

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 69 OF 2002

Govind @ Dwarkadas s/o Nandkishor Loya,
aged about 28 years, occ. Business,
R/o Sailu, District Parbhani

...Applicant
[Orig.Accused]

VERSUS

State of Maharashtra

...Respondent

.....
Shri Vijay Sharma, advocate for applicant
Shri V.P.Kadam, A.P.P. for respondent/State
.....

CORAM : V.M.DESHPANDE, J.

DATE OF RESERVING

THE JUDGMENT : **22.1.2015**

DATE OF

PRONOUNCEMENT

OF THE JUDGMENT : **03.02.2015**

J U D G M E N T :-

1] The present Revision is directed against the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Sailu, dated 3.7.1999 in Summary Criminal Case No. 210 of 1997, by which the applicant was convicted for the offence punishable under Section 304-A of the

Indian Penal Code and was directed to suffer simple imprisonment for three months and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for 45 days, together with the judgment and order, passed by the learned 3rd Additional Sessions Judge, Parbhani, dated 2.3.2002 in Criminal Appeal No. 37 of 1999, whereby the learned lower appellate court dismissed the appeal filed by the applicant and thereby confirmed the judgment and order of conviction.

2] Briefly stated, the prosecution case is as under :-

On 29.11.1997 the applicant was found to be driving a tempo trax bearing registration no. MH-22/8207. According to the prosecution, the applicant was driving the said jeep negligently and gave a dash to Sachin Sanjay Jadhav, aged about 3 years, resident of Vidyanagar, Sailu, resulting into his death.

3] First information report was immediately lodged by Sheshrao Ashruba Raut (PW 1). The first information report was disclosing commission of a cognizable offence, therefore, the police station authorities at Sailu, District Parbhani registered a crime against the present applicant vide Crime No.174 of 1997 for the offence punishable under Section 304-A of the Indian Penal Code.

4] After completion of the usual investigation, the investigating officer found that sufficient material is collected against the present applicant for trial. Hence, he filed charge sheet against him in the court of law.

The case was registered in the court of Judicial Magistrate, First Class, Sailu vide Summary Criminal Case No. 210 of 1997.

Charge was framed against the applicant by the learned Magistrate that on 29.11.1997 at about 11.45 a.m. the applicant by driving the jeep bearing registration No. MH-22/8207 rashly and negligently caused death of Sachin Jadhav, aged about 3 years and thereby committed an offence punishable under Section 304-A of the Indian Penal Code.

5] The applicant denied the charge and claimed for his trial.

6] In order to bring home the guilt of the applicant, the prosecution examined six witnesses. The statement of the applicant was recorded under Section 313 of the Code of Criminal Procedure and his defence was of total denial and false implication.

7] On evaluation of the prosecution evidence, the learned Magistrate found the applicant guilty, and therefore,

convicted him, as observed in the opening paragraph of this judgment and the appeal filed by the appellant was also dismissed.

8] I have heard Shri Vijay Sharma, learned counsel for the applicant and Shri V.P.Kadam, learned Additional Public Prosecutor for the respondent/State. With their able assistance, I have gone through the record and proceedings.

9] Learned counsel for the applicant vehemently submitted that the prosecution has utterly failed to adduce cogent evidence to connect the applicant to the incident in question. He submitted that serious prejudice is caused to the applicant, since the investigating officer failed to step in the witness box. He further submitted that one Santosh Shahane, who was accompanying the applicant at the relevant time in jeep is not examined by the prosecution, and therefore, an adverse inference has to be drawn against the prosecution case. He submitted that there is no evidence to show that the applicant was rash or negligent at the relevant time. The unfortunate death of Sachin, according to him, was pure accident, and therefore, he submitted that both the courts below committed mistake in convicting him.

Learned counsel for the applicant placed reliance on the following reported decisions of the Hon'ble Apex Court.

- (1) **AIR 1972 SC 221**
[Mahadeo Hari Lokre vs The State of Maharashtra]
- (2) **AIR 1973 sc 165**
[Nageshwar Sh.Krishna Ghobe vs
State of Maharashtra]

10] Per contra, learned Additional Public Prosecutor submitted that there are eye witnesses to the incident, who have supported the prosecution case. He pointed out from their evidence that their testimonies withstood the searching cross-examination of the learned cross-examiner. He submits that their evidence clearly show that the applicant was negligent and was responsible for the death of Sachin. He, therefore, submitted for dismissal of the present Revision.

11] Death of Sachin, aged about 3 years, is not in dispute. The postmortem notes are at Exh.37. The postmortem notes are admitted by the defence. Cause of death, as per the postmortem notes is, "shock due to intra cranial hemorrhage". Examination of the postmortem notes reveal that deceased suffered fracture of left temporal region. There were multiple abrasions on the person of the deceased. The inquest panchanama, which is also admitted by the defence, is at Exh.36.

12] The question, which is posed before this court is, whether the death of Sachin was pure accident or it was due to rash and negligent act on the part of the applicant.

13] Section 304-A of the Indian Penal Code reads as under :-

“[304-A. Causing death by negligence—
Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

14] In order to reach to the conclusion as to whether the driver was rash and negligent at the time of driving a vehicle, speed is not the criteria. What the driver of the vehicle is expected is, to drive his vehicle cautiously and not in a negligent manner.

