

CASE NO.:
Appeal (crl.) 45 of 2007

PETITIONER:
Rathnashalvan

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 11/01/2007

BENCH:
DR. Arijit Pasayat & S.H. Kapadia

JUDGMENT:
JUDGMENT

DR. ARIJIT PASAYAT, J. :

1. Leave granted.

2. Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Karnataka High Court dismissing the criminal revision filed by the appellant questioning correctness of the judgment of learned Second Additional Civil Judge (Jr. Dn.) & JMFC, Hassan. The appellant was convicted for offences punishable under Sections 304-A, 279 and 337 of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to pay a fine of Rs. 700/- for the offence punishable under Section 279 IPC, Rs. 300/- for the offence punishable under Section 337 IPC and simple imprisonment for six months for the offence punishable under Section 304-A IPC. Default stipulations were provided in respect of the fines imposed. An appeal was preferred which was partially allowed by learned Additional Sessions Judge, Hassan. The conviction in terms of Section 279 was set aside. However, in respect of Sections 337 and 304-A IPC the conviction was maintained along with the sentences imposed. In the revision petition filed before the High Court the primary stand was that there was no rash and negligence involved because the vehicle capsized because of mechanical failure. The High Court did not find any substance and dismissed the revision petition.

3. The factual position in a nutshell is as follows :

On 23.7.1996 at about 11 a.m. the revision petitioner/accused being the driver of a lorry bearing No. KL13-4363, was proceeding on Hassan-Arsikere Road, near Sankenahalli gate and drove the same in a rash and negligent manner and dashed against a tree, which was by the side of the road and caused death of Shivanna, Bililyamma, Basheer and caused bleeding injuries to C.Ws. 3 to 5, who were travelling in the said lorry sitting in the cabin. Two of them died at the spot and the third person died on the way to the hospital. C.Ws. 3 to 5 sustained grievous injuries. Therefore, the accused was charge-sheeted for offences punishable under Sections 279, 337 and 304-A of IPC. The trial court took cognizance of the offence and registered the case. The prosecution in order to prove the guilt of the accused examined 10 witnesses as PWs 1 to 10 on its behalf and closed its side. The accused denied the incriminating evidence, which was appearing against him, but he did not choose to examine any witness on his behalf.

4. The stand taken before the High Court was reiterated in this appeal.

5. Learned counsel for the State on the other hand supported the order passed by the courts below.

6. Coming to the question whether there was any rash and negligence involved, evidence of the RT0 (PW-10) is relevant. He has clearly stated

that the accident did not occur on account of mechanical defects. The evidence of PWs. 1, 2 and 6 who were eye-witnesses shows that the vehicle was being driven at a very high speed. Significantly some of the PWs. were travelling in a lorry. PW-6 had stated that the vehicle was coming at a very high speed and that the road was quite wide and there was no traffic at the time of accident. It is to be noticed that the evidence of the witnesses clearly shows that the vehicle against a tree and the branches of the tree fell on it. From the evidence of PW-6 it appears that though it was rainy season but there was no rain at the relevant point of time.

7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is direction at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 302-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A 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 it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

9. The distinction has been very aptly pointed out by Holloway J. in these words :

"Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the negligence of the civic duty of Circumspection." (See In re : Nidamorti Nagabhusanam 7 Mad. H.C.R. 119)

10. When the factual scenario is considered in the light of evidence of the eye witnesses the inevitable conclusion is that the courts below have rightly found the accused guilty. The sentence of six months' simple imprisonment and the fine imposed does not in any way appear to be irrational.

11. Vehicular accidents resulting in deaths and injuries is spiraling.

12. The Editorial under the heading "Road Traffic Injuries & fatalities and India - a modern epidemic" in Indian J. Med. Res.123, January 2006 contains

some interesting observations. The relevant portions read as follows :

"The United Nations General Assembly adopted a resolution on road safety on October 26, 2005 which invites Member States to implement the recommendations of the World Report on Road Traffic Injury Prevention; to participate in the first United Nations Global Road Safety Week; and to recognize the third Sunday in November of every year as the World Day of Remembrance for Road Traffic Victims'. This resolution follows the publication of The World Report on Road Traffic Injury Prevention by the World Health Organization in 2004. This report highlights the fact that all over the world working age people are more likely to suffer hospitalization, permanent disability and death due to road traffic injuries than most other diseases. The situation in India is not very different.

About 82,000 persons were killed on Indian roads in 2002. Official statistics regarding serious injuries are not reliable as they underestimate the actual number, but it is estimated that the number of people hospitalized may be 15-20 times the number killed. In a do-nothing scenario, it is possible that India will have 1,20,000-1,30,000 road traffic fatalities in the year 2008 and possibly 1,50,000 - 1,75,000 in 2015. Our vision should aim at reducing the fatalities to less than 1,00,000 in the short term (2008) and less than 70,000 in the long term (2015).

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Safety measures for the near future

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Motor vehicle occupants : (i) Enforcement of seatbelt use laws countrywide; (ii) restricting travel in front seat of cars by children has the potential of reducing injuries dramatically; and (iii) bus and truck occupant injuries, fatalities; and injuries caused to other road users can be reduced significantly by enforcing strict observance of speed limit regulation on highways. Ensuring that bus time tables and truck movement schedules make it possible for drivers to observe speed limits with ease. Random speed checking on highways would help ensure such measures.

