

(2001) 11 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 11470 of 2000

Court on its own motion

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Nov. 23, 2001**Citation:** (2005) 4 RCR(Criminal) 673**Hon'ble Judges:** H.S.Bedi, J and A.S.Garg, J

Advocate: Mr. R.S. Cheema, Senior Advocate, Mr. KDS Hooda, Mr. Pawan Girdhar, Mr. P.R. Yadav and Ms. Ashima Mahindru, Mr. Vinod Ghai, Advocates; Mr. S.S. Randhawa, DAG and Mr. Randhir Singh, DAG, Punjab. Mr. L.D. Mehta, Addl. A.G. Haryana, Mr. GPS Nagra, AAG Haryana., Advocates for appearing Parties

Judgement

Harjit Singh Bedi, J.

1. The matter before us is of a great public importance and clearly reflects the anxiety and concern that we feel towards the travelling public. The number of vehicles on the road, the speed to which they can now be driven, the lack of elementary skills, knowledge and etiquette of decent driving have led to an enormous increase in the number of accidents and a journey by road with mangled vehicles and bodies strewn around is a common experience. The statistics picked up by us from The Tribune dated 19, 20 and 21.8.2001 are truly disturbing. It has been reported that there has been a 500 per cent increase in deaths in accidents in Punjab between 1980 to 2000 and that against 472 deaths in 1980, 2800 persons had lost their lives, in 1999 2000. It has also been reported that the number of murders in Punjab in 1980 was 620 and while the murders had mercifully remained around 800 as of today, the number of deaths in road accidents had gone up alarmingly. It was further reported that the worst offenders were trucks, followed by cars, buses and twowheelers. Little wonder, therefore, that a safe return from a journey is often an occasion for thanks giving. It is in this background that the fate of the road traveller has become a matter of focus and concern and the traditional interpretation of the law governing motor accidents must be re interpreted to meet

the changed scenario and the crying need of the hour till the legislature acts decisively and makes fundamental changes in the law governing the concept of rashness and negligence as visualised under Section 304A of the Indian Penal Code. While we were yet pondering over this matter, we came across a News item in 'The Tribune' dated 9.8.2000 captioned "Topsy Crew put passengers in driving seat", in which it was reported that five Conductors and Drivers of the Haryana Roadways had taken a bus out of the depot for a joyride and after collecting free liquor and food from a Dhaba which they often patronised while on duty and while driving and partying in the bus had a collision with a car killing five members of a family. It was also reported that from enquiries made, it had been revealed that Haryana Roadways buses had been involved in about 300 accidents in three months and most of them had, on investigation, been attributed to drunken driving. Alarmed by this and much other information available almost daily from the newspapers, we issued notice to the Advocates General for the States of Punjab and Haryana and also the standing counsel for the U.T. Administration to assist us on the question as to whether in such or similar cases a charge under Section 304A of the Indian Penal Code was in order or the nature of the act required a more stringent applicability of the law. We also requested several counsel to assist us and are indeed grateful to Mr. R.S. Cheema, Senior Advocate, who has helped us in arriving at our conclusions.

2. We have considered the matter very carefully and are of the opinion that in cases of extreme recklessness or negligence, a driver cannot be said to be guilty of merely committing a rash or negligent act to be booked under Section 304A of the Indian Penal Code as in certain cases the act may amount to culpable homicide not amounting to murder and in the most extraordinary of cases, may even amount to murder. We record, in short, the reasons for our opinion.

3. Section 304A of the Indian Penal Code reads as under :

"Causing death by negligence :

Whoever causes the death of any person by doing any rash and negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

4. In *Empress of India v. Idu Beg*, I.L.R. 3, Allahabad, 776, It was observed that criminal rashness is "hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without intention to cause injury or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness of indifference as to consequences."

5. In *Bharosi v. State*, AIR 1957, MP, 236, the words 'rashness' and 'negligence' have been elucidated thus :

6. "Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that they will not. And negligence is a

breach of duty imposed by law. In criminal cases, the amount and degree of negligence are the determining factors. According to Russle on Crime (1950 Ed) p. 641, there must be mens rea in the criminal negligence also. The learned author has said that Judges have used many epithets to describe negligence, such as `culpable`, `criminal`, `gross`, `wicked, or `complete negligence`. But whatever epithet be used in order to establish criminal liability, the facts must be such that the negligence of the accused went beyond a mere matter of compensation and showed such disregard for the life and safety of others as to amount to a crime".

