



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1374 OF 2003

The State of Maharashtra
(Through the Police Inspector,
Bundgardan Police Station) ...Appellant

Versus

Avinash Ramchandra Dake,
R/a. 401, Kasbapeth, Pune ...Respondent

Mr. S. H. Yadav, APP for the Appellant.

CORAM : JITENDRA JAIN, J.

RESERVED ON : 15th SEPTEMBER, 2023
PRONOUNCED ON: 27th SEPTEMBER, 2023

JUDGMENT:

1. This appeal is filed by the appellant/original complainant against the judgment of the Judicial Magistrate at Pune delivered on 14th August 2003 acquitting the respondent/original accused. The charge against the accused was for an offence punishable under sections 279, 338, 427 of Indian Penal Code and Section 78 and 112 of the Motor Vehicles Act.

2. Brief facts as noted in the impugned judgment are as under:

(i) On 29th April 1989, at about 10:30 PM, the accused driving vehicle M80 dashed with the Luna whereby Mr. Rajendra

Bingi and Mr. Mahendra Thorat fell down and sustained injuries. Mr. Bhaskar Dharane, ASI, Kothrud Police Station visited the site of the accident and after recording the statement of the accused lodged complaint against the accused primarily for rash and negligent driving.

- (ii) On 13th December 2001, the plea of the respondent/accused under section 251 of the Criminal Procedure Code was recorded by the Judicial Magistrate. The accused pleaded not guilty and therefore the case was tried by the Magistrate.
- (iii) The appellant/original complainant lead evidence of Shri Rajendra Bingi as PW2, Mr. Mahendra Thorat PW3, Dr. Pravin PW4, Mr. Bhaskar Dharane PW5, ASI, Kothrud Police Station and Mr. Suresh Babhale PW6 Investigating Officer. The statement of the accused was also recorded under section 313 of the Criminal Procedure Code.
- (iv) The learned Magistrate after perusing the evidence and after having heard the appellant/original complainant and respondent/accused passed the order acquitting the respondent/original accused. Briefly, the Magistrate observed that PW2 and PW3 being interested witness, their evidence should be scrutinised very carefully. The evidence

of these 2 witnesses are silent as to the speed of the vehicle of respondent/accused and the direction of the vehicle of respondent/accused. The Magistrate also observed that PW2 and PW3 have not lodged the complaint with the police station which itself goes to show that PW5 has lodged the report. The Magistrate also observed that the prosecution was duty bound to explain the injury on the person of accused as under what circumstances he also sustained injury and on this issue evidence of PW2 is silent. The Magistrate also observed that in the panchnama there is no tyre marks or break mark mentioned nor spot map was drawn and hence there is absence of evidence regarding rashness or negligence. None of the injured have lodged a report with the police which creates a doubt in the prosecution case. Therefore, the Magistrate observed that since no evidence has been put forth by the prosecution regarding the type of traffic rules and signals having been contravened, the prosecution has failed to prove the charges.

3. Heard learned counsel for the Appellant and with his assistance have perused the case records of the lower court.

4. Section 78 of the Motor Vehicles Act, 1988 provides for consideration of application for goods carriage permit. Although,

the charge was levied under this section, I failed to understand how it is applicable in the present case. Section 112 of the Motor Vehicles Act, 1988 provides for limits of speed at which a person shall drive a motor vehicle in public place. The appellant/original complainant have invoked the provisions of Section 112 but as analysed by me hereinafter, they have failed to prove the said charge. Section 279 of the Indian Penal Code, 1860 (for short "IPC") provides for rash driving in a public way, which the appellant/original complainant in this case has failed to prove. Section 338 of the IPC provides for causing grievance hurt by act endangering life or personal safety of others and section 427 of the IPC provides for mischief causing damage to the amount of Rs.50/-. In the instant case, the appellant/original complainant has not proved the quantum of damage for attracting section 427 of the IPC and insofar as section 338 of the IPC is concerned, same has not been proved as analysed by me hereinafter. Therefore, the only relevant section which requires consideration is sections 279 and 338 of the IPC and read with section 112 of the Motor Vehicles Act, 1988.

5. In my view and after perusing the evidence and documents of the lower court, the present appeal is devoid of any merits for more than one reasons.

6. There are lot of inconsistencies in the evidences of the prosecution. In the accident report form it is mentioned that the accident is not fatal and, therefore, one cannot assail the charge of rash or negligent driving. In the said report it is also mentioned that front and rear wheels are in order, whereas PW2 evidence on this is contrary. Against place of accident, it is mentioned in the said report that date of accident is 30 April 1989 and time is 12.30 hrs, whereas in evidence of other witness date is 29th April 1989 and time is 10 - 10.30 PM.

7. In the evidence of PW6, investigating officer, he has mentioned that there was no technical default in the said vehicle as per the inspection report. It is also important to note that the investigating officer in his cross-examination has stated that he has not recorded the statement of persons residing nearby the spot of accident.

8. In the evidence of PW4, Dr. Pravin has stated that he did not bring the x-ray photograph with him since same is handed over to the patient. In the evidence of PW3 Shri Mahendra Thorat has stated the date of accident as 29th April 1989 and the accident happened at approximately 12 to 12:30 PM. In the evidence of PW2, Shri Rajendra Bingi refers to the person driving with him as B. Thorat, whereas name of pillion rider PW3 is

Mahendra Thorat. PW2 further stated that the front wheel got bent which is contrary to inspection report and further he stated that someone had informed about the accident to the police but PW5 - ASI, stated that it was Rajendra Bingi PW2 who informed about the accident to the police. PW2 has further stated that his statement was recorded on the next day and the accident happened approximately at 12 to 12:30 PM but PW5 stated that statement was recorded of PW2 on the day of accident.

9. There are lot of contradictions in the evidence of the prosecution as mentioned above. The timing of the accident is also not same as stated by various witnesses of the prosecution. In the statement of PW3 he has stated that the accident occurred at around 9.30-10 PM whereas in the statement of PW2 the accident happened at around 10:30 PM and in the statement of PW5 it is stated that the accident happened at 12 to 12:30 PM. There is a contradiction on the timing of the accident also between the various witnesses of the prosecution.

10. The prosecution has not proved whether the accused was driving rashly or negligently and thereby failed to prove the charge leveled by the prosecution against the accused. There is no evidence of anyone who watched the speed at which accused was driving his M80 and what were the limits notified by the

government on the speed of such a vehicle. In the absence of same, it would be difficult to say that the accused was driving rashly or negligently. The prosecution has also not led any evidence of the persons residing near the spot of the accident so as to make out a case for rash or negligent driving. In my view, merely framing charge of rash or negligent driving is not enough, but same has to be proved, which has not been done in the present case.

11. In view of above, I am of the view that the Magistrate has correctly acquitted the accused from the charges under sections 279, 338 and 427 of Indian Penal Code and sections 78, 112 and 116 of the Motor Vehicles Act.

12. Appeal dismissed. If any bond has been executed by the accused then same may be cancelled or return.

[JITENDRA JAIN, J.]