
(1984) 08 MP CK 0002

Madhya Pradesh High Court

Case No: Criminal Rev. No. 686 of 1982

Chintaram

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Aug. 24, 1984

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 363, 363(1)
- Penal Code, 1860 (IPC) - Section 304A

Citation: (1986) LJ 156

Hon'ble Judges: P.C. Pathak, J

Bench: Single Bench

Advocate: Y.K. Munshi, for the Appellant; D.D. Bhargava, for the Respondent

Final Decision: Allowed

Judgement

P.C. Pathak, J.

The Applicant-accused has filed the revision challenging his conviction u/s 304A of the Penal Code and sentence of rigorous imprisonment for eight months, passed on him in Crl. Appeal Nos. 32 and 34 of 1982, by the Sessions Judge, Jagdalpur, arising out of judgment dated 15.5.1982, passed by the Judicial Magistrate, First Class, Narayanpur, in Criminal Case No. 127 of 1981.

2. The prosecution case is that on 15.3.1981, at about 4.30 p.m., deceased Rukmibai, along with Rondibai and Bhukibai (PW 4), was returning from Narayanpur market by metal road leading to Kondagaon, when the accused on motor cycle CPR 4335 came from behind and dashed against Rukmibai, who received serious injuries and fell unconscious. She succumbed to her injuries at 5.45 p.m. the same day at Primary Health Centre, Narayanpur as per intimation, Exh. P-3. Sirnath (PW 1) made a report (Exh. P-I) at Police Station Narayanpur. The accused and pillion rider Mukaru also received injuries.

3. M.P. Shrivastava (PW 5), S.I. Narayanpur, held inquest on the dead body on 15.3.1981 vide Exh. P-7. Dr. Vijay Kumar Sanjay (PW 7) did the post-mortem vide Exh.P-8A. The cause of death was head injuries resulting in intracranial hemorrhage. Patwari Laxman (PW 6) prepared a map on 18.3.1981, Exh. P-15. The motor cycle was seized vide seizure memo. Exh. P-9 and got inspected by a mechanic. The inspection report is not filed. After recording statements of witnesses, charge-sheet was filed.

4. The trial court framed charge u/s 304A of the Penal Code against the accused. The accused abjured his guilt.

5. The prosecution examined three witnesses to prove the death of Rukmibai caused by rash and negligent act of the accused. Sirnath (PW 1) who made the first information report (Exh. P-I) and Phoolsingh (PW 2) were declared hostile. They were cross-examined by the learned Addl. Public Prosecutor. Their statements do not throw light except that Phoolsingh (PW 2) admitted in his cross-examination that after the accident, the deceased lay on the left side of metal road. Bhukibai (PW 4) stated that she along with deceased was returning from Narayanpur market by her left. The accused came from behind on motor cycle from Narayanpur. Even though the deceased went out of the metal road to walk on unmetal part of the road, the motor cycle of the accused hit her from behind and caused the accident. The deceased was taken to the hospital where she succumbed to her injuries. In cross-examination, she admitted that she and the deceased both were in the middle of the road. From the middle of the road, the deceased ran towards her left. While she was going to her left, the accused hit her with his motor cycle. She also stated that the accused was driving his motor cycle on the left side of the road.

6. In his examination, the accused stated that he was driving his motor cycle with a speed of 20 km. per hour. On the pillion Mukaru was sitting. When he saw the deceased and Bhukibai (PW 4)", he blew the horn. Hearing that, the deceased all of a sudden ran to her left, he tried to swerve the motor cycle to avert the accident, but the deceased dashed against the motor cycle. He denied that he caused her death by his rash and ftegligent act of driving the motor cycle.

7. The learned trial court held that the deceased and her companion Bhukibai (PW 4) both were going by their left on the road. The motor cycle dashed against the deceased from behind so as to attract Section 304A of the Penal Code. As regards Bhukibai (PW 4), admission in cross-examination that both were in the middle of the road and on hearing the sound of the motor cycle, the deceased ran towards the left of the road, the learned trial court observed that this might have been due to her old age, illiteracy and lapse of time.. This part of her statement was, therefore, ignored. In view of the finding that the deceased was going by her left and the motor cycle hit her on the left side of the road, the accused was found guilty u/s 304A of the Penal Code and was sentenced to suffer rigorous imprisonment for one year.

