

In Re: Sundaram Pillai

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Court : Chennai

Decided On : Apr-28-1969

Reported in : (1969)2MLJ464

Appellant : In Re: Sundaram Pillai

Judgement :

ORDER

K.N. Mudaliyar, J.

1. The revision petitioner was the driver of an express bus MDR 4884 belonging to Jayaram Motor Service. Both the Courts below found the accused guilty under Section 304-A, Indian Penal Code, and sentenced him to R. I. for six months. The occurrence is stated to have taken place on 30th March, 1967. The revision petitioner was driving the bus along Tenkasi Road, two miles from Rajapalayam. He met with an accident resulting in the death of one Guruswami, aged about 30, who was driving in a cycle. The plea of the accused was that he drove the vehicle slowly and the cyclist came fast, crossed the road and suddenly fell down before his vehicle. Both the Courts below gave the finding that the accused drove the vehicles rashly and negligently, with the result the cyclist was killed on the spot instantaneously.

2. I shall briefly set out the salient features of the evidence given by P.Ws. 1 to 3. P.W. 1 says that the express bus came fast from west to east and dashed against

the deceased on the south (side) of the road. Then the vehicle went some distance and then came to a stop. The cycle M.O. 1 was found damaged near the body of the deceased. The passengers complained to the accused as to why he drove the vehicle fast and caused the accident. In the cross-examination, it is elicited from P.W.. 1 that he saw the accident at a distance of 10 yards. But P.W. 1 saw the carts and the sheep even at a distance of 150 feet away. The carts and the sheep were going on the tar road. The bus overtook the carts and sheep. The deceased was going in a cycle just in front of the bus at a distance of about 10 or 12 feet. The left edge of the bumper hit him. The bus went to the mudroad by about 3 feet on the south. No doubt, it is elicited from P.W. 1 that, in order to avoid the sheep, the cyclist also turned to south and hit the vehicle on the left extreme of the bumper. But this answer will not undermine the effect of the evidence of P.W. 1 as noticed above. The criticism against the evidence of P.W. 2 is that he did. not notice which part of the vehicle hit the cyclist. But substantially the evidence of P.Ws. 2 and 3 corroborates the evidence of P.W. 1. In fact, P.W. 3 speaks to the bus coming in the centre of the road. He further says that it was coming on the south of the sheep and the carts and the cyclist was going ahead of the bus. The front bumper hit the cyclist. In the course of the cross-examination of P.Ws. 1 to 3, the case set up by the accused in his (section) 342, Criminal Procedure Code statement was not put to any witness. The entire cross-examination of the witnesses was certainly different from the plea of the accused in his (section) 342, Criminal Procedure Code statement.

3. Both the Courts below have disbelieved the evidence of D.Ws. 1 to 5. I have been taken through their evidence and I am not impressed with their testimony.

4. The body of the deceased was found on the mud portion on the southern side of the road, about 101/2 feet away from the edge of the cement road. The accused ought to have been prudent and careful enough not to negotiate through the right half of the road, namely, southern half of the road, when the two bullock carts stopped and sheep were moving about and the cyclist was going ahead of the bus. It is very clear from the way in which the bus was driven, namely, the moving of the bus to a distance of nearly 79 feet from the place where the deceased, lay, as revealed from the tyre marks to a length of 79 feet, and from the marks found

as a result of impact of the left bumper on the cyclist and the cycle, that the accused was rash and negligent in ploughing through as if it were on the southern side of the road, in utter disregard and indifference to the risk involved. He ought to have exercised enough caution and have driven slowly, according to the conditions of the traffic on the road. P.Ws.1 to 3 have been consistent in their evidence that the accused drove the bus fast and their evidence to that effect has not been challenged in their cross-examination. The two circumstances, namely, the speed with which the vehicle was driven and the travelling of the vehicle on the southern side of the road, are strong circumstances indicating that the accused was rash and negligent in driving the vehicle and causing the death of the cyclist. I am in complete agreement with the reasoning and findings of the two Courts below.

5. The learned Counsel for the petitioner referred to the following observations in *Ibramsa, In re* (1962) 2 M.L.J. 508: (1962) M.L.J. 668 in support of his contention that there should be high degree of negligence or rashness in cases as the present one:

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 Prosecution* L.R. (1937) A.C. 576 , 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 degree 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 applied ' reckless' most nearly covers the case. These observations have been quoted with approval in *Intoor John v. State* (1951) 2 M.L.J. 54 The above decision of the House of Lords has been considered by the Privy Counsel in *Viswanath Vishnu Dabholkar v. The King* (1948) M.W.N. 64. In construing Section 222 (e) of the Thanganyika 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.