7. To answer the question posed by us, Section 304A would have to be read alongwith Section 299 which defines culpable homicide and Section 300 which enmerates the circumstances in which culpable homicide may amount to murder. Section 299 and clause fourthly of Section 300 which are relevant for our purpose are reproduced below :

"299. Culpable homicide.

Whoever causes the death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide".

300. Murder : Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly xx xx xx xx

3rdly xx xx xx xx

4thly of Section 300 "If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

8. It will be evident from a reading of the second part of Section 299 and clause 4thly of Section 300 that they do not talk about `intention" but make reference to the fact that a person committing such an act must have the knowledge that he could cause death or bodily injury. The two sections, however, differ in one material aspect inasmuch that while Section 299 visualises that death was likely to be caused by a particular act, Section 300 presupposes (interalia) that the act committed was so imminently dangerous that it must in all probability cause death or is likely to cause death. It is, therefore, the nature of the act, which would bring the matter within either Section 299 or Section 300. This distinction has been clearly brought about in Queen v. Gora Chand Gopee and others, reported as 1866 Weekly Reporter, Criminal, 45 and by the Hon"ble Supreme Court in State of Madhya Pradesh v. Ram Prasad, A.I.R. 1968 Supreme Court 881. In this case, Ram Prasad had quarrelled with

his mistress Mst. Rajji and in the heat of moment had poured kerosene oil on her and set her alight. The trial Court acquitted him of the charge of murder and convicted him for an offence under Section 324 of the Indian Penal Code. The High Court in appeal set aside the judgment of the trial Court and convicted him under Section 304II. The matter was taken to the Supreme Court by the State and while discussing clause fourthly of Section 300 of the Indian Penal Code, it was observed that Ram Prasad's act was covered by that clause and convicted him under Section 302 of the Indian Penal Code by holding :

"Although clause fourthly is usually invoked in those cases where there is no intention to cause the death of any particular person (as the illustration shows) the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death."

9. The above observations clearly underline the view that it would be the nature of act that would determine the gravity and nature of the offence.

10. Equally relevant are the observations of Division Bench of the Lahore High Court in *Gurdev Singh Sardar Puran Singh v. Emperor*, AIR 1941 Lahore 459. In this case the accused was driving a lorry down the Grand Trunk Road from Delhi northwards in the direction of Panipat. He was signalled to stop by a Police Officer but instead of doing so, attempted to get away and drove along the G.T. Road at a speed of 50 or 55 miles an hour. As the lorry came near a culvert, a young girl, who was crossing the road was run over and killed. Although the Division Bench held that the facts made out a case of rash and negligent driving punishable under Section 304A of the Indian Penal Code yet the observations are extremely relevant in the context of this discussion :

"The appellant was driving fast on a public highway and while there is no doubt he was driving a heavy vehicle at great speed it cannot be said that he knew that by driving at that pace on an open road in the country he was likely to cause death. The child who was killed came from the side of the road and attempted to cross in front of the lorry. It is true that if the lorry had not been driven at this great speed the driver could have avoided the accident and he certainly caused the death of the child by his rash and negligent driving. To say, however, that he must have known that such an accident was bound to occur, and therefore, he was likely to cause death, is putting an interpretation upon the facts which they cannot bear. It is possible that the driving of a heavy vehicle at high speed in a crowded place like a city might result in charge under Section 304, or even under Section 301, Penal Code, but it would be impossible under the circumstances of this case to bring the offence under either of these sections. We think that the offence clearly comes within Section 304A, Penal Code, as the appellant under all the circumstances of the case has certainly committed a rash and negligent act not amounting to culpable

homicide. We, therefore, set aside the conviction under Section 302, Penal Code, and the sentence of death, and convict Gurdev Singh appellant under Section 304A, Penal Code, and sentence him to rigorous imprisonment of 18 months".

