

(1918) 01 BOM CK 0041

Bombay High Court

Case No: None

Abas Mirza

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Jan. 11, 1918**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 336

**Citation:** AIR 1918 Bom 230 : 45 Ind. Cas. 509**Hon'ble Judges:** Shah, J; Marten, J**Bench:** Division Bench

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**Judgement**

Shah, J.

In this case the accused was originally charged u/s 279 of the Indian Penal Code with driving a motor car on a public way in a manner so rash or negligent as to endanger human life; but the learned Magistrate finds that the evidence shows that the accused was not to blame for the collision which in fact occurred and that the charge u/s 279 cannot be sustained. He, however, proceeded against the accused with the charge of doing an act so rashly or negligently as to endanger human life or the personal safety of others u/s 336, Indian Penal Code.

2. The act complained of here is that the accused drove his car without wearing his spectacles which he was required to wear by the license under which he drove the car. The learned Magistrate has come to the conclusion that under the circumstances his omission to wear the spectacles at the time of driving the car was sufficient to endanger human life. From the finding recorded by the trial Magistrate and from the course which the proceedings took before him, it seems to me that to a certain extent he has been unconsciously influenced in his conclusion by the fact that there was a serious accident. But for the purposes of this case, the fact of there having been an accident, for which on the evidence the accused is found not to be responsible, must be left out of consideration. It would clearly be a rash or negligent act for a person to drive a motorcar without wearing spectacles if his eyesight was

really defective. But an omission to wear the spectacles at the time of driving the car in every case, where a driver may properly use spectacles, would not necessarily render the driver liable u/s 336. It must depend upon the nature of the defect in the eyesight, and the necessity for using spectacles in each case.

3. In the present case there is the evidence of an oculist which has not been disbelieved by the trial Magistrate. That evidence shows that the defect in the eyesight of the accused is not very much and that it would not appreciably interfere with his efficiency as a driver, even though he drove without spectacles. It is true that the accused was required by his license to use eye-glasses at the time of driving the car. But the circumstance must be considered along with, and in the light of, the medical evidence. Having regard to the evidence, it seems to me that on the facts of this case it is not made out that the present accused, if he drove his car without wearing spectacles, would be acting so rashly or negligently as to endanger human life or the personal safety of others.

4. On these grounds I am of opinion that the accused is not guilty u/s 336 of the Indian Penal Code. In the present case we are not concerned with the effect of the omission on the part of the driver to comply with the condition of his license and I express no opinion as to what effect such omission might or ought to have on the license.

5. I would set aside the conviction and sentence and direct the fine, if paid, to be refunded.

Marten, J.

6. As we are differing from the learned Acting Chief Presidency Magistrate, I should like to add this. The want of spectacles had nothing whatever to do with the accident. The Magistrate finds that the accused was not responsible for the accident. Secondly, no question about the license arises here. Whether that should be or should not be renewed is a matter for other people to decide. Nor must it be thought that our decision amounts to this that short sighted people can drive their cars in Bombay without their spectacles. Speaking for myself my opinion is indeed entirely the other way.

7. Now in the present case we have got to see what is the evidence as to this man's eye sight. The finding of the learned Judge is that an oculist (who was called as a witness by the accused) says that the defect is not very much and that it would not appreciably interfere with his efficiency as driver, even though he drove without spectacles, but the oculist admits that it would make some slight difference if he drove without spectacles. That evidence, in my opinion, is not sufficient to make the conduct of the accused amount to a criminal offence u/s 336 of the Indian Penal Code.

8. Under these circumstances I agree in thinking that the conviction should be set aside and the fine, if paid, refunded.