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PRABHAKARAN

v  
STATE OF KERALA

JUNE 21, 2007

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[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

*Penal Code, 1860:*

Section 304A—Causing death by negligence—Negligence and rashness—Essential attributes of—Distinction between knowledge and intention—A boy aged 10 years was run over by a bus driven by the accused—Trial court found that no intention had been proved but, at the same time, held that the accused acted with the knowledge that it was likely to cause death—Hence, the accused was convicted under S.304 part II—High Court confirmed the conviction—Correctness of—Held: S.304A applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused—This section does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death—A rash act is a negligent act done precipitately—Negligence is the genus of which rashness is the species—Negligence and rashness are essential elements under S.304A—Culpable negligence lies in the failure to exercise reasonable and proper care—Rashness means doing an act with the consciousness of a risk—In a criminal case, the amount and degree of negligence are determining factors—Whether the conduct of the accused amounted to culpable rashness or negligence depends directly on 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 an act done without any intention to cause injury or knowledge that it would probably be caused—On facts, conviction is under S.304A and not under S.304 Part II—Conviction altered to one under S.304A.

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*Words and Phrases:*

“negligence” and “rashness”—Meaning of—In the context of Section 304A of the Penal Code, 1860.

**A** According to the prosecution, a boy aged 10 years was run over by a bus driven by the appellant-accused. During the investigation it was revealed that the bus was being driven with a very high speed and therefore, the appellant was charged under Section 302 of the Penal Code, 1860.

**B** The trial court found that no intention had been proved in the case, but, at the same time, held that the accused acted with the knowledge that it was likely to cause death. Hence, the trial court held that the act committed by the appellant was culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for five years. The High Court did not accept the stand that the case was covered under Section 304A IPC and confirmed the conviction. Hence the appeal.

Allowing the appeal in part, the court

**D** HELD: 1.1. Section 304A of the Penal Code, 1860. applies to rash and negligent acts and does not apply to causes 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.

[Para 5] [1145-B-C]

**E** 1.2. 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. [Para 5] [1145-C-D]

*Andrews v. Director of Public Prosecution, (1937) AC 576, referred to.*

**G** 2. Negligence and rashness are essential elements under Section 304A. Culpable negligences 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

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that it will not. Negligence is a breach of duty imposed by law. In a criminal case, the amount and degree of negligence are determining factors. The question whether the conduct of the accused 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 may cause injury but done without any intention to cause injury or knowledge that it would probably be caused. [Para 6] [1145-H; 1146-A-C]

3. "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality in such a case lies 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 change has arisen, it was the imperative duty of the accused person to have adopted. [Para 7] [1146-D-E]

*In Re: Nidamorti Nagabhusanam* 7 Mad H.C.R.119, referred to.

4. When the factual scenario of the present case is analyzed, it is crystal clear that the appropriate conviction would be under Section 304A IPC and not under Section 304 Part II IPC. Conviction is accordingly altered. The maximum sentences which can be imposed for an offence punishable under Section 304A is two years with fine or with both. The custodial sentences, therefore, is reduced to the maximum i.e. two years.

[Para 19] [1150-G] F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 775 of 2005.

From the Judgment & Order dated 23.06.2004 of the High Court of Kerala in Criminal Appeal No. 39 of 1998. (A) G

Venkat Subramaniam T.R. and Ramesh Babu M.R. for the Appellant.

R. Sathish and M.T. George for the Respondent.

The Judgment of the Court was delivered by H

**A** DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by the learned Single Judge of the Kerala High Court. By the impugned order the appellant was found guilty of the offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short 'IPC'). Learned Sessions Judge, Kozhikode, had convicted the appellant for the offence punishable under Section 304 Part II IPC. The High Court found the same to be in order. Custodial sentence of five years was confirmed.

