

## REVISIONAL CRIMINAL

Before Mr. Justice H. G. Smith

EJAZ AHMAD (ACCUSED-APPLICANT) v. KING-EMPEROR  
(COMPLAINANT-OPPOSITE PARTY)\*

1935  
August 22

*Indian Penal Code (Act, XLV of 1860), sections 279 and 337—Motor Vehicles Act (VIII of 1914), section 18—Rash and negligent driving of bus—Bus overturned and passengers hurt—Words “any other person” in section 279, I. P. C., whether can include occupants of the vehicle itself.*

The words “any other person” in section 279 of the Indian Penal Code are very wide and are not distinctly limited to persons on a road, as distinct from the occupants of the particular vehicle which is being rashly or negligently driven. They are wide enough to include the occupants of the vehicle itself, and it may be reasonably held, that the occupants of a motor-bus have as much right to be protected against rash or negligent driving on the part of the driver of the bus as have other people on the road. *Ram Sewak v. King-Emperor* (1), distinguished, *Queen-Empress v. Hormusji Nowroji Lord* (2), referred to, and *Mahomed Jamal v. Emperor* (3), correctness doubted.

Mr. *Siraj Hasan*, for the applicant.

The Assistant Government Advocate (*Mr. H. K. Ghosh*), for the Crown.

SMITH, J.:—This is a reference by the learned Sessions Judge of the Rae Bareli District, the facts being briefly as follows:

One Ejaz Ahmad was driving a motor-bus on the Rae Bareli-Partabgarh road on the 30th of December last. He is said to have driven at an excessive speed, and to have been swerving about. In the course of these swerves the bus is said to have struck a culvert, and to have in the end overturned, ten paces from the right side of the road. Some of the passengers were injured. Ejaz Ahmad, the driver, was convicted by a second class Magistrate under sections 279 and 337 of the Indian

\*Criminal Reference No. 33 of 1935, made by Mr. K. N. Wanchoo, i.c.s., Sessions Judge of Rae Bareli.

(1) (1933) 10 O.W.N., 823.

(2) (1894) I.L.R., 19 Bom., 715.

(3) (1930) A.I.R., Sind, 64.

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Penal Code, and was sentenced to pay a fine of Rs.100 under each of these sections. Rs.25 was ordered to be paid to one Musammat Ram Raji, who was the most severely injured passenger, and, under section 18 of the Motor Vehicles Act, the driver's licence was suspended for three months. The driver appealed to the learned District Magistrate, who upheld the convictions, but reduced the fine under section 337 of the Indian Penal Code to Rs.50. An application was then made in revision to the learned Sessions Judge. It was contended before the latter that section 279 of the Indian Penal Code is designed to punish persons who drive vehicles or ride, on any public way, to the danger of other persons on the road, and that it does not apply to the actual passengers in the vehicles itself which is being rashly or negligently driven. In the present case, it was argued, it was in evidence that the road was clear, and therefore there was no danger to anyone except the actual occupants of the bus. Reference was made before the learned Sessions Judge to a ruling of the Judicial Commissioner of Sind reported in *Mahomed Jamál v. Emperor* (1). The learned Sessions Judge on the basis of the view taken in that ruling has referred the case to this Court with a recommendation that the conviction under section 279 of the Indian Penal Code be set aside.

The learned Judicial Commissioner said, in the course of his judgment, "If there was no danger to the public outside the car who were using the road no offence under section 279 can have been committed." In that case also there had been convictions both under sections 279 and 337 of the Indian Penal Code, in circumstances similar to those of the present case, and the conviction under section 279 of the Indian Penal Code was set aside, the conviction under section 337 being upheld.

It was contended by the learned counsel who appeared on behalf of Ejaz Ahmad that he was not, in fact, driving

(1) (1930) A.I.R., Sind, 64: 30 Cr.L.J., 1077.

rashly or negligently, and that he ought not to have been convicted under either of the sections in question. The driver's defence was that there was an "ekka" on the road, and that when he was passing it the tyre of his front wheel on the off-side burst and so caused the accident. Two witnesses were called in support of this story. These witnesses said that the bus was not being driven at an excessive speed,—one of the witnesses said that it was not being driven at more than 15 or 20 miles an hour. Both these witnesses went so far as to deny that the bus overturned at all. The prosecution witnesses, however, three of whom were themselves passengers in the bus, said that the vehicle was being driven very fast. It was also in evidence that the road was clear, and that there was no "ekka" ahead of the bus. It was also said that there was no sound, such as might have been caused by a bursting tyre. In the report which he made to the police after the accident, Ejaz Ahmad did not state that any tyre had burst.

