Supreme Court of India
Naresh Giri vs State Of M.P on 12 November, 2007
Author: . A Pasayat
Bench: Dr. Arijit Pasayat, P. Sathasivam

CASE NO.:
Appeal (crl.) 1530 of 2007

PETITIONER:
Naresh Giri

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 1530 OF 2007 (Arising out of S.L.P (Crl.) No.4805 of 2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court dismissing the criminal revision petition filed by the appellant.

3. Background facts in a nutshell are as follows: On 29.8.2004 bus bearing no. MPO 10588 was going from Ahrauli towards Kailaras. While it was near a railway crossing, an accident took place. A train hit the bus at the railway crossing. In the accident the bus which was being driven by the appellant was badly damaged and as a result of the accident several passengers got injured and two persons namely Bhagoli @ Bhagwati and Ankush died. First information report was lodged by Brijmohan Sharma, Constable. After completion of investigation charge sheet was filed. Charges were framed in relation to the offences punishable under Section 302 and alternatively under Section 304, 325 and 323 of the Indian Penal Code, 1860 (in short the 'IPC').

Questioning correctness of the charges framed, the revision petition was filed. It was the stand of the appellant that Section 302 IPC has no application to the facts of the case. The High Court did not accept the plea. It found no substance in the stand taken by the appellant that he had no intention to kill the passengers. High Court was of the view that on the basis of material available, charges were framed and the intention of the appellant has been gathered when the evidence is adduced.

4. Learned counsel for the appellant submitted that the accident took place near the railway crossing which was un- manned. The materials on record show that the engine of the train hit rear portion of the bus. Ultimately it may have been an error of judgment on the part of the appellant and the fact that the engine hit rear portion shows that there was no apparent negligence on the part of the

appellant. Therefore, Section 302 has no application and at the most it may be Section 304-A IPC.

5. In response, learned counsel for the respondent submitted that the fact that the passengers were asking the appellant not to cross the railway line shows that there was negligence and appellant was acting in a rash and negligent manner without proper care and caution.

6. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

7. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

8. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows:

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the

same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

9. In this context the following passage from Kenny's Outlines of Criminal Law, 19th Edition (1966) at page 38 may be usefully noted :

"Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful, if harmful, the question rises whether there is legal liability for it. In tort, (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realised the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages. But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two states of mind which constitute mens rea and they are intention and recklessness. The difference between recklessness and negligence is the difference between advertence and inadvertence they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence The common habit of lawyers to qualify the word "negligence" with some moral epithet such as wicked' `gross' or `culpable' has been most unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself."

10. "Negligence", says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I. Section 28 "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In Director of Public Prosecutions v. Camplin (1978) 2 All ER 168 it was observed by Lord Diplock that "the reasonable man" was comparatively late arrival in the laws of provocation. As the law of negligence emerged in the first half of the 19th century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like "care" "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

11. In Syed Akbar v. State of Kamataka, (1980) 1 SCC 30, it was held that "where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be

culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in Andrews v. Director of Public Prosecutions (1937) (2) All ER 552) simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case. "

12. According to the dictionary meaning `reckless' means `careless', `regardless' or heedless of the possible harmful consequences of one's acts'. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it. In R. v. Briggs (1977) 1 All ER 475 it was observed that a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.

13. In R. v. Caldwell (1981) 1 All ER 961, it was observed that:-

"Nevertheless, to decide whether someone has been `reckless', whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as `reckless' in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not he deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave). So, to this extent, even if one ascribes to 'reckless' only the restricted meaning adopted by the Court of Appeal in Stephenson and Briggs, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are seldom solved by simply asking whether the test is subjective or objective."

14. The decision of R. v Caldwell (Supra) has been cited with approval in R v. Lawrence (1981) 1 All ER 974 and it was observed that:

"--- Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting `recklessly' if,

before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it".

14. Normally, as rightly observed by the High Court charges can be altered at any stage subsequent to the framing of charges. But the case at hand is one where prima facie Section 302 IPC has no application.

15. Accordingly, the appeal is allowed. The charges stand altered to Section 304-A IPC along with Sections 279 and 337 IPC.