

A RATTAN SINGH

v.

STATE OF PUNJAB

October 3, 1979

B [V. R. KRISHNA IYER AND P. N. SHINGHAL, JJ.]

Indian Penal Code—S. 304A—Rash and negligent driving—Sentence of two years rigorous imprisonment—If excessive.

Sentencing—Punishment for driving offences—Policy of correction—Course for better driving—Occasional parole—Legislative action—Necessity.

C The petitioner, a driver, of a heavy automobile, was sentenced to two years' rigorous imprisonment under s. 304A IPC for having killed a scooterist by his rash and negligent driving of the vehicle. The petitioner's plea that someone else was responsible for the accident was rejected by the trial and appellate courts.

On the question whether the sentence was excessive,

D HELD: Rashness and negligence are relative concepts, not absolute abstractions. The law under s. 304A IPC and under the rubric of negligence, must have regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. It is fair, therefore, to apply the role of *res ipsa loquitur* with care. When a life has been lost and the circumstances of driving are harsh, no compassion can be shown. [848 A-B, D]

E The petitioner deserves no consideration on the question of conviction and sentence. [848 C]

[(a) Sentencing must have a policy of correction. When the punishment is for driving offences, the State should attach a course for better driving together with a livelier sense of responsibility and in the cases of men with poor families, the State may consider occasional parole and reformatory course. [848 E-F]

F (b) Victim reparation is still the vanishing point of criminal law. The victims of the crime, and the distress of dependents of the prisoner, do not attract the attention of the law. This deficiency in the system must be rectified by the Legislature.] [848-G]

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Crl.) No. 953 of 1979.

G From the Judgment and Order dated 13-10-1978 of the Punjab and Haryana High Court in Crl. Revision No. 1021 of 1978.

A. S. Sohl and R. C. Kohli for the Petitioner.

The Order of the Court was delivered by

H KRISHNA IYER, J.—This petition for special leave under Art. 136 is by a truck driver whose lethal hands at the wheel of an heavy automobile has taken the life of a scooterist—a deadly spectacle

becoming so common these days in our towns and cities. This is a case which is more a portent than an event and is symbolic of the callous yet tragic traffic chaos and treacherous unsafety of public transportation—the besetting sin of our highways which are more like fatal facilities than means of mobility. More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. What with frequent complaints of the State's misfeasance in the maintenance of roads in good trim, the absence of public interest litigation to call state transport to order, and the lack of citizens' tort consciousness, and what with the neglect in legislating into law no-fault liability and the induction on the roads of heavy duty vehicles beyond the capabilities of the highways system, Indian Transport is acquiring a menacing reputation which makes travel a tryst with Death. It looks as if traffic regulations are virtually dead and police checking mostly absent. By these processes of lawlessness, public roads are now lurking death traps. The State must rise to the gravity of the situation and provide road safety measures through active police presence beyond frozen indifference, through mobilisation of popular organisations in the field of road safety, frightening publicity for gruesome accidents, and promotion of strict driving licensing and rigorous vehicle invigilation, lest human life should hardly have a chance for highway use.

These strong observations have become imperative because of the escalating statistics of road casualties. Many dangerous drivers plead in court, with success, that someone else is at fault. In the present case, such a plea was put forward with a realistic touch but rightly rejected by the courts below. Parking of heavy vehicles on the wrong side, hurrying past traffic signals on the sly, neglecting to keep to the left of the road, driving vehicles criss-cross often in a spirituous state, riding scooters without helmets and with whole families on pillions, thoughtless cycling and pedestrian jay walking with lawless ease, suffocating jam-packing of stage carriages and hell-driving of mini-buses, overloading of trucks with perilous projections and, above all, police man, if any, proving by helpless presence that law is dead in this milieu charged with melee—such is the daily, hourly scene of summons by Death to innocent persons who take to the roads, believing in the bona fides of the traffic laws. We hope that every State in India will take note of the human price of highway neglect, of State transport violations and the like, with a sombre sensitivity and reverence for life.

This, however, does not excuse the accused from his rash driving of a 'blind Leviathan in berserk locomotion'. If we may adapt the words of Lord Green M.R.: 'It scarcely lies in the mouth of

A the truck driver who plays with fire to complain of burnt fingers'. Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under sec. 304-A IPC and under the rubric of Negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of *res ipsa loquitur*,
B of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, we are convinced that the present case deserves no consideration on the question of conviction.

C Counsel for petitioner has contended that a sentence of 2 years' R.I. is excessive, especially having regard to the fact that the petitioner has a large family to maintain and the proprietor of the truck has left his family in the cold. When a life has been lost and the circumstances of driving are harsh, no compassion can be shown. We do not interfere with the sentence, although the owner is often
D not morally innocent.

Nevertheless, sentencing must have a policy of correction. This driver, if he has to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this
E area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences. Maybe, the State may consider, in cases of men with poor families, occasional parole and reformatory courses on appropriate application, without the rigour of the old rules which are subject to
F Government discretion.

The victimisation of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim
G reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention to this matter. Hopefully, the Welfare State will bestow better thought and action to traffic justice in the light of the observations we have made. We dismiss the special leave petition.

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