8. The accused filed two appeals, one through his advocate, Mr. Surendra Sharma, registered as Crl. Appeal No. 32 of 1982 and the other through Mr. A. K. Samant, registered as Appeal No. 34 of 1982 against the one and the same judgment of the trial court. The appeal court disposed of both the appeals by a common judgment which is under challenge in this revision.

9. The appeal court did not agree with the approach of the learned trial court. It took the view that in the absence of any vehicular traffic, pedestrians have a right to walk in the middle of the road. In the event of a vehicle approaching from behind, such pedestrians, according to road rules, are supposed to go on their left and the vehicle approaching from behind should overtake the pedestrians only from the right. In the present case, as stated by Bhukibai (PW 4), the deceased rightly left the middle portion of the road and ran towards the left side of the road. The accused instead of bypassing her from the right as per road rules, attempted to bypass from her left. Thus, disagreeing with the reasons of the trial court, the lower appellate court maintained his conviction though for different reasons, but reduced the sentence to rigorous imprisonment for eight months. Being aggrieved by this judgment, the Applicant has filed the present revision.

10. u/s 304A of the Penal Code gravamen of the offence consists in the conduct of the accused being either "rash or negligent". In criminal cases, the amount and degree of negligence are the determining factors. 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 a crime. Section 304A, like all other sections of the Penal Code, requires a mens rea or guilty mind. The rashness or negligence must be such as fairly to be described as criminal. Mere carelessness is not sufficient. See: [Bharosi Vs. State](#), . In this case, a truck was being driven on the wrong side of the road and when the driver saw a cyclist coming from the opposite direction, he turned the vehicle to the left side of the road. The cyclist, finding the truck on the wrong side, turned to his right side. The cyclist dashed against one side of the truck and the man riding the carrier was killed. The brakes of the cycle were found to be out of order. The court held that the accused was entitled to acquittal of charge u/s 304A of the Penal Code.

11. In [State Government Vs. Bhawanesh Kumar](#), , this Court observed that degree of rashness or negligence will have to be proved which will make it safe for the court to infer that conduct which is complained of is a crime. It is always easy to be wise after the event and condemn as negligence what was only a misadventure and besides "mere mistake" or "intellectual defect" is not sufficient to constitute criminal rashness or criminal negligence in law. There must be a wilful and forward confidence in his own opinion which is contrary to all reason and experience. In the aforesaid case, the accused was driving a motor truck. He saw a buffalo cart in the middle of the road in front of him. The driver wanted to overtake the cart from the

right when the buffaloes also swerved to the right whereupon the driver bypassed it from the left. This Court observed that in overtaking the buffalo cart from the left, the accused was not taking a risk with recklessness or with indifference as to consequences. In driving a mechanically propelled vehicle, the driver has most often to take a decision in a split second. He has to intelligently anticipate what the other user of the road is intending to do and regulate his conduct accordingly. If the other person has made a mistake that does not absolve him from the consequences of his act. In the circumstances of that case, it was held that there was no criminal negligence or failure to exercise that reasonable and proper care which the circumstances of the case demanded.

12. In *State of Maharashtra v. Vijay Sadanand Shenoy* 1981 ACJ 494 (SC), the deceased while crossing a road stopped at the mid-road to allow the vehicular traffic pass. A motor cycle after taking over a bus was proceeding from behind when the deceased suddenly took a step backward and then the fatal impact came about. It was held that the driver of the motor cycle was not to be blamed as he could well have bypassed both the bus and the deceased had the deceased not taken the fatal erratic step. The acquittal was, therefore, affirmed.

13. It was also observed in *State of Maharashtra v. Goutam*, 1977 Cri. LJ (Bom.) [Sic], that the death of a pedestrian in running down case may very well be purely accidental, or may be due to his own negligence. To presume that because a person has been killed, the driver of the vehicle must be guilty overlooking these two possibilities. To these two possibilities, one more may be added as a third possibility, that is, that there may be what may be called a pure error of judgment on the part of the driver.

