

A.W. Lazarus vs The State on 14 February, 1952

Equivalent citations: AIR1953ALL72, AIR 1953 ALLAHABAD 72

JUDGMENT

Misra, J.

1. The accused-appellant, A. W. Lazarus, has been convicted by the learned Sessions Judge of Hardoi under Section 304A, Penal Code, for rash and negligent driving. He has been sentenced to four months' rigorous imprisonment. The incident in connection with which the appellant was tried took place on 15-1-1950, at 8.2 A. M. in the Railway yard of Hardoi station. Lazarus was driver of a fast goods train No. 216 down coming from Saharanpur towards Balamau.

2. The facts established by the prosecution, and not disputed on behalf of the accused, are that the aforesaid down goods train was not scheduled to stop at Hardoi station but it was to run through to Balamau, that shortly before its arrival at Hardoi another train running in the same direction had arrived on platform No. 3 at 7.30 A. m., that it was due to leave at 7.51 but due to some trouble in one of the component wagons its departure was delayed till 7.56, and that while the 84 down parcel train was still at Hardoi, the Kaurha Station, which precedes Hardoi on the western side, asked for line clear for 216 down goods express and the control which was contacted authorised the reception of the train and the giving of the line clear expecting that by the time she reached Hardoi 84 down would have left. The line clear was given as directed but when the goods train approached Hardoi, the station master informed the Control of the fact that the parcel train was still standing on platform No. 3 and asked for directions regarding the entry of the train driven by Lazarus and that in consequence of the instructions received by him he directed that the goods train should come on platform No. 5 and be stopped there. Hardoi station has five lines altogether. Lines NOS 1 and 2 are meant exclusively for up trains going from Lucknow towards Saharanpur. Line No. 3 runs through the station and is common both for up and down trains, while lines NOS. 4 and 5 are exclusively meant for the use of trains coming from Saharanpur side and proceeding towards Lucknow Line No. 5 normally terminates in a dead end at which there is a sand hump, but it is also connected with the other lines and can be so operated as to allow a train to pass through line No. 5 on to the main track. The normal system adopted in guiding a through train at Hardoi station was that the outer or distant signal and the home or the inner signal had to be lowered and the two starters, i. e. both the starter and the advance starter signals had also to be depressed. If it was intended, on the other hand, to stop an incoming train at the station, the starter signal and the advance starter signal had to be raised. When No. 216 down goods express reached Hardoi, the driver found that the two outer signals and the advance starter signal were down. The starter signal of platform No. 5 was up but it was obstructed from view by a banyan tree and a raised water tank and a pump house. The accused saw that one of the starter signals was depressed, but as it turned out that signal related to No. 3 and not line No. 5. In fringing in the train Lazarus slowed down at the outer signal. He ran through the

home signal and when his train was guided on to line No. 5, he was running at a speed of about ten miles an hour, being under the impression on account of the lowering of the starter signal of the main line and the advance starter signal that he was to pass through in accordance with the schedule. When he proceeded further on platform No. 5, the starter on line No. 5 came into view. He then suddenly realised his mistake and tried to bring the train to a stop, but it was then too late. The train was sufficiently heavily loaded and it ran through the sand bump into some huts which lay beyond it, with the result that four persons, who were in unauthorised occupation of the huts were killed and two other persons belonging to the military personnel who were in third wagon of the train without anyone being aware of it also received fatal injuries.

The Court below has found that Lazarus should have known that the eastern advance starter signal controlled three lines, that the fact that the starter signal of line No. 5 was not visible to him should have impelled him to exercise extreme caution and to have either stopped the train or to have brought it to a crawling pace and that in failing to observe the precaution the accused acted grossly negligently and was liable to conviction.

3. It is urged on behalf of the appellant that the whole incident was occasioned by a mere error of judgment on the part of the accused, that Lazarus was not called upon to exercise, any degree of care and caution that ordinarily a prudent driver of a Railway engine should do in the above circumstances and that the fact that the driver's view of the starter signal of platform No. 5 was obstructed by the banyan tree and the other Railway constructions and the further fact that the huts which were not meant for human dwelling were occupied by unauthorised men and the two military men who according to the rules were not supposed to be in any wagon up to 10th wagon were in fact in the third wagon, were in fact the more proximate causes of the deaths.

4. We have carefully and anxiously examined the case and in our estimation the facts narrated above do not fix any criminal liability on the accused. The unfortunate incident, it appears to us, was brought about by an extraordinary combination of events, the existence of which the accused could scarcely have divined. He reached the distant signal at 8-1 A. m. and he found the three signals, namely the outer signal, the home signal and the advance starter signal, down. He also found that another starter signal in the direction of Balamau was depressed. There is nothing to show that he was aware of the fact that the parcel train had just left Hardoi that the starter which was depressed was intended to guide that train and the pointsman had not yet had the time to put it 'off.' His own train was scheduled to run through Hardoi. The signal of the platform into which Lazarus was to come was not visible and we apprehend that ordinarily a prudent driver in these circumstances could scarcely have sensed danger. It is easy after the event to analyse the happenings and to find out possible methods or devices which if adopted may have averted the accident. In order to judge of the criminality of the accused it is necessary, however, to put oneself in his position and to see what in the circumstances which were before him would be the normal reaction to these signals of a man situated as he was. Criminal rashness, as laid down by Straight J., in *Empress of India v. Idu Beg*, 3 ALL. 776 and by a Division Bench of the Calcutta High Court in *H. W. Smith v. Emperor*, 53 Cal. 333, 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. The criminality in such a case lies in running the risk

of doing such an act with recklessness or indifference as to the consequence. Criminal negligence under Section 304A is gross and culpable neglect or failure to exercise that reasonable and proper care and to take precaution 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. As stated above the accused exercised the ordinary caution which was demanded of him inasmuch as he slowed down his train on entering the yard. It is difficult to saddle him with the knowledge that his train was to be received on platform No. 5 or failure to notice that a further signal which was intended for line No. 5 but which was obstructed from view was not lowered. It is impossible, in our judgment, to insist that Lazarus should have discerned that the down advance starter and the more proximate starter were intended for the parcel train and not for him. His action was unfortunate but in our opinion it was by no means grossly negligent.

5. Having regard to the result arrived at on a survey of facts, it is not necessary to go into the question whether the act of the accused was or was not causa causans of the deaths complained of.

6. We hold that the accused is not guilty of the charge under Section 304A, Penal Code. We accordingly allow the appeal, set aside the order of the learned Sessions Judge and acquit A. W. Lazarus of the charge under Section 304A, Penal Code. The accused-appellant is on bail. His bail bonds will be discharged.

7. The connected revision arises out of a notice for enhancement of sentence issued to Lazarus on a perusal of the Sessions statements by one of the learned Judges of this Court. In view of the finding reached above, this revision must be dismissed and the notice of enhancement of sentence discharged. We order accordingly.