

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 429 OF 2018

The State of Maharashtra

... Appellant
(Org. Complainant)

Versus

Bandopant @ Bandya Appasaheb Dadage,
age 32 years, Resident of Patil Galli,
Gaonbhag, Sangli.

... Respondent
(Org. Accused)

Mr RM Pethe, APP for the Appellant-State.

Ms Aishwarya Sharma, appointed Advocate for the Respondent.

Coram : R. N. Laddha, J.

Reserved on : 22 December 2023.

Pronounced on : 10 January 2024.

Judgment :

The appellant State has come up in appeal, feeling aggrieved by a judgment and order of acquittal recorded by the learned Sessions Judge, Sangli, in Sessions Case No. 16 of 2014.

2. According to the prosecution, on 6 September 2013, PW-5 Bhagwan Kohli, who was on hospital duty from 09:00 p.m. to 09:00 a.m. the next day, received an order from PSO to investigate ADR No. 71 of 2009 under Section 174 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). The case

involved the deaths of Sanjeev Sakharam Kadam and Saurabh Shivaji Kadam. As per the order, the informant PW-5 visited Miraj Mission Hospital and prepared an inquest panchnama for the deceased. He then visited the place of accident and drew the spot panchnama.

3. During the investigation, it was discovered that on 6 September 2013, at about 11:00 p.m., Ajit Dattatray Shinde and Sandeep Ashok Khole (PW1) were riding a Hero Splendor motorcycle bearing registration No. MH10/BK-1209, along with Sandeep Khole's son, towards Hotel Saurabh on Kolhapur road. Suddenly, a Maruti Swift car, travelling at high speed, collided with their motorcycle from behind and then hit a Maruti Omni car coming from the opposite direction. The driver of the Maruti Omni vehicle, a passenger, the driver of the Maruti Swift car, and a woman sitting in the car were also injured. The accused, who was driving the Maruti Swift car, was under the influence of alcohol. Despite being externed under Section 56 of the Bombay Police Act from Sangli and Kolhapur Districts, he illegally entered Sangli city and recklessly drove the Maruti Swift car, causing the deaths of Sanjay Sakharam Kadam and Saurabh Shivaji Kadam, as well as seriously injuring other individuals involved.

4. The Police made requisite investigation, interrogated witnesses and recorded their statements. During the investigation, it transpired that the accident had occurred due to rash, negligent driving of the accused/driver of the Maruti Swift Car and was under the influence of alcohol. After finding the complicity of the accused, a charge sheet came to be lodged. As the accused abjured the guilt, the trial commenced.

5. During the course of the trial, the learned trial Court recorded the evidence of Sandeep Ashok Khole (PW1); Smt Seema alias Shobha Sanjeev Kadam (PW2); Rani Shivaji Kadam (PW3); Shivaji Sakharam Kadam (PW4); Bhagwan Walmiki Kolhi, the informant (PW5); Dilip Govind Patil (PW6); Dr Dhanashree Haridranath Deshpande (PW7); Dr Ninad Ramesh Patil (PW8); Kumar Gulabrao Ghadge (PW9), the Investigating Officer, and Vinod Sambhaji Salunkhe (PW10). As the prosecution closed its evidence, the accused was questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, but he denied them as false. The accused, in his defence, has examined Shobha Appaso Hegade (DW1).

6. Mr RM Pethe, the learned Additional Public Prosecutor appearing on behalf of the appellant-State, submitted that the

evidence on record unequivocally points to the accused's rash and negligent driving as the sole proximate cause of the deceased's death. The situation at the spot, as borne out by the evidence, establishes the guilt of the accused beyond a shadow of doubt. According to the learned APP, the accused was under the influence of alcohol at the relevant time, which can be inferred from the evidence of the Medical Officers. The trial Court misread the prosecution evidence, failed to evaluate the evidence in a proper perspective, and was influenced by a number of assumptions that cannot be sustained on the material on record. As a result, there has been a grave miscarriage of justice.