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Road safety strategies - Long term

Traffic calming and speed control; (i) Aim at implementing speed control and traffic calming measures in all urban areas and at appropriate locations on rural highways by altering road design, vehicle monitoring through intelligent transport systems, and vehicle design by the year 2015. This measure is likely to give us the maximum savings in terms of lives and serious injuries; and (ii) segregated lanes for vulnerable road users and buses in urban areas. Non-motorized transport and buses must be provided segregated lanes on all major arterial roads in urban areas. India specific designs need to be developed and phase wise implementation plans drawn up for all cities.

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Vehicle safety: (i) All vehicles sold in India should meet international crashworthiness standards by 2010; (ii) all buses and trucks should meet pedestrian impact standard by 2010; (iii) all urban buses to have low floors and automatic closing doors; (iv) crashworthiness standards must be developed for all indigenous vehicles by 2010 and implemented by 2012; (v) installation of

Intelligent Transport Systems (ITS) and other modern safety devices for assisting and controlling drivers; and (vi) driving under the influence of alcohol and other drugs. A long term strategy to reduce drinking and driving incidence to less than 10 per cent of all crashes needs to be drawn up for the next 10 yrs. Sensitization of the public to the extent to the problem. Institution of random roadblocks and checking on urban roads and rural highways. Ignition interlock on cars."

13. In "Global Road Safety" certain revealing data have also been provided. They read as follows :

"THE COMING PLAGUE OF ROAD TRAFFIC INJURIES :

A PREVENTABLE BURDEN FOR RICH AND POOR COUNTRIES".

Almost 1.2. Million people are killed each year and 20-50 million are injured or disabled, most people are unaware that road traffic injuries are a leading cause of death and disability.

In developing countries, death rates from vehicle crashes are rising, and disproportionately high in relation to the number of crashes. According to a report published in 2000

\007 Developing and transitional countries cumulatively represent over 85 per cent of all road traffic deaths

\007 Kenya has nearly 2,000 fatalities per 10,000 crashes. Vietnam has over 3,000 fatalities per 10,000 crashes.

\007 44% of all road traffic deaths occur in the Asia/Pacific area, which only has 16% of the total number of motor vehicles.

\007 At 71,495 and 59,927 total deaths, China and India, respectively, had the highest number of road fatalities in the world in 1995.-

\007 Pedestrian deaths represent 62% of all traffic fatalities in Lebanon. In most developing countries vulnerable road users, including pedestrians, bicycle and motor cycle riders, account for the majority of all fatalities.

\007 Eastern European countries represent 6% of motor vehicles, but 11% of crash fatalities worldwide.

\007 The Latin America/Caribbean region has the second highest crash costs behind Asia.

14. As developing countries increase vehicle use, road traffic injuries and expected to become the third leading cause of death and disability worldwide by 2020. In developing countries, each vehicle is much more lethal than the vehicles in developed countries, because it most frequently takes the lives not of vehicle occupants, but of vulnerable road users : pedestrians, cyclists. Many developing countries are increasing the rate of motorized vehicle use at up to 18% per year. In India, for example, there has been a 23% increase in the number of vehicles from 1990-1999 and a 60-fold increase is predicted by 2050.

15. The human toll is tragic. Survivors and family members are affected not only by an immediate death or disability, but sometimes a lifetime of psychological and physical suffering. Crashes often result in orphans, and some victims, as young as infants, spend the rest of their lives in medical facilities.

ECONOMIC IMPACT

16. In addition to the devastating human toll, the economic impact of road

crashes is also enormous. Many of those injured or killed are wage earners; leaving families destitute and without means of support. Loss of wages, property damage, and other factors affected by road traffic crashes represented 4.6% of the gross national product of the United States in 1994. In developing countries, road traffic crashes represent 3-5% of the GNP. The estimated annual cost of road traffic crashes in developing countries exceeds \$ 100 billion (US). This amounts to nearly double the total combined development assistance these countries receive every year from bilateral and multi-lateral government organizations. Globally, the estimated annual costs of road crashes are 500 billion (US).

THIS PROBLEM IS PREVENTABLE

17. We have the tools needed to combat this epidemic. In the developed nations, proven methods such as enforcement of laws regarding driving under the influence of alcohol or drugs, reducing speed limits and requiring seat belts and restraints have shown significant reduction in traffic fatalities. Road design and road environment, vehicle design, and road safety standards are also strategies that successfully address traffic safety. For maximum impact for RTI's a systems approach with multiple, scientifically proven prevention techniques must be employed. Education alone has been shown to be less effective, and often ineffective.

18. Proven interventions for developed countries require research, modification, and testing for developing countries. For example, developing countries face poorly designed and maintained roadways, unsafe vehicles, drivers under the influence of drugs or alcohol, lack of national policies, and inadequate enforcement. Success will require significant new resources supported by sustained political commitment."

19. The inevitable conclusion is that the appeal is sans merit and deserves dismissal which we direct.