

Andrews Vs. Director of Public Prosecutions (on Behalf of His Majesty) (Criminal Appeal)

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Court : House of Lords

Decided On : Apr-22-1937

Judge : Lord Atkin, Viscount Finlay, Lord Thankerton, Lord Wright, Lord Roche

Appeal No. : [1937] UKHL 1

Appellant : Andrews

Respondent : Director of Public Prosecutions (on Behalf of His Majesty) (Criminal Appeal)

Judgement :

Lord Atkin

MY LORDS,

This is an appeal under the necessary certificate of the Attorney-General from an order of the Court of Criminal Appeal dismissing an appeal by the Appellant from conviction and sentence on a charge of manslaughter. The Appellant was tried before Mr. Justice Du Parcq at Leeds Assizes in December, 1936, and being convicted was sentenced to be imprisoned for 15 months and was disqualified for life from holding a motor driving licence.

He was indicted for manslaughter, the particulars of offence being that on 27th June, 1936, he unlawfully killed William Burton Craven. The appeal is based solely on an alleged misdirection, and no issue is raised as to the facts, which can be stated shortly. The Appellant, a man aged 37, was employed by the Leeds Corporation Transport Department at their Donisthorpe Garage. On Saturday, 27th June, at about 10.30 p.m., he was directed to take a van to assist a Corporation omnibus which had broken down at Whingate, about 3 to 4 miles away. About 10.45 a man named Binks was driving a saloon car down the Tong Roadaway from Leeds at about 10 miles an hour. He noticed about 30 yards ahead the deceased Craven crossing the road from Binks' near side. The road is about 29 feet wide. The Appellant, driving fast, over 30 miles an hour, overtook Binks' car, and driving well over on the off side of the road, ran into Craven, who was then within 3 or 4 paces of the kerb. He was carried on the bonnet for a short period, thrown forward and run over by the van. The Appellant, who immediately after the accident nearly ran into a pedal cyclist, did not stop. He returned to the garage after 11 stating that he had not found the omnibus. When challenged a day or two later he denied that he had travelled along the Tong Road on the Saturday night. At the trial he said he was unable to remember the journey at all. There was no dispute that in fact the Appellant was driving the van which killed Craven. The road was well lighted and there were people about. On these facts there would appear to have been a very clear case of manslaughter, and the only question that arises is whether the learned Judge correctly directed the jury.

My Lords, of all crimes manslaughter appears to afford most difficulties of definition, for it concerns homicide in so many and so varying conditions. From the early days when any homicide involved penalty the law has gradually evolved through successive differentiations and integrations until it recognises murder on the one hand, based mainly though not exclusively on an intention to kill, and manslaughter on the other hand, based mainly though not exclusively, on the absence of intention to kill but with the presence of an element of unlawfulness which is the elusive factor. In the present case it is only necessary to consider manslaughter from the point of view of an unintentional killing caused by negligence, i.e., the omission of a duty to take care. I do not propose to discuss the development of this branch of the subject as treated in the successive treatises

of Coke, Hale, Foster and East: and in the judgments of the Courts to be found either in directions to juries by individual judges, or in the more considered pronouncements of the body of judges which preceded the formal Court of Crown Cases Reserved. Expressions will be found which indicate that to cause death by any lack of due care will amount to manslaughter; but as manners softened and the law became more humane a narrower criterion appeared. After all manslaughter is a felony, and was capital, and men shrank from attaching the serious consequences of a conviction for felony to results produced by mere inadvertence. The stricter view became apparent in prosecutions of medical men or men who professed medical or surgical skill for manslaughter by reason of negligence. As an instance I will cite *R. v. Williamson* 3 C. and P. 633 (1807) where a man who practised as an accoucheur owing to a mistake in his observation of the actual symptoms inflicted on a patient terrible injuries from which she died. To substantiate the charge of manslaughter, Lord Ellenborough said, the prisoner must have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention. The word criminal in any attempt to define a crime is perhaps not the most helpful: but it is plain that the Lord Chief Justice meant to indicate to the jury a high degree of negligence. So at a much later date in *Rex v. Bateman* 19 Cr. App. Rep. 8 (1925) a charge of manslaughter was made against a qualified medical practitioner in similar circumstances to those of Williamson's case. In a considered judgment of the Court the Lord Chief Justice, after pointing out that in a civil case once negligence is proved the degree of negligence is irrelevant, said, "In a criminal Court, on the contrary, the amount and degree of negligence are the determining question. There must be mens rea." After citing *Cahill v. Wright* 6 E. and B. 891 (1856), a civil case, the Lord Chief Justice proceeds: "In explaining to juries the test which they should apply to determine whether the negligence in the particular case amounted or did not amount to a crime, judges have used many epithets such as 'culpable,' 'criminal' 'gross,' 'wicked,' 'clear,' 'complete.' But whatever epithet be used and whether an epithet be used or not in order to establish criminal liability the facts must be such that in the opinion of the jury the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the