7. Ms Aishwarya Sharma, the learned counsel appearing on behalf of the respondent/accused, submitted that the FIR does not indicate that the accused was under the influence of alcohol at the time of the accident. She submitted that the involvement of the alleged offending vehicle and the identity of the accused as the driver of the offending vehicle has not been established.

8. This Court has given anxious consideration to the rival contentions and examined the record.

9. Sandeep Ashok Khole (PW1) testified that on 6 September 2013, he was riding his motorcycle with his son and friend Ajit

Shinde towards Saurabh Dhaba. As they reached the TV centre, the offending Maruti Swift car hit their motorcycle from behind, causing them to fall. The offending car then collided with a Maruti Omni coming from the opposite direction, injuring the passengers in both vehicles. He attributed the accident to the rash and negligent driving of the Maruti Swift car. However, during cross-examination, he admitted that at the time of the accident, he did not see the accused at the wheel. This witness also admitted that he did not see the impact of the Maruti Swift car and the Maruti Omni car. Additionally, the witness stated that more than 500 people gathered on the spot of the accident, and he was there for about 15 minutes thereafter. However, his evidence does not reveal whether he or the people gathered around the place of occurrence ever tried to find the driver of the offending Swift car. The testimony of this witness does not in any manner point out that it was the accused who was driving the offending Swift car at the relevant time. All that can be seen from the evidence of this witness is that the offending Swift car had dashed his motorcycle from behind.

10. Seema alias Shobha Sanjeev Kadam (PW2) informed the trial Court that her husband owned a Maruti Omni van bearing registration No. MH44 B 2328. On 6 September 2013, she and her family members had been to Shirol in the said Maruti Omni van. When they were proceeding towards Sangli, near the TV

centre on Sangli Kolhapur road, the offending Swift car came from Sangli's side, and first, it gave a dash to the motorcycle. The offending Swift car came in a zig-zag manner and was speeding. It then went towards the wrong side of the road and collided with their van. According to her, at the time of the incident, she was sitting behind the driver's seat and could not see what was happening in front of the van. She claimed that the offending Swift car was driven by the accused.

11. Admittedly, PW2 was seated behind the driver's seat. Further, she admitted that the front portion of the vehicle was not visible from her position. She also testified that she was conversing with others in the van and did not realise that an accident had occurred until the impact. While she did not claim to have seen the accused driving the offending Swift car, she claimed in cross-examination that she had stated seeing the driver in her police statement. However, this was not found in the statement recorded by the police, and PW 9 confirmed this omission in his cross-examination. Therefore, like PW1, PW 2 also failed to establish the identity of the accused as the person who was driving the offending Swift car at the relevant time.

12. According to Rani Shivaji Kadam (PW3), another injured witness, she was travelling in a Maruti Omni van at the time of

the incident. She was seated on the rear seat facing the front side, and the front portion of the vehicle was visible to her. She claimed that the offending Swift car collided with a motorcycle and then with the Maruti Omni van, which was coming from the wrong side. Her evidence shows that she came to know the name of the offending Swift car from her relatives.

13. It is not in dispute that on 6 September 2013, around 10:00 p.m., an accident occurred. The evidence of Rani Kadam (PW3) came to be recorded on 25 April 2016, after a period of two and half years. This is significant because she did not have an opportunity to see and identify the accused during the investigation. Furthermore, she claimed that she had stated to the Police while recording her statement that she could identify the driver of the offending vehicle, however, the same was not found in her Police statement.

14. The evidence of the informant (PW5) shows that after arriving at the place of the accident, he recorded statements of witnesses who were passengers in the Maruti Omni car, as well as the rider of the motorcycle. He categorically stated that none of the occupants of the Maruti Omni van had disclosed the fact that they had seen the accused driving the offending Swift car. Her cross-examination revealed that she had not previously informed

the Police that she was seated in the rear seat of the van facing front.

