

SUPREME COURT OF INDIA

State of Karnataka

Vs.

Muralidhar

Crl.A.No.428 of 2002

(Dr. Arijit Pasayat and Asok Kumar Gaguly JJ.)

16.03.2009

JUDGEMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court allowing the Revision Petition filed by the respondent. The respondent faced trial for alleged commission of offence punishable under Sections 279, 338, 304-A of the *Indian Penal Code, 1860* (in short the 'IPC') by learned IIIrd Additional Sessions Judge, Mangalore.

“For the offence punishable under Section 338 IPC the respondent was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- with default stipulation. For the offence punishable under Section 304-A IPC he was sentenced to rigorous imprisonment for one year and to pay a fine of Rs.5,000/- with default stipulation. The appeal was dismissed by learned IIIrd Additional Sessions Judge, D.K. Mangalore.”

2. Background facts in a nutshell are as follows:

“The respondent had been driving the bus on Ullal-Hejamadi route on 3.12.1995 at about 10.30 a.m. A tempo was coming from the opposite direction. Both the vehicles rubbed through resulting in the right hand side portion of the bus hitting the right hand side portion of the tempo, as a result of which a boy sitting at that hind portion of the tempo died and one passenger sustained grievous injuries. It was in respect of this accident that the respondent came to be prosecuted and convicted.

The primary stand before the High Court was that the offences were such that the accused should not be required to undergo imprisonment.

Accordingly, taking note of Section 71 IPC, High Court held that for the offence under Section 338 IPC the accused was to pay a fine of Rs.1,000/- with default stipulation and for the offence under Section 304-A the accused was to pay a fine of

Rs.5,000/- with default stipulation and out of the total amount of Rs.6,000/- a sum of Rs.5,000/- was to be paid to the father of the deceased boy.”

3. Learned counsel for the appellant-State submitted that the High Court has not indicated any reason as to why this was not a fit case where custodial sentence was not to be imposed. The High Court found that the accused was rightly convicted for the offence punishable under Sections 279, 338 and 304-A IPC. After having so observed without any basis or reason the custodial sentence was waived and fines were imposed. It was also noted that no separate sentence was necessary in respect of offence under Section 279 IPC. It is submitted that the sentences should be commensurate with the gravity of the offence.

4. Learned counsel for the respondent on the other hand submitted that the occurrence took place long back and, therefore, taking the overall view waived the custodial sentence and imposed fines.

5. In the instant case, 16 years old boy lost his life because of the rash and negligent acts of the respondent.

6. Section 304A speaks of causing death by negligence. This section applies to rash and negligence acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act 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 and 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 act which a prudent or reasonable 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 that the mischievous or illegal consequences may fall, but with a hope that they will not. Lord Atkin in *Andrews v. Director of Public Prosecutions*¹ observed as under:

"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 'recklessness' most nearly covers the case. It is difficult to visualize 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 'recklessness' 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."

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 directed 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 304-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 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*²)”

10. Vehicular accidents resulting in deaths and injuries are spiraling.

11. The Editorial under the heading "Road Traffic Injuries & fatalities in 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).

xxx xxx xxx Safety measures for the near future xxx xxx xxx 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 regulations on highways. Ensuring that bus timetables 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.

xxx xxx xxx 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.

xxx xxx xxx Vehicle safety: (i) All vehicles sold in India should meet international crashworthiness standards by 2010; (ii) all buses and trucks should meet pedestrian impact standards 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 yr. Sensitization of the public to the extent of the problem. Institution of random roadblocks and checking on urban roads and rural highways. Ignition interlock on cars."

12. 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".

13. 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.

14. 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 7 Developing and transitional countries cumulatively represent over 85 percent of all road traffic deaths 7 Kenya has nearly 2,000 fatalities per 10,000 crashes. Vietnam has over 3,000 fatalities per 10,000 crashes.

“44&percent; of all road traffic deaths occur in the Asia/Pacific area, which only has 16 &percent; of the total number of motor vehicles.

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

Pedestrian deaths represent 62 &percent; 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.

Eastern European countries represent 6&percent; of motor vehicles, but 11&percent; of crash fatalities worldwide.

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

15. As vehicle use in developing countries are increasing, road traffic injuries are 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&percent; per year. In India, for example, there has been a 23&percent; increase in the number of vehicles from 1990-1999 and a 60-fold increase is predicted by 2050.

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

ECONOMIC IMPACT

17. 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&percent; of the gross national product of the United States in 1994.

In developing countries, road traffic crashes represent 3-5&percent; 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

18. 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 of 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.

19. 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.

20. These aspects were highlighted in *Prabhakaran v. State of Kerala*³.

21. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu*⁴.

22. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle MCGDautha v. State of California*⁵ that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

23. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

24. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

25. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

26. This is a case where the High Court has without considering the relevant aspects and even without indicating any reason, waived the custodial sentence and imposed only fine.

The judgment therefore is clearly unsustainable. The impugned judgment of the High Court is set aside and that of the trial Court is restored.

27. The appeal is allowed.

¹(1937) AC 576 at p.583 = 2 All E.R. 552)

²7 Mad. H.C.R. 119

³(2007 (8) SCALE 605)

⁴(AIR 1991 SC 1463)

⁵402 US 183: 28 L.D. 2d 711