14. The legal position, as stated above, is that mere breach of Driving Regulations does not necessarily give rise to an inference of a criminal negligence. Similarly, mere fact that a pedestrian is knocked down and has died, the driver of the erring vehicle cannot be presumed to be guilty of rashness or negligence. The prosecution has to prove that rash and negligent act of the accused was the proximate cause of the death. The question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection, which a prudent and reasonable man would consider to be sufficient upon circumstances of the case. The mere fact that the accident would not have taken place, if the accused would have been still more cautious would not be enough to make him liable u/s 304A of the Penal Code.

15. In the present case, the deceased with her companion Bhukibai (PW 4) was going in the middle of the road. The view of the lower appellate court that in the absence of vehicular traffic, pedestrians have a right to use the road in any manner they like cannot be accepted as a uniform rule. Persons who exercise right of way are bound to see that they do not trench upon the rights of others by incommoding them. They have, therefore, to obey the rules and regulations of the road. When the

deceased was going in the middle of the road, she ought to have been watchful of any approaching vehicle from behind and if so, she was duty bound to take to her safety giving sufficient time and place to the driver of the approaching vehicle to regulate its driving suitably.

16. In the present case, seeing that the deceased and her companion were going in the middle of the road, the accused-driver must have thought it proper and safer to continue driving his motor cycle from the left side of the road. When the motor cycle came very close, it appears that the deceased took a decision abruptly to go to the left side of the road. Had this traffic sense not dawned in her mind so late, the unfortunate accident may not have taken place at all. The deceased by her erratic decision to come to her left made the accident inevitable since she did not give any reasonable time to the driver of the motor cycle to negotiate with the situation at all. The map (Exh. P-15) reveals that the deceased had fallen in the middle portion of the road close to its left edge and not on the kacha portion on the left side of the metal road as deposed by Phoolsingh (PW 2). The width of the metal road is shown to be 12 ft. and the kacha portion of the road on the left is 9 ft. and on the right 7 ft. The fact that the deceased fell on the edge of the metal road shows that the accused must have been driving his motor cycle on the kacha portion of the road. Looking to the fact that there was a gap of about 15 ft. (including the kacha road) from the left edge, no inference of negligence can be drawn against the accused when he bypassed the deceased and her companion from their left. It was also argued that after hitting the deceased, the accused drove away his motor cycle. This conduct of the accused was construed against him by the lower appellate court who observed that the accused showed complete apathy to a human life. It is, no doubt, true that the accused should not have run away after the deceased was hit by his motor cycle and should have voluntarily rendered all possible assistance including a report to the police. However, one cannot lose sight of the fact that the accident took place on the outskirts of Narayanpur and the people nearby reached the spot soon after the accident. Of late, a tendency has grown among such people to turn in a rowdy crowd and chastise the driver of the vehicle merely because an accident had taken place. The conduct of the accused, though reprehensible, may be just to save himself from fury of the approaching crowd. I do not think that inference of guilt can be drawn from that fact.

17. In the facts and circumstances of the present case, I am of the opinion that the accident became inevitable on account of erratic behaviour of the deceased and it became impossible for the accused to modulate his driving suitably to avoid causing hurt to the deceased.

18. Before parting with this case, I find that the judgment of the lower appellate court was pronounced on 5.10.1982. The order-sheet of the appeal court does not show that any copy of the judgment was delivered to the accused. The accused filed the revision along with a certified copy of the judgment for which he made an

application on 11.10.1982 and the copy was delivered to him on 15.10.1982. He filed the revision along with this certified copy of the judgment on 25.10.1982. Attention of the appeal court is drawn to Section 363 of the Code of Criminal Procedure, 1973. Sub-section (1) thereof provides that when the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after pronouncement of the judgment, be given to him free of cost. This provision is also applicable when judgments are delivered in appeals. See: [Anil Kumar Biswas Vs. The State](#), and Agadhu Mishra v. State ILR 1958 Cut. 580. It is hoped that the lower courts adhere to provision.

19. The revision is allowed, the conviction and sentence awarded to the accused-Applicant are set aside and he is acquitted of the offence charged with. The Applicant is on bail. He need not surrender to his bail. His bail bonds shall stand discharged.