State and conduct deserving punishment. Here again I think with respect that the expressions used are not, indeed they probably were not intended to be, a precise definition of the crime. I do not myself find the connotations of mens rea helpful in distinguishing between degrees of negligence nor do the ideas of crime and punishment 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. But the substance of the judgment is most valuable, and in my opinion is correct. In practice it has generally been adopted by judges in charging juries in all cases of manslaughter by negligence, whether in driving vehicles or otherwise. 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 the felony is established. Probably of all the 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 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 such a high degree of negligence in the means adopted to avoid the risk as would justify a conviction. If the principle of Bateman's case is observed it will appear that the law of manslaughter has not changed by the introduction of motor vehicles on the road. Death caused by their negligent driving, though unhappily much more frequent, is to be treated in law as death caused by any other form of negligence: and juries should be directed accordingly.

If this view be adopted it will be easier for judges to disentangle themselves from the meshes of the Road Traffic Acts. Those Acts have provisions which regulate the degree of care to be taken in driving motor vehicles. They have no direct reference to causing death by negligence. Their prohibitions, while directed no doubt to cases of negligent driving, which if death be caused would justify convictions for manslaughter, extend to degrees of negligence of less gravity. Section 12 of the Road Traffic Act imposes a penalty for driving without due care

or attention. This would apparently cover all degrees of negligence. Section 11 imposes a penalty for driving recklessly or at a speed or in a manner which is dangerous to the public. There can be no doubt that this section covers driving with such a high degree of negligence as that if death were caused the offender would have committed manslaughter. But the converse is not true, and it is perfectly possible that a man may drive at a speed or in a manner dangerous to the public and cause death and yet not be guilty of manslaughter: and the legislature appears to recognise this by the provision in Section 34 of the Road Traffic Act, 1934, that on an indictment for manslaughter a man may be convicted of dangerous driving. But apart altogether from any inference to be drawn from Section 34 I entertain no doubt that the statutory offence of dangerous driving may be committed, though the negligence is not of such a degree as would amount to manslaughter if death ensued. As an instance, in the course of argument it was suggested that a man might execute the dangerous manoeuvre of drawing out to pass a vehicle in front with another vehicle meeting him, and be able to show that he would have succeeded in his calculated intention but for some increase of speed in the vehicles in front: a case very doubtfully manslaughter but very probably of dangerous driving. I cannot think of anything worse for users of the road than the conception that no one could be convicted of dangerous driving unless his negligence was so great that if he had caused death he must have been convicted of manslaughter. It therefore would appear that in directing the jury in a case of manslaughter the judge should in the first instance charge them substantially in accordance with the general law, i.e., requiring the high degree of negligence indicated in Bateman's case: and then explain that such degree of negligence is not necessarily the same as that which is required for the offence of dangerous driving, and then indicate to them the conditions under which they might acquit of manslaughter and convict of dangerous driving. A direction that all they had to consider was whether death was caused by dangerous driving within Section 11 of the Road Traffic Act, 1930, and no more would in my opinion be a misdirection.

In dealing with the summing-up in the present case I feel bound to say with every respect to the learned and very careful Judge that there are passages which are open to criticism. In particular at the beginning of his charge to the jury he began

with the statement that if a man kills another in the course of doing an unlawful act he is guilty of manslaughter, and then proceeded to ascertain what the unlawful act was by considering Section 11 of the Road Traffic Act, 1930. If the summing-up rested there would have been misdirection. There is an obvious difference in the law of manslaughter between doing an unlawful act and doing a lawful act with a degree of carelessness which the legislature makes criminal. If it were otherwise a man who killed another while driving without due care and attention would ex necessitate commit manslaughter. But as the summing-up proceeded the learned Judge reverted to and I think rested the case on the principles which have been just stated. On many occasions he directed the attention of the jury to the recklessness and high degree of negligence which the prosecution alleged to have been proved and which would justify them in convicting the accused. On consideration of the summing-up as a whole I am satisfied that the true question was ultimately left to the jury, and that on the evidence the verdict was inevitable. For these reasons I came to the conclusion that the appeal should be dismissed.

Lord Thankerton

MY LORDS,

I have had the privilege of considering the Opinion which has just been delivered by the noble Lord on the Woolsack, and I desire to express my complete concurrence with it.

Lord Wright

MY LORDS,

I also agree; and I am asked by my noble and learned friend Viscount Finlay, who has also had the privilege of considering the Opinion which has just been delivered, to say that he agrees.

Lord Roche

MY LORDS,

I also concur.

