Tika Ram Vs Rex

Court: Allahabad High Court

Date of Decision: Oct. 10, 1949

Acts Referred: Penal Code, 1860 (IPC) â€" Section 304A

Citation: AIR 1950 All 300 : (1950) 20 AWR 23

Hon'ble Judges: Agarwala, J

Bench: Single Bench

Advocate: Mukerji, for the Appellant; Jai Kishan Lal, for A.G.A., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Agarwala, J.
This is an application in revision by Tika Ram, a motor-lorry driver, who was convicted by the Additional City Magistrate of

Kanpur u/s 304A, Penal Code and sentenced to six months" rigorous imprisonment and whose appeal was dismissed by the Additional Sessions

Judge.

2. The prosecution case was that on 30th May 1948 the applicant was driving lorry No. 2407 on the road running between Fazal Ganj and Sabzi

Mandi in the city of Kanpur From the opposite side an ekka was coming. Two persons, namely, Sone Ram deceased and Ram Charan P. W.

were also coming from that direction. They were by the side of the ekka towards its right. These persons, therefore, were practically in front of the

lorry. According to the statement of the accused, he blew the horn. This statement has not been disbelieved by the lower appellate Court and has,

therefore, to be taken as correct. When the horn was blown, Ram Charan P. W. wisely turned to the left, while Sone Ram de-ceased

unfortunately turned to his right towards the footpath. Meanwhile Tika Ram accused appears to have turned the lorry to his left in order to avoid

Sone Ram, almost crossing the footpath, and in doing so over-ran the deceased Sone Ram. The accused stopped the lorry and picked up Sone

Ram and took him to the hospital. Sone Ram, however, died on his way to the hospital.

3. The facts of the case are not in dispute. The question is whether the accused was guilty of rash or negligent driving. The Magistrate thought

he (accused) struck the man when he had reached the foot-path in the attempt to save himself from the lorry, makes it evident that the accused

was both rash and negligent in his driving.

4. The lower appellate Court took the view that the lorry was being driven at a speed of 20 miles per hour and the fact that he could not stop it

and save Sone Ram from being crushed to death showed that it was being driven rashly and negligently.

5. Section 304A, Penal Code, runs as follows: ""Whoever causes the death of any person by doing any rash or 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.

6. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act done will in all probability

cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a ""rash"" or

''negligent'' act. A negligent act is an act done without doing something which a reasonable man, guided upon those considerations which ordinarily

regulate the conduct of human affairs, would do, or an act which a prudent or reason-able man would not do in the circumstances attending it. A

rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in

rashness the action is done precipitately with the consciousness that the mischievous or illegal consequences may follow, but with a hope that they

will not. But it is not necessary that there should always be this consciousness in a rash act. It has also been observed that in negligence there is no

such consciousness of the consequences. This is also untrue as the observations of Lord Atkin quoted hereafter will show.

7. Now what may be called a negligent act'' in civil proceedings is not necessarily so in criminal cases. The principles of liability governing civil

actions based on negligence differ from those governing criminal liability in two important particulars, firstly, that negligence in a criminal case must

be culpable and gross and not the negligence which is merely based upon an error of judgment, or arises because of defect of intelligence, and

secondly, that the principle of the avoidance of liability when there is contributory negligence by the injured person is no defence in criminal law.

8. In illustration of the first point Lord Ellenborough''s observations in Rex v. John Williamson (1807) 172 ER 579 : 3 Car. & P. 635 may be cited.

In that case, a person in the habit of acting as man-midwife tore away part of the prolapsed uterus of one of his patients, supposing it to be part of

the placenta, by means of which the patient died. Lord Ellen-borough observed :

To substantiate that charge (Man-Slaughter), a prisoner must have been guilty of criminal misconduct arising either from the grossest ignorance or

the most criminal inattention. One or other of these is necessary to make him guilty of that criminal negligence and misconduct which is essential to

make out a case of man-slaughter. It does not appear that in this case there was any want of attention on his part; and from She evidence of the

witnesses on his behalf it appears that he had delivered many women at different times and from this he must have had some degree of skill. It

would seem that having placed himself in a dangerous situation, he became shocked and confounded. I think that he could not possibly have

committed such mistakes in the exercise of his unclouded faculties.

9. O''brien J., in summing up the case to the jury in Elliott''s case, 16 Cox. Cr. C. 710 said :

What the prisoner must be found guilty of is gross negligence, or recklessly negligent conduct. However, the degree of care to be expected from a

person, the want of which would be gross negligence or less than that, must in the necessity of things, which law cannot change, have some relation

to the subject and the consequences. But from the very language of the indictment, which alleges the act to be done feloniously, it results that there

must be a certain moral quality carried into the act for which the prisoner is made criminally responsible. For intellectual defect, for mere mistake of

judgment, he cannot be found guilty. That is the subject of the civil remedy.

10. The law on the point was summarised in a recent case by Lord Atkin, Andrews v. Director of Public Prosecutions (1937) 2 ALLE R 552 :

1937 AC 676. His Lordship observed ;

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 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.

11. The second principle which distinguishes criminal from civil liability is that contributory negligence of the injured person is no defence to charge

of causing death by a negligent act. But at the same time in order to find whether there was negligence at all, or whether the negligence was so

gross as to make the accused criminally liable, one has to take into consideration all the attending circumstances and the attending circumstances

must include the situation created by the negligent act of the injured person.

12. Now, in the present case, there is no evidence on the record as to what speed limit had been prescribed by the authorities in the city of

Kanpur. According to the accused he was driving at 15 or 20 miles per hour. This statement has been accepted by the lower appellate Court. This

speed does not appear to be a dangerous speed. The accused further stated that when he saw the deceased in front of his lorry, he blew the horn.

This statement has also been accepted by the lower appellate Court. It appears that when the deceased did not listen to the horn, the accused

swerved to his left in order to avoid the deceased. It appears that when the accused had already swerved to the left, the deceased turned to his

right, that is, in the same direction in which the lorry had been turned by the accused. The accused thereupon seems to have still further turned his

lorry to the left so as to reach the foot-path on the left. At this point the deceased was caught underneath the lorry and crushed. It is quite possible

that when the deceased turned to his right, the distance between the deceased and the lorry was so short that there was no time for the accused to

stop the lorry at once. Even if it be assumed that a more careful driver would have stopped the lorry at once, I cannot hold that the act of the

accused in swerving to his left, in order to avoid the deceased, was so grossly negligent or reckless that the accused must be held criminally liable.

13. It must be observed that the accused did not violate any rule of the road. In swerving to his left, he was observing the rule which bade him to

keep to his left. If in swerving to the left, he had not taken care to see whether there were pedestrians on the footpath or on his left on the road

itself and had crushed one of them, that would have been entirely a different matter. Here, however, the accused was doing his very best,

according to his lights to save the deceased from being caught under his lorry and at best there was an error of judgment.

14. In my judgment, the prosecution failed to establish clearly the guilt of the accused. I would, therefore, allow this application in revision, set

aside the order of conviction and sentence passed upon the applicant and acquit him.

15. The applicant is on bail and need not surrender.