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DALBIR SINGH  
v.  
STATE OF HARYANA

MAY 4, 2000

B

[K.T. THOMAS AND DORAISWAMY RAJU, JJ.]

*Probation of Offenders Act , 1958—S. 4.*

C

*Road Accident—Death due to rash and negligent driving Conviction under Ss. 279 and 304-A, Penal Code—Invoking Claim under S. 4—Grant of—Held, in view of galloping trend in road accidents in the country and its devastating consequences, lenience cannot be shown to the offenders—Thus, benevolent provisions of S. 4 held not attracted—Penal Code, 1860—Ss. 279 and 304-A.*

D

*Penology—Death due to rash and negligent driving—Sentence—Imposition of—Held, deterrence should be the prime consideration—Every offender should have fear psyche of sentence—Penal Code 1860—Ss. 279 and 304-A.*

*Words & Phrases.:*

E

*“expedient”—Meaning of in the context of S. 4 of the probation of Offenders Act, 1958.*

F

**Appellant, while driving a bus, knocked down a cyclist and crushed him to death. Both the trial court and sessions court holding the accused guilty of rash and negligent driving, convicted and sentenced him under Ss. 279 & 304-A of the Penal Code. High Court dismissed the Revision Petition. Hence the present appeal.**

G

**On behalf of the appellant, it was contended that the benevolent provisions of the Probation of Offenders Act, 1958 should be invoked in favour of the accused.**

**Dismissing the appeal, the Court**

H

**HELD : 1.1. Appellant accused convicted for offences under Ss. 279 and 304-A of the Penal Code, 1860 is not entitled to the benevolent provision of S. 4 of the Probation of Offenders Act, 1958 (P.O. Act). [1006-B]**

1.2. The provision of S. 4 of the Act can be invoked only if the court forms an opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct. Thus, Parliament has left it to the court to decide when and how the Court should form such opinion. However, one of the circumstances which cannot be side-lined in forming the said opinion is "the nature of the offence". [1004-G; B; C]

1.3. There is sufficient indication in the Act that releasing the convicted person on good conduct must appear to the court to be expedient. The word "expedient" had been thoughtfully employed by the Parliament in the section so as to mean it as "apt and suitable to the end in view". It is used in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

[1004-C; G-H]

*State of Gujarat v. Jamnadas G. Pabri & Ors.*, AIR (1974) SC 2233, referred to.

*Black's Law Dictionary & Webster's New International Dictionary*, referred to.

2. Courts must bear in mind that when any plea is made based on S. 4 of the PO Act for application to a convicted person under S. 304-A IPC, that road accidents have proliferated to alarming extent and the toll is galloping up day-by-day in India, and that no solution is in sight nor suggested by any quarters to bring them down. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. [1005-A; E]

3. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A rash and negligent driver must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of

**A** vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles. [1005-F-H; 1006-A]

*State of Karnataka v. Krishna alias Raju*, [1987] 1 SCC 538, referred to.

**B** *Aitha Chander Rao v. State of Andhra Pradesh*, [1981] Supple. SCC 17, distinguished.

**C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 426 of 2000.

From the Judgment and Order dated 7.2.2000 of the Punjab and Haryana High Court CrI.R. No. 130 of 2000.

Surya Kant for the Appellant.

**D** The Judgment of the Court was delivered by

**E** **THOMAS, J.** When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.

**F** A man who drove a stage carriage knocked down a cyclist who succumbed to this injuries. The said driver was convicted of the offence relating to rash or negligent driving and he was sentenced to a term of imprisonment. His appeal and revision were dismissed by the Sessions Court and the High Court respectively. He has now come up with the special leave petition. Leave is granted.

**G** After hearing learned counsel for the appellant we did not feel the necessity to wait for the arguments on behalf of the respondent-State. So we did not issue notice to the State.

**H** Appellant was driving a bus which belonged to Haryana Roadways. It

was on 4.7.1994 at 6.15 P.M. that the cyclist was knocked down in front of the main gate of the Board of School Education at Bhiwani. The cyclist was just going out of the office of the Board where he was working. The bus, after hitting him down, dragged him for some distance. He was crushed to death. The driver was convicted under Section 279 and Section 304-A of the IPC, and was sentenced to imprisonment for three months and one year respectively under the above two counts. He made a two-fold plea in the trial court. One was that he was not the person who drove the vehicle. The other was that the accident happened due to the negligence of the cyclist. Both the pleas were repelled by the trial court and the Sessions Court. On the positive side both the said courts found that the incident happened within the town area whereat offices are situated and hence the need to be greatly circumspect while driving motor vehicles was act *adhered* to by the appellant and such carelessness resulted in the instantaneous death of the young man who was crushed under the wheels of the vehicle. The revision filed by the appellant before the High Court was dismissed in limine.

Learned counsel pleaded for invocation of the benevolent provision of the Probation of Offenders Act, 1958 (for short "the PO Act").

As a precedent learned counsel cited the decision of this Court in *Aitha Chander Rao v. State of Andhra Pradesh*, [1981] Supple. SCC 17. But we may point out that the two Judge Bench, which extended the benefit of Section 4 of the P.O. Act to the accused in that case, made it clear that such a course was resorted to "having regard to the peculiar circumstances of this case". None of the peculiar circumstances has been specified in the decision except that the negligence on the part of the driver in that case was only contributory. The said decision, therefore, cannot be treated as an authority to support the contention that the court should, as a normal rule, invoke the provisions of the P.O. Act when the accused is convicted of the offence under Section 304-A of IPC in causing death of human beings by rash or negligent driving.

The conditions for applying Section 4 of the P.O. Act have been delineated in the commencing portion of the provision in the following words :

"When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to

A the circumstances of the the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct .....

B Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence."

C Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word "expedient" had been thoughtfully employed by the Parliament in the section so as to mean it as "apt and suitable to the end in view". In Block's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In *State of Gujarat v. Jamnadas G. Pabri & Ors.*, AIR (1974) SC 2233 a three Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in paragraph 21 thus :

E "Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view'; 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)."

F It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the P.O. Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence.....". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender  
H can be released on probation of good conduct.

Courts must bear in mind that when any plea is made based on Section 4 of the P.O. Act for application to a convicted person under Section 304-A of IPC, that road accidents have proliferated to alarming extent and the toll is galloping up day-by-day in India, and that no solution is in sight not suggested by any quarters to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country" the saturation of accidents toll was not even half of what it is today. So V.R. Krishna Iyer, J., has suggested in the said decision thus :

"Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under Section 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."

In *State of Karnataka v. Krishna alias Raju*, [1987] 1 SCC 538 this Court did not allow a sentence of fine, imposed on a driver who was convicted under Section 304-A IPC to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing death of a human being. In that case this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the P.O. Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance think that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for

A causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

B Thus, bestowing our serious consideration on the arguments addressed by the learned counsel for the appellant we express our inability to lean to the benevolent provision to Section 4 of the P.O. Act. The appeal is accordingly dismissed.

S.V.K.

Appeal dismissed .