

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

CRIMINAL REVISION APPLICATION NO. 173 OF 2003

Anil Ramdas Surwade,
age 36 years, occ. Driver,
R/o Dongar Sangvi, Tq. Yawal,
District Jalgaon

...Applicant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri R.C.Patil, advocate for applicant
Shri A.S.Shinde, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 3rd August, 2015

ORAL JUDGMENT : -

1] The applicant was convicted by the Judicial Magistrate, First Class, Chopda, on 13.12.1999 in Regular Criminal Case No.153 of 1997, by which the learned trial Magistrate convicted the applicant for the offence punishable under Section 304-A of the Indian Penal Code and directed to suffer rigorous imprisonment for six months and to pay a fine of

Rs.500/-, in default of payment of fine further to suffer simple imprisonment for two months.

The applicant was also convicted for the offence punishable under Section 279 of the Indian Penal Code and directed to suffer rigorous imprisonment for three months and to pay a fine of Rs.100/-, in default of payment of fine further to suffer simple imprisonment for one month.

The applicant was further convicted for the offence punishable under Section 337 of the Indian Penal Code and directed to suffer rigorous imprisonment for two months and to pay a fine of Rs.100/-, in default of payment of fine further to suffer simple imprisonment for 15 days.

The applicant was also convicted for the offence punishable under Section 427 of the Indian Penal Code and directed to suffer rigorous imprisonment for two months and to pay a fine of Rs.100/-, in default of payment of fine further to suffer simple imprisonment for 15 days.

The applicant was also convicted for the offence punishable under Section 184 of the Motor Vehicles Act, however, no separate sentence was imposed upon him.

2] Being aggrieved by the aforesaid judgment and order of conviction, the applicant preferred appeal before the Sessions Court. The appeal was registered as Criminal Appeal No. 1 of 2000. It was assigned on the file of the Additional

Sessions Judge, Ahmednagar. Learned lower appellate court vide judgment and order, dated 6.5.2003 partly allowed the appeal. He confirmed the conviction and sentence for the offence punishable under Sections 304-A, 279, 337 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act. However, learned lower appellate court set aside the conviction for the offence punishable under Section 427 of the Indian Penal Code. Hence this Revision.

3] Heard Shri R.C.Patil, learned counsel for the applicant and Shri A.S.Shinde, learned Additional Public Prosecutor for respondent. With their able assistance, I have gone through the entire record and proceedings.

4] Charge was framed against the applicant by the learned Magistrate in Regular Criminal Case No.153 of 1997 below Exh. 8. The charge reads that, on 13.7.1997 on Chopda to Adavad road on Gawali Nala Bridge, he caused death of one Laxman Koli who was travelling in truck bearing registration No. MH-19/3161, which was driven by applicant rashly and negligently, and therefore, he was charged for the offence punishable under Section 304-A of the Indian Penal Code.

He was also charged that he was rash and negligent in driving the said truck resulting into endangering the human life and personal safety.

5] In order to bring home the guilt of the applicant, the prosecution has examined seven witnesses.

6] The first information report is at the behest of PW 1 Bapu Koli, who was one of the passenger along with deceased Laxman in the truck. The first information report is in the nature of the statement of Bapu. It is at Exh.13.

The first information report discloses that it was recorded at Primary Health Center, Adavad.

As per the said report, on 13.7.1997, he went to village Vardi to collect the amount and thereafter he came to Vardi Phata on Chopda Yawal road. That time, truck driven by the applicant came from Yawal. He requested the applicant that he should be taken to Loni. Laxman (deceased) was also with him. He and Laxman boarded the said truck. In the truck, apart from the first informant and applicant driver, two others namely Laxman, the deceased and the cleaner of the truck were present.

According to the first information report, truck started from Vardi Phata. The truck was driven at the speed of 80 to 90 kilometers per hour and near Payavihir pool on road in between Vardi-Adavat, the truck turned turtle, resulting into death of Laxman and also suffering the injuries, not only by the first informant but also by the present applicant.

7] Dr. Vittaldas Baheti (PW 6) was examined by the prosecution. At the relevant time, he was Medical Officer at Adavat. He examined first informant Bapu and gave his injury certificate (Ex.21). His injury certificate shows contused lacerated wound 4 x 2 cm. bone deep at mid part of lower extremity with local tenderness. He was referred to the Civil Hospital for further treatment.

He also examined Sanjay Wankhede and gave injury certificate (Exh.22). He also examined present applicant Anil Surwade. His injury certificate is at Exh.23. That shows that he has also received various injuries. Laxman, the deceased was brought in unconscious condition. His injury certificate is at Exh.24.

8] The only question, that has to be answered, is whether the applicant was rash and negligent while driving the truck in question.

Except Bapu (PW 1) nobody has supported the case of the prosecution to prove that the truck was in high speed. PW 7 is one Hiranman Patil. He has supported the prosecution that the truck was in high speed.

9] Speed is not the criteria in order to hold the accused liable for conviction under Section 304-A of the Indian Penal Code. There should be cogent and consistent evidence in

respect of rash and negligent driving. Rash and negligent driving cannot be spelt out only through speed.

10] The evidence of PW 1 Bapu is completely silent that the applicant was driving the truck in rash and negligent manner. His claim from the witness box is that the applicant was driving the truck at 80 to 90 kilometers per hour. Besides this, he has not stated anything in his evidence.

In so far as claim of PW 1 Bapu in respect of speed is concerned, from his evidence, it appears that he is making a tall claim. His evidence would disclose that he boarded the truck along with Laxman at Vardi phata and the accident took place near Payavihir pool on Yawal-Chopda road. Even according to the evidence of this witness, the distance between these two points is hardly 1 to 1½ kilometers. If that is so, it will be a very tall claim on the part of this witness to state that within this short distance, a heavy vehicle like truck has garnered the speed of 90 kilometers per hour.

Further, the authenticity of the first information report itself is in doubt, if his cross-examination is read in correct perspective. The relevant portion from his cross-examination is reproduced herein under.

“ Police obtained my thumb impression when I was not in a position to talk.”

If that be so, the authenticity of Exh.13, which is in the

nature of statement is at serious doubt.

11] Further, in the entire prosecution case, there is nothing available on record to show that during the course of investigation any efforts were made by the investigating officer to get checked the motor vehicle in question to rule out the possibility that the accident did not occur due to mechanical fault. It was the duty