Chamman Lal vs The State on 8 October, 1953

Equivalent citations: 1954CRILJ405, AIR 1954 ALLAHABAD 186

ORDER

Mukerji, J.

1. This is an application in revision by Chamman Lal, who was the driver of a motor truck, (against his conviction?) under Section 304A, Penal Code. He was convicted by a Magistrate of the 1st class under that section and sentenced to one year's rigorous imprisonment. He preferred an appeal to the Sessions Judge who agreed with the Magistrate and maintained the conviction and the sentence of the applicant.

2. The facts giving rise to this conviction, briefly stated, were these:

> On February 1, 1951, at about 10 O'clock in the forenoon, the applicant was driving a truck bearing registration No. UPR 3185 and to this truck of his was hitched on another disabled truck. The applicant's truck was towing the other truck by means of a small tow-rope. There was another driver on the driving wheel of the truck that was being towed. There was a collision while these trucks were moving along a certain highway and as a result of that collision one Datadin sustained such severe injuries that he died. It may be mentioned that Datadin was one of the men who were taking a Thela which was heavily laden with bags of cement. The case for the prosecution was that the accident was occasioned because of the rash and negligent driving of the applicant. The allegation also was that the applicant was driving fast and after having met with the accident the applicant did not stop his vehicle but attempted to run away. The truck was, however, stopped at some distance because the people of the locality obstructed the passage of the truck.

3. The defence of the applicant was that he had not been either rash or negligent and further that the accident had been occasioned because of the negligence of the deceased and his companions who were taking the cement laden Thela. The applicant further alleged that the actual impact as a result of which Datadin sustained his injuries and lost his life was received not from the truck that the applicant was driving but from the truck that was on tow.

4. The lower appellate Court has assumed for the purpose of this case that the actual impact which occasioned the death of Datadin came from the truck that was on tow, but the Court below was of the opinion that even though this was so, the liability of the applicant was in no way minimized thereby. The lower appellate Court held this view because of the fact that in its opinion the speed and maneuverability of the truck on tow depended upon the speed and the line of drive taken by the leading truck which was under the control of the applicant. The Courts below, on the evidence

produced in the case, came "to the conclusion that the applicant was negligent and that the accident was occasioned because of such negligence. The lower appellate Court has not recorded any categorical finding as to whether or not the applicant was guilty of any rashness.

5. Section 304A, Penal Code is in these words:

> 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. It must be pointed out that rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances, it was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the consequences In the hope that they may not happen. The law, in my view, does not permit a man to be uncautious on a hope however earnest or honest that hope may be. Some Judges have expressed the view that mere carelessness is not sufficient for sustaining a conviction under Section 304A, I. P. C. They have said that 'mens rea' or a guilty mind must be found in relation to that carelessness before a conviction can be made.

In the case of - 'A. W. Lazarus v. The State' , a Bench of this Court held, following the decisions in - 'Empress of India v. Idu Beg' 3 All 776 (B) and - 'H. W. Smith v. Emperor' AIR 1926 Cal 300 (C), that 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. It was pointed out that the criminality in such a case lay in running the risk of doing such an act with recklessness or indifference as to the consequences. The Bench further held that criminal negligence under Section 304A, I. P. C. was gross and culpable neglect or failure to exercise that reasonable and proper care and to take precautions to guard against Injury either to the public generally or to an Individual in particular, which, having regard to all the circumstances attending the charge, it was the imperative duty of the accused person to have adopted. Another important element which goes to make the offence is that the act of the accused must be found to be the immediate cause of the death, that is to say, the act and the death must be 'causa causans'.

7. I may here refer to a very instructive Judgment of the House of Lords in - 'Andrews v. Director of Public Prosecutions' 1937-2 All ER 552 (D), In this case Lord Atkin reviewed several of the earlier cases and delivered the leading opinion of the House. Lord Atkin pointed out that the connotations

of 'mens rea' are not helpful in distinguishing between degrees of negligence, nor do the ideas of crimes and punishments in themselves carry a jury much further in deciding whether, in a particular case, the degree of negligence shown is a crime and deserves punishment. According to Lord Atkin, the principle to be observed is that cases of manslaughter in driving motor cars are but Instances of a general rule applicable to an charges of homicide by negligence. 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.

Lord Atkin observed that the most appropriate epithet which can be applied to such cases is "reckless". He further pointed out that "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."

In an earlier case Lord Ellenborough had pointed out that to substantiate the charge or manslaughter the prisoner must be found to have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention. Lord Atkin explained this observation of Lord Ellenborough in these words:

> The word "criminal" in any attempt to define a crime is perhaps not the most helpful, but it is plain that Lord Ellenborough meant to indicate to the jury a high degree of negligence.
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> Attention was also drawn by Lord Atkin to a passage in a considered judgment of Lord Hewart, Lord Chief Justice-the passage to which attention was drawn was this : "In a criminal Court, on the contrary, the amount and degree of negligence are the determining questions. There must be 'mens rea'."
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> But, as was pointed out by Lord Atkin, the connotation of mens rea do not always prove helpful in determining the guilt of an accused in a particular case.

8. It appears to me that before a conviction can be had under Section 304A, Penal Code a very high degree of negligence must be found-negligence which must amount to recklessness or utter indifference to consequences and not merely negligence of tort.

9. In this case the Courts below do not appear to have scrutinized the circumstances to see whether they could amount to an offence in the light of the observations made above. The lower appellate Court has stated thus:

> If the trucks had not been driven at a fast speed accident could have been avoided.

10. It appears to me that the Court below came to hold the view that the trucks were being driven at a fast speed because the applicant did not stop his bus after the accident but attempted to run away from the scene of the accident at a fast speed. Prom this fact also the lower appellate Court inferred that the applicant had a guilty mind. In my judgment the Court should not have taken into account the speed which the applicant developed after the accident to Judge the speed at which he was driving the truck prior to the accident. It is well known that it is a common human failing, however reprehensible it may be, for a man to attempt to run away if he has committed an accident.

11. The Court below has found that the evidence in the case indicated that in all probability the second truck, that is, the truck that was on tow, collided with the wheel of the Thela and that occasioned the injury to Datadin. The evidence points out that the distance between the leading truck and the following truck was about 10 to 12 feet-that was the length of the tow-rope. The learned Judge of the Court below appears to have doubted this part of the evidence on the ground that if the distance between the two trucks was 10 or 12 feet then towing would have been extremely difficult. I am unable to agree with this view of the learned Judge. According to the rules framed under the Motor Vehicles Act a tow-rope can be as long as 10 or 12 feet. This indicates, to my mind, the fact that the framers of the rules did not consider towing with the aid of a tow-rope of 10 or 12 feet in length either hazardous or improbable of performance.

12. I have given this case my anxious consideration and I have come to the conclusion that in the view of the law that I have taken it is not possible to affirm the conviction of the applicant in the state of the evidence that was adduced against him in the case. The application in revision, therefore, must be allowed.

13. I accordingly allow this application in revision and set aside the conviction and the sentence passed on the applicant. The applicant is on bail. He need not surrender to his bail. His bail bonds are cancelled.