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, Indian Penal Code, 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 death. What in fact amounts to criminal negligence is difficult to define but it should show such disregard for life and 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.

The learned Counsel for the petitioner also drew my attention to the following observations in *Chamman Lal v. State* : AIR1954 All186 :

It must be pointed out that rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Criminal negligence is gross and culpable neglect, that is to say, a failure to

exercise that care and failure to take that precaution which, having regard to the circumstances, it was imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the consequences in the hope that they may not happen. The law, in my view, does not permit a man to be uncautious on a hope however earnest or honest that hope may be. Some Judges have expressed the view that mere carelessness is not sufficient for sustaining a conviction under Section 304-A, Indian Penal Code. They have said that ' *mens rea*' or a guilty mind must be found in relation to that carelessness before a conviction can be made.

In the case of *A. W. Lazarus v. The State* : AIR1953 All72 , a Bench of this Court held following the decisions in *Empress of India v. Idu Beg* I.L.R.(1881)All. 776 and *H.W. Smith v. Emperor* : AIR1926 Cal300 , that criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused. It was pointed out that the criminality in such a case lay in running the risk of doing such an act with recklessness or indifference as to the consequences. The Bench further held that criminal negligence under Section 304-A, Indian Penal Code, was gross and culpable neglect or failure to exercise that reasonable and proper care and to take precautions to guard against injury, either to the public generally or to an individual in particular, which, having regard to all the circumstances attending the charge, it was the imperative duty of the accused person to have adopted. Another important element which goes to make the offence is that the act of the accused must be found to be the immediate cause of the death, that is to say, the act and the death must be ' *causa causans*'.

I may here refer to a very instructive judgment of the House of Lords in *Andrews v. Director of Public Prosecutions* (1937) 2 All.E.R. 552. In this case Lord Atkin reviewed several of the earlier cases and delivered the leading opinion of the House. Lord Atkin pointed out that the connotations of ' *mens rea*' are not helpful in distinguishing between degrees of negligence, nor do the ideas of crimes and

punishments in themselves carry a jury much further in deciding whether, in a particular case, the degree of negligence shown is a crime and deserves punishment. According to Lord Atkin,

' the principle to be observed is that 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 felony is established.

Lord Atkin observed that the most appropriate epithet which can be applied to such cases is 'reckless.' He further pointed out that : '

It is difficult to visualise a case of death caused by 'reckless' driving, in the connotation of that term in ordinary speech, which would not justify a conviction for manslaughter, but it is probably not all embracing for 'reckless' suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid, it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction.

In an earlier case Lord Ellenborough had pointed out that to substantiate the charge of manslaughter the prisoner must be found to have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention. Lord Atkin explained this observation of Lord Ellenborough in these words:

The word 'criminal' in any attempt to define a crime is perhaps not the most helpful, but it is plain that Lord Ellenborough meant to indicate to the jury a high degree of negligence.

Attention was also drawn by Lord Atkin to a passage in a considered judgment of Lord Hewart, Lord Chief Justice-the passage to which attention was drawn was this:

In a criminal Court, on the contrary, the amount and degree of negligence are the determining questions. There must be 'mens rea.'

But, as was pointed out by Lord Atkin, the connotations of mens rea do not always prove helpful in determining the guilt of an accused in a particular case.

It appears to me that before a conviction can be had under Section 304-A, Penal Code, a very high degree of negligence must be found--negligence which must amount to recklessness or utter indifference to consequences and not merely negligence of tort.

I am in respectful agreement with the principles of law enunciated by the learned Judges in the cases cited above. Applying those principles to the facts of this case, I have no hesitation in finding that very high degree of negligence or rashness is found against the revision petitioner in the criminal act resulting in the death of the cyclist.

6. On the question of sentence, the learned Counsel for the petitioner cited Emperor v. Khanmahomed A.I.R. 1937 Bom. 96 at 98, for the purpose of reducing the sentence of the petitioner. In that case the learned Judge observed:

I think that in all these cases one has to consider whether the rash and negligent act of the accused which has occasioned the death, shows callousness on his part as regards the risk to which he was exposing other persons.

I think the severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the accused.

Adopting the standard, I see no reason to reduce the sentence imposed on the revision petitioner.

7. The conviction and sentence are confirmed and the revision case is dismissed.