One of the limb of the argument of Shri Sharma, learned counsel for the applicant and which could be seen from the line of cross-examination of the prosecution witnesses is that, just prior to the incident the applicant brought his jeep to the mechanical shop of Shahane for repairing the tape recorder. The shop of Shahane is located just nearby the place of the incident. Therefore, the learned counsel submitted that it cannot be expected that within few moment the jeep will garner high speed as deposed by the prosecution witnesses.

15] Though the prosecution witnesses have stated that the jeep was at high speed at the time of incident and even the submission of the learned counsel is accepted that the jeep cannot cover the high speed within short distance, that by itself will not render the testimonies of the prosecution witnesses as untrustworthy. Merely because a witness has given colour of exaggeration that by itself is not sufficient to discard his entire testimony. It is the duty of the court to separate the chaff from the grain.

16] The evidence of prosecution witness Sheshrao Raut, who has lodged the first information report (Exh.24) clearly shows that at the relevant time the applicant was driving the vehicle and though he has raised his hands to stop the jeep, the applicant fled away from the spot. Criticism was made in respect of the evidence of Sheshrao that his version from the witness box was found to be absent from the first information report (Exh.24).

Firstly, it is not expected that the first informant is under obligation to give minute details of the incident. The object of the first information report is to put the criminal law into motion. The investigating officer is under obligation to register the offence if the first information discloses commission of a cognizable offence.

Apart from the afore said, the first information report clearly shows that the first informant has mentioned the name of the applicant as driver of the jeep.

16] The other eye witnesses are PW 3 Lalita and PW 4 Parmeshwar. According to the learned counsel for the applicant, the evidence of these witnesses has to be excluded, since they are related to deceased. Merely because the witnesses are related or having a close acquaintance, that itself is not sufficient to render their evidence untrustworthy or the court should not keep their evidence out of consideration. If the court on evaluation of their evidence is of the opinion that their evidence is trustworthy and inspires confidence and their evidence is corroborated by the attaining circumstances, then their evidence can be made a basis for the conviction.

17] Lalita (PW 3) is very specific in her evidence that the jeep was of white colour and the present applicant was driving the said jeep. She has stated that after the dash was given the driver of the jeep did not stop the same and ran away from the spot. In cross-examination, even it is not suggested to her that the present applicant was not driving the vehicle.

Further PW 4 Parmeshwar is also very specific in his evidence that the applicant was driving the jeep. His evidence would disclose that he was knowing the applicant prior to the

incident.

From cross-examination of this witness, it is established that in front of his house there is a shop of Santosh Shahane, who deals in repairs of radio and tape recorder. Material portion from the cross-examination of Parmeshwar (PW 4) is reproduced herein below :-

“ It is true that accused Govind had come to the shop of Santosh Shahane for repairing tape recorder. Thereafter, Santosh and Govind both travelled in the trax towards College side. Accused had stopped trax in front of shop of Santosh Shahane. Thereafter, Santosh boarded in the trax and both travelled towards college.”

Thus, even from the line of cross-examination of the prosecution witnesses, the applicant has admitted that he was driving the vehicle and Santosh Shahane was accompanying him. The accident took place immediately.

The submission of the learned counsel that Santosh Shahane ought to have been examined and non-examination of Santosh draws an adverse inference against the prosecution. It appears that for obvious reason Santosh Shahane is not examined by the prosecution.

18] PW 5 is one Anant Mahadev Wadgaonkar. He is an independent witness. This witness is a vehicle driver. His evidence would reveal that the applicant was driving the killer

vehicle at the relevant time. He has witnessed the dash given to deceased. Criticism to this witness is that his statement was recorded after 4-5 days of the incident.

Merely because his statement was recorded after 4-5 days is not helpful to the present applicant, since the present applicant is not the only eye witness. On the contrary, his evidence corroborates the version of PW 3 Lalita and PW 4 Parmeshwar. There is nothing in the evidence of Anant that he was nursing any grudge against the present applicant to falsely implicate him in the incident. Suggestion is given to this witness that the father of the deceased is also driver by profession and he knows him being from the same profession. That by itself is not sufficient to discard his evidence when same was found to be trustworthy. Therefore, the evidence of PW 5 Anant can readily be used as a corroborative piece of evidence to the version rendered by PW 3 Lalita and PW 4 Parmeshwar.

19] Exh. 17 is spot panchanama. The said panchanama is proved by Kisan Sukate (PW 1) the panch. He has specifically denied the suggestion that road was in worst condition.

Exh. 17 would reveal that width of the road was 10 feet. Adjoining to the said road there exist 5 feet kachha road on both sides up to the drainage. The spot panchanama

reveals that the blood was noticed at 5 feet from the drainage. If this document is interpreted in its face value, then it is clear that the jeep was not on the constructed road, but it hit deceased near the drainage. That fact itself demonstrates that the applicant was rash and negligent while driving the vehicle.

20] The scope of the Revision is limited. In the present case, there are concurrent findings of fact recorded by both the courts below. On examination of the impugned judgments, it is clear that both the courts below have recorded a finding of fact on correct appreciation of the prosecution evidence available on record. The approach and view taken by both the courts below, in my view, is based on the correct appreciation of the evidence adduced by the prosecution. There is no perversity in appreciating the prosecution case by both the courts below.

21] In that view of the matter, I see no reason to interfere and upset the concurrent findings recorded by the courts below. Revision fails and it is dismissed. The applicant is directed to surrender to his bail bonds. The learned Magistrate is directed to take immediate steps for serving the jail sentence by the applicant. Rule is discharged.

[V.M.DESHPANDE, J.]