new principle of law. The revision petition is accordingly allowed, since, on the facts of the present case, it is not at all clear that the revision petitioner was guilty of rash and negligent driving, and that the fatal accident was caused thereby, the revision petitioner is acquitted. His bail bonds will be cancelled.