

1936

SRI RADHA
KRISHNA
ASTHAPIT
THAKUR-
DWARA
THROUGH
BHAGWAN
KUAR,
MUSAMMAT
v.
MAHRAJ
KUNWAR,
MUSAMMAT

trust. The learned Judge seems to have been greatly influenced by the fact that the defendants are the legal heirs of Raj Kuar but when a scheme of management has definitely been laid down in the deed of trust excluding the legal heirs from any connection with the trust property, the fact that it is the legal heirs who are the defendants to the suit is immaterial and so far as the trust property is concerned, they are in no better position than mere trespassers.

Ziaul Hasan,
J.

I am, therefore, of opinion that the appeal must succeed. It is allowed with costs, the decree of the lower appellate Court is set aside and that of the Court of first instance restored.

Appeal allowed.

REVISIONAL CRIMINAL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice Ziaul Hasan*

1936
August 6

KING-EMPEROR (COMPLAINANT) *v.* AKBAR ALI (ACCUSED)*

Indian Penal Code (Act XLV of 1860), sections 304A and 279—Accused, a motor driver, running over and killing a woman but no rashness or negligence in use of road or manner of driving, whether guilty under section 304A, I. P. C.—Inefficient brakes and absence of horn, whether ground for conviction—"Rash or negligent act" in section 304A, meaning of.

Section 279, I. P. C., shows clearly that it is the rash or negligent manner of driving or riding which can constitute an offence under that section. So where the accused, a motor driver, runs over and kills a woman but there is no rashness or negligence on the part of the driver so far as his use of the road or manner of driving is concerned, the accused cannot be convicted under section 304A, I. P. C., on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in that section means the act which is the immediate cause of death and not any act or omission

*Criminal Reference No. 24 of 1936, made by M. Masudul Hasan, District Magistrate of Rae Bareilly.

which can at most be said to be a remote cause of death. *Emperor v. Omkar Ram Pratap* (1), and *Emperor v. Sat Narain Pandey* (2), relied on.

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 EMPEROR
 v.
 AKBAR ALI

The Assistant Government Advocate (Mr. S. C. Das), for the Crown.

Mr. *Siraj Husain*, for the accused.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is a criminal reference made by the learned District Magistrate of Rae Bareli recommending that the sentence of a fine of Rs.30 inflicted on Akbar Ali under section 304-A, I. P. C., be enhanced.

Akbar Ali is a motor driver. On the 16th of July, 1935, he was driving a motor lorry belonging to a firm of Rae Bareli on the Rae Bareli-Lucknow Road. A bullock cart was going ahead of the lorry and so were two women named Maharania and Maharajia. The driver tried to pass the cart to the right and swerved for that purpose. While Maharajia crossed the road and went over to the left, Maharania turned to the right and was run over and killed. The driver stopped the lorry, put the dead body into it and took it to the Rae Bareli kotwali where a report of the occurrence was made.

The learned Magistrate found that there was no rashness or negligence on the part of the driver so far as his use of the road or the manner of driving was concerned but convicted him on the ground that the brakes of the lorry were not in perfect working order and that the lorry carried no horn.

We are of opinion that so far from enhancing the accused's sentence as recommended by the learned District Magistrate, we must set aside his conviction under section 304-A, I. P. C. The rash or negligent act referred to in that section means, in our opinion, the act which is the immediate cause of death and not any act or omission which can at best be said to be a remote cause of death. The words "not amounting to culpable

(1) (1902) 4 Bom., L.R., 679.

(2) (1933) I.L.R., 55 All., 263.

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homicide" clearly show that what was intended was an act which had directly caused the death of any person. A comparison of section 304-A with sections 279 and 338 confirms us still further in our opinion. These sections are co-relative with section 304-A. Section 279 applies to the driving of any vehicle or riding 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 person where no hurt has actually been caused. Section 338 applies to a case where grievous hurt has been caused to any person by an act being done so rashly or negligently as to endanger human life or the personal safety of others. This section is more general than section 279 and embraces not only the act of driving or riding but all acts which endanger human life or personal safety. Section 304-A while as general as section 338 is restricted to cases where death has been caused. Now, section 279 says "whoever drives any vehicle or rides on any public way *in a manner* so rash or negligent as to endanger human life. . ." showing clearly that it is the rash or negligent manner of driving or riding which can constitute an offence under that section. Similarly section 338 refers to grievous hurt being caused by the doing of any act "so rashly or negligently" as to endanger human life or the personal safety of others. This also shows that grievous hurt must be the direct result of the act which is rash or negligent and not a remote result of such an act.

We are further supported in our view by the cases of *Emperor v. Omkar Ram Pratap* (1), and *Emperor v. Sat Narain Pandey* (2).

Our examination of the record has satisfied us that the absence of the horn or the inefficiency of the brakes was not in any way responsible for the death of Musammatt Mahrانيا. The fact that the accused's lorry had no horn or had inefficient brakes cannot, therefore, in the circumstances of this case, be taken into consideration

(1) (1902) 4 Bom., L.R., 679.

(2) (1933) I.L.R., 53 All., 263.

under section 304-A, I. P. C. though they can be made the subject of a prosecution under the Motor Vehicles Act.

We accordingly reject the reference for enhancement of the sentence and set aside the accused's conviction under section 304-A, I. P. C. The fine, if paid by him, will be refunded.

Reference rejected.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice Ziaul Hasan*

BISHESHWAR PRASAD (PLAINTIFF-APPELLANT) *v.* JANG
BAHADUR, DEFENDANT AND ANOTHER (PLAINTIFF) (RES-
PONDENTS)*

1936
August 14

Construction of document—Agreement to finance intended litigation—Proposed plaintiff executing registered deed purporting to sell half share in property in suit—Consideration money to be spent by vendee on litigation in trial Court—Deed, whether conveys a present interest.

Where, on *B's* undertaking to finance the intended litigation in respect of a certain property, the proposed plaintiff executes a registered deed, by which he purports to sell a half share of the property to *B* in lieu of certain sum of money but the entire sale consideration is left with the vendee to be spent by him on the litigation in the trial Court, then, whatever be the terms of the contract between the vendor and the vendee in respect of the expenses of litigation, the deed is a deed of sale conveying property to *B in presenti* and he is entitled to continue the suit brought by him and the vendor jointly for the recovery of the property, if the vendor subsequently withdraws from it. *Case-law discussed.*

Mr. *M. Wasim*, for the appellant.

Messrs. *Hyder Husain* and *H. H. Zaidi*, for the respondents

*Second Civil Appeal No. 141 of 1934, against the decree of Mr. G. C. Badhwar, I.C.S., District Judge of Fyzabad, dated the 6th of February, 1934, upholding the decree of M. Ziauddin Ahmad, Subordinate Judge of Fyzabad, dated the 29th of May, 1933.