15. Shivaji Sakharam Kadam (PW4) testified that on 6 September 2013, he and his family were travelling in a Maruti Omni van, when they reached near the TV centre on Sangli-Kolhapur road, a Splendor motorcycle with three riders came from the opposite direction. At that moment, a speedy offending Swift car appeared and collided with the motorcycle. The offending Swift car then proceeded to zigzag at high speed, went to the wrong side of the road, and collided with their Maruti Omni van. He claimed to have seen the accused as the driver of the offending Swift car. It is not in dispute that the accident had occurred on Sangli Kolhapur road, which was heavily trafficked at night. The accident happened during the night hours. It is unlikely that one can see the driver of the motorcycle of the offending Swift car in the dark.

16. Regarding the allegation that the accused was under the influence of alcohol at the time of the accident, the record revealed that an FIR was lodged on 7.9.2013 under Sections 184 and 185 of the Motor Vehicles Act (MV Act). Section 185 of the MV Act pertains to driving under the influence of alcohol or drugs. Registration of the FIR under these Sections suggests that

at the time of filing the FIR, the informant was convinced that the accused had consumed alcohol. However, during cross-examination, the informant (PW5) admitted that none of the witnesses, including the occupants of the Maruti Omni van, had disclosed that the accused was under the influence of alcohol while driving the vehicle. He further admitted that he had no medical report of the accused showing that the accused was under the influence of alcohol until he lodged the report and the registration of the crime. Admittedly, the informant (PW5) had not witnessed the accident. Furthermore, the breath analyser test of the accused was not conducted. It reveals from the record that the accused voluntarily went to the hospital after the accident and was not charged with fleeing the scene.

17. According to Dr Ninad Ramesh Patil (PW 8), the accused was admitted to the hospital with a history of a road traffic accident and a complaint of head injury. Dr Patil (PW8) examined the accused and found that his respiratory, cardiac, and abdomen systems were normal, and his central nervous system was sound. He also found injuries on the person of the accused. However, Dr Patil did not see any evidence of the accused being under the influence of alcohol during the clinical examination.

18. The testimony of Dr Dhanashree Deshpande (PW7) contradicts that of Dr Patil (PW8). According to Dr Deshpande, the accused arrived at the hospital around 12.20 a.m. on 7.9.2013 and reported a road traffic accident. She observed that the accused was under the influence of alcohol, with slurred speech, dilated eyes, unsteady gait, and a strong smell of alcohol. However, Dr Patil (PW8) did not note any of these symptoms despite having examined the accused from 11.30 p.m. until 3.00 a.m. the following day. Dr Deshpande also stated that a blood sample was taken in her presence but did not refer to any rules or books for drawing the sample. She volunteered that her senior guided her in the process. Additionally, she did not claim that the vial containing the blood was shaken vigorously to dissolve anticoagulants and preservatives in the blood. The CA report (Exh.68) shows that there is no mention of the addition of preservatives in the blood sample. Furthermore, Form No.2 (Exh.67) does not indicate the sealing of the blood sample.

19. The accused was externed from Sangli and Kolhapur Districts for a year by an externment order dated 8.8.2013. The learned trial Court observed that the prosecution did not claim that the accused was found living or staying in Sangli city without the permission of competent authority in breach of the

externment order. The evidence of the defence witness shows that she proceeded to Nipani via Ichalkaranji with the help of the accused after his cousins fell at a construction site. At that time, the accused was in Karad, District-Satara, and they intended to go to Nipani. The learned trial Court rightly opined that, in such a situation, it could not be said that the accused had breached the externment order as one has to cross Kolhapur or Sangli District to enter Karnataka State.

20. In view of the above, no infirmity can be found in the acquittal of accused for the offences punishable under Sections 304, 279, 337, 338, 427 of the Indian Penal Code, 184 and 185 (a) and (b) of the MV Act and 132 of the Bombay Police Act, 1951.

21. As a result, the appeal stands dismissed.