11. These observations clearly supplement the observations in Bharosi's case (supra) and can profitably be applied to the scenario as it exists today 60 years after the judgment was delivered. The enormous increase in the population and all around development has virtually obliterated the difference between town and country. The proliferation of motor vehicles of various categories and the speeds which some of them can achieve make these broad principles clearly applicable. The statistics culled out from various articles in the `Tribune" and the `Indian Express" are truly mindboggling. We reproduce here some of the relevant information :

Vehicles Registered in Punjab

Year Buses Cars Jeeps Taxis 3wheelers 2wheelers

1980 5,850 25,888 5,495 1,867 2,897 1,76,555

1990 9,470 66,312 12,453 4,034 13,550 8,77,837

1997 13,823 1,19,958 20,028 5,166 22,337 16,30,068

2000 15,708 1,70,925 23,111 6,065 26,664 19,54,764

Accidents : Involvement of various types of vehicles

Year Buses Cars Jeeps Taxis 3wheelers 2wheelers

1980 286 68 31 259 16 55

1990 293 177 77 398 33 93

1997 522 631 x* 936 x* 214

1998 526 740 x* 1091 x* 270

x* figures included in other categories

Deaths in road accidents

Year Accidents Vehicles involved Killed Injured

1980 1,010 1,064 472 836

1990 1,621 1,621 1,133 1,322

1997 3,301 3,301 2,353 2,721

1998 3,579 3,579 2,295 2,705

12. It is also significant that the number of accidents involving cars visa vis other vehicles has increased phenomenally and that the number of dead and injured in

road accidents along the main highways is much higher than the side roads. This is clear from the following tables:

Districts with more than 150 deaths in road accidents in 1997/1998.

Year	Accidents	Vehicles involved	Persons Killed	Persons Injured
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1997/1998	1997/1998	1997/1998	1997/1998	
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Ludhiana	543/500	543/500	399/294	280/297
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Patiala	483/542	483/542	288/334	376/301
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Amritsar	286/285	286/282	218/187	298/308
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Ropar	291/374	291/374	169/221	243/410
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Hoshiarpur	213/232	213/232	165/152	204/267
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Gurdaspur	266/207	266/207	162/115	179/186
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Sangrur	210/240	210/240	161/149	233/209
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Jalandhar	247/237	247/237	156/163	167/142
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Year	District/Union Territory	Persons killed	Persons injured
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1998	Chandigarh	128	322
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"	Panchkula	83	242
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"	Gurgaon	321	759
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"	Faridabad	293	1069
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"	Karnal	260	589
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"	Kurukshetra	184	617
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"	Panipat	185	368
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1999	Chandigarh	137	409
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"	Panchkula	79	323
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"	Gurgaon	316	851
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"	Faridabad	335	1158
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"	Karnal	213	742
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"	Panipat	193	391
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"	Kurukshetra	209	813
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2000	Chandigarh	80	292
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" Panchkula 50 148

" Gurgaon 196 411

" Faridabad 161 570

" Karnal 123 351

" Panipat 85 193

" Kurukshetra 93 410

Upto August 17, 2000,

Upto June 30, 2000,

13. The above table underlines the speed which is often achieved by drivers on the open highway. Statistics are impersonal but they do convey the gory details of the death count along the grand truck road between Ambala and Delhi (N.H. 1.). In the year 199899, 1073 accidents took place leading to 638 deaths and injuries to 1323 persons. There was a marginal decrease in the year 19992000 on the completion of the fourlaning of the highway with 922 accidents leading to 576 deaths and 1284 injured. It can safely be assumed that a large number of accidents figuring in the tables were probably caused by the extreme rashness or negligence visualised by us.

14. We are, therefore, of the opinion that in cases covered by the News items and in similar matters not necessarily arising out of motor accidents which are the result of utter callousness, that come to our notice with disturbing regularity and are a matter of deep concern, a prosecution for an offence punishable only under Section 304A of the Indian Penal Code may not be in order, and the circumstances may warrant more vigorous action. We, therefore, issue a direction to Courts subordinate to this Court to ensure that in cases of extreme negligence and rashness and only where the evidence and circumstances so warrant, a charge under Section 304 or 302 of the Indian Penal Code adequate to the circumstances of the case be framed alongwith an alternative charge under Section 304A of the Code. The matter is disposed of accordingly.

JUDGMENT accordingly