2. The background facts in a nutshell are as follows:

**C** A boy aged 10 years residing in a hostel of the Tribal Welfare Department, while he was a student of 4th standard in a nearby school, was run over by a bus driven by the appellant in the middle of the road. The investigation by the police revealed that there was evidence to the effect that even the passengers in the bus were alarmed of the enormous speed in which it was being driven and had cautioned the driver to stop even crying, as they had seen the school children crossing the road in a queue. The investigation also **D** revealed that even the children crossing the road had raised both hands for stopping the vehicle. The passengers and pedestrians were of the view that the bus was being driven at a high speed and that they had cried aloud to stop the bus. It was, in spite of all these, that the bus ran over the said student on his head and the bus could be stopped only 15 to 20 feet ahead of the spot of occurrence. In the light of the said evidence, the investigating **E** officer felt that there was real intention on the part of the appellant/driver of the bus to cause death of persons to whom harm may be caused by reason of hitting the bus and he was charged with offence punishable under Section 302 IPC. The court below found that no intention had been proved in the case. But, at the same time, the accused acted with the knowledge that it was **F** likely to cause death. So, the act committed by the appellant was culpable homicide not amounting to murder punishable under Section 304 Part II IPC. Convicting him for the said offence, he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.15,000/- with a default sentence of imprisonment for three years. This was assailed in appeal.

**G** 3. The High Court did not find any substance in the plea of the appellant that the accused had not caused death either with the intention of causing death or with the intention to cause such bodily injury as is likely to cause death or with the knowledge that he is likely to cause such act to cause the death. It was submitted that case is covered under Section 304A IPC. Same was not accepted. So, it was held that this is a case of culpable **H**

homicide. It accepted the stand of the respondent-State that conviction is to A be made for culpable homicide.

4. The respective stand taken before the High Court was re-iterated in this appeal.

5. 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*, (1937) AC 576 at p.583 = 2 All E.R. 552) 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.”

6. 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

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- A 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
- B 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.
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- 7. 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
- D 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.
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8. The distinction has been very aptly pointed out by Holloway J. in these words:

- F "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* 7 Mad. H.C.R. 119)
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- H 9. Vehicular accidents resulting in deaths and injuries are spiraling.

10. The Editorial under the heading "Road Traffic Injuries & fatalities A 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).

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#### Safety measures for the near future

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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.

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**Road safety strategies - Long term**

B 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.

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D 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."

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11. In "Global Road Safety" certain revealing data have also been provided. They read as follows:-

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"THE COMING PLAGUE OF ROAD TRAFFIC INJURIES: A PREVENTABLE BURDEN FOR RICH AND POOR COUNTRIES".

12. 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.

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13. 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. A

\* Developing and transitional countries cumulatively represent over 85 percent of all road traffic deaths B

\* Kenya has nearly 2,000 fatalities per 10,000 crashes. Vietnam has over 3,000 fatalities per 10,000 crashes. B

\* 44% of all road traffic deaths occur in the Asia/Pacific area, which only has 16 % of the total number of motor vehicles. C

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

\* Pedestrian deaths represent 62 % 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. D

\* Eastern European countries represent 6% of motor vehicles, but 11% of crash fatalities worldwide. D

\* The Latin America/Caribbean region has the second highest crash costs behind Asia. E

14. 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% per year. In India, for example, there has been a 23% increase in the number of vehicles from 1990-1999 and a 60-fold increase is predicted by 2050. F

15. 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. G

**A      *ECONOMIC IMPACT***

16. 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

**B** represented 4.6% of the gross national product of the United States in 1994. In developing countries, road traffic crashes represent 3-5% 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***

17. 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

**E** prevention techniques must be employed. Education alone has been shown to be less effective, and often ineffective.

18. 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.

19. When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under Section 304 A IPC and not Section 304 Part II IPC. Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under Section 304A is two years with fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years.

**H** 20. It is contended by the learned counsel for the State that in a case

of this nature two years sentence is grossly inadequate. There is substance A in this submission considering the increasing number of vehicular accidents resulting in death of large number of innocent persons. It is for the legislature to provide for an appropriate sentence. But the statute presently provides for a maximum sentence of two years.

21. The appeal is allowed to the aforesaid extent. B

V.S.S.

Appeal partly allowed.