I see no reason to differ from the finding of fact that the driver was driving rashly and negligently. His learned counsel referred me to the case of *Ram Sewak v. King-Emperor* (1), which is a decision of a Bench of this Court of which I was a member. That case, however, turned on its own facts, and has no bearing on the facts of the present case. The trial Court and the District Magistrate agreed in rejecting the defence evidence, and I agree with them.

The question whether section 279 of the Indian Penal Code is applicable to the facts of this case is not free from difficulty. It was certainly held by the learned Judicial Commissioner of Sind, in the decision that has been referred to, that that section does not apply where there is no danger to the public outside the vehicle concerned. The learned Assistant Government Advocate referred, on the other hand, to a decision reported in

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*Queen-Empress v. Hormusji Nowroji Lord* (1). That was a case in which there was no proof of any person being on the part of the road on which the accused was riding a horse in a rash or negligent manner, but nevertheless his conviction under section 279 of the Indian Penal Code was not interfered with in revision.

*Smith, J.*

I am in some doubt as to the correctness of the view taken by the learned Judicial Commissioner of Sind in the above case. Section 279 of the Indian Penal Code is worded as follows:

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

It is to be noted that the words "any other person" are very wide, and are not distinctly limited to persons on a road, as distinct from the occupants of the particular vehicle which is being rashly or negligently driven. They are wide enough to include the occupants of the vehicle itself, and it may be reasonably held, especially at the present time, that the occupants of a motor-bus have as much right to be protected against rash or negligent driving on the part of the driver of the bus as have other people on the road. However, as in the present case the driver has been convicted under section 337 of the Indian Penal Code, in view of the fact that he actually caused hurt to some of the occupants of the bus, I do not think it necessary that he should be convicted under section 279 of the Indian Penal Code also, even if that section is applicable.

The result is that I accept the recommendation made by the learned Sessions Judge, and set aside the conviction and sentence under section 279 of the Indian Penal Code. The conviction and sentence under section 337

of the Indian Penal Code will stand, and so will the other orders passed by the trial Court with reference to the payment of compensation to Musammat Ram Raji, and the suspension of the driver's licence.

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*Reference accepted.*

## APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and  
Mr. Justice H. G. Smith*

BHARAT SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v.  
GUR PRASAD SINGH AND OTHERS (DEFENDANTS-RESPONDENTS)\*

1935  
*August, 7*

*Limitation Act (IX of 1908), articles 109 and 120—Transfer by Hindu widows—Reversioner's suit for possession against transferee decreed in part—Mesne profits, suit for—Limitation governing subsequent suit for mesne profits—Landlord suing for ejectment as tenant—Suit dismissed—Fresh suit for ejectment as trespasser, whether maintainable.*

Where a suit for possession by the reversioners against the transferees from a Hindu widow is decreed in part, a subsequent suit against the transferees for mesne profits of the decreed property is governed by article 109 and not by article 120 of the Limitation Act. *Banwari Lal v. Mahesh* (1), *Maung Po Kin v. Maung Shwe Bya* (2), and *Yerukola alias Penta Jogula v. Yerukola alias Penta Tatayya* (3), distinguished.

Where a landlord sues a person for ejectment in the Revenue Court treating him as a tenant of the land in his cultivatory possession and fails, he cannot be allowed subsequently to sue him for ejectment as a trespasser. Having once elected to accept him as a tenant, he cannot be allowed to shift his ground, and to sue him afterwards as a trespasser. *Baldeo Singh v. Imdad Ali* (4), referred to.

Mr. D. K. Seth, for the appellants.

Messrs. M. Wasim, Pearey Lal Varma and Onkar Narain Bakhshi, for the respondents.

\*First Civil Appeal No. 117 of 1933, against the decree of Pandit Braj Kishen Topa, Subordinate Judge of Malihabad at Lucknow, dated the 18th of September, 1933.

(1) (1918) L.R., 45 I.A., 284. (2) (1923) I.L.R., 1 Rang., 405.  
(3) (1922) I.L.R., 45 Mad., 648. (4) (1893) I.L.R., 15 All., 189.