

**In Re: Ibramsa**

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**SooperKanoon Citation :** [sooperkanoon.com/810129](http://sooperkanoon.com/810129)

**Court :** Chennai

**Decided On :** Jul-27-1962

**Reported in :** 1963CriLJ690

**Judge :** Sadasivam, J.

**Appellant :** In Re: Ibramsa

**Judgement :**

ORDER

**Sadasivam, J.**

1. Petitioner Ibramsa has been convicted under Section 304-A I.P.C. and sentenced to rigorous imprisonment for four months.
2. Both the Courts below have found that the petitioner drove the bus MDR 2439 on 24-10-1960 at about 6-40 p.m. negligently in Nachiapuram village and hit against one Shanmugham, a boy aged seven years, and caused his death. At the time of the accident the petitioner was negotiating a turn towards the main road after touching the bus stop in that village. The boy Shanmugham who was sitting on the western side of the road ran towards the east at about a distance of 15 feet in front of the bus. Both the Courts below accepted the evidence of p.w. 1, Ramalingam, and P.W. 11, Durairaj, Inspector of Police who were travelling in the bus at the time of the accident and found that the left side head light of the bus was not burning. The courts below did not accept the plea of the petitioner that the

bulb of the head light on the left side fused on account of the accident. The petitioner did not also sound the horn or apply the brakes till after the accident with the result that the bus stopped after travelling a distance of 40 feet.

3. The learned advocate for the petitioner argued that the facts proved by the prosecution may amount to negligence in civil law but not culpable negligence under criminal law. He referred to the decision in *Andrews v. Director of Public Prosecutions* (1937) A.G. 578 in support of his contention that,

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 the epithets that can be applied 'reckless' most nearly covers the case.

These observations have been quoted with approval in *Intoor John v. State* : AIR1953 Mad774 The above decision of the House of Lords has been considered by the Privy Council in *Vishwanath Vishnu v. King* 1948 MWN 64 : AIR 1948 PC 183 in construing Section 222(e) of the Thanganika Penal Code, which refers to 'rash or negligent' driving in terms similar to Section 304-A and other sections of the Indian Penal Code. It is pointed out in the decision that the negligence charged in the section when referring to negligent driving etc is not necessarily as grave, either in its nature or in its consequence as in the case of manslaughter. It is pointed out further in the decision that although the negligence which constitutes the offence of negligent driving must be of a higher degree than the negligence which gives rise to a claim for compensation in a civil court, it is not, in their Lordships' opinion, of so high a degree as that which is necessary to constitute the offence of manslaughter.

4. The concept of different degrees of negligence recognised in Roman law does not find a place either in the civil law negligence or criminal law negligence of this country. In fact neither Section 304-A I.P.C. nor the other sections of the Indian Penal Code where the mens rea required is negligence, appear to use the word 'negligence' in any different manner from the word 'negligence' in civil law. But there is bound to be difference between the proof of negligence required to sustain a conviction for criminal negligence and proof of negligence required ] in a civil suit

to obtain compensation for damages, in a civil suit it is sufficient to prove neglect of duty by consideration of the probabilities of the case. But, in criminal law it is necessary to prove beyond reasonable doubt the [negligent act of the accused which resulted in particular harm to a person, such as hurt grievous hurt or ceatn. What in fact amounts to criminal negligence is aitticuit to define, but it should show such disregard for lite ana safety of others as to amount to a criminal act, that is, an act against the State, as distinguished from an act against the individual.

5. On the facts of this case, there can be little doubt that the petitioner was culpably negligent in driving a bus without the left head light and without sounding the horn when it was going through a village and taking a bend to enter the main trunk road. The petitioner did not notice the boy Shanmugham running in front of the the bus at a distance of 15 feet though P.W. 1 who was sitting with him was able to notice him. The Courts below have rightly pointed out that it was due to the tact that there was no head light on the left side of the bus. Further It is the duty of the petitioner to look ahead on the road to see persons or children moving about and alert them by sounding the horn. It is quite, likely the accident could not have occurred if the petitioner had not been negligent. The conviction of the petitioner under Section 304-A I.P.C. is therefore correct and there is no ground to interfere with the same.

6. The only remaining question to be considered is the question of sentence. The petitioner has been awarded four months' rigorous imprisonment. He has been in jall for 19 days. Having regard to the facts of the case, it is not necessary to send the petitioner back to jail. I reduce the sentence of imprisonment to the period already undergone, but in addition impose a fine of Rs. 100 ins. one hundred only) and in default, rigorous imprisonment or three months. Petitioner is granted a week's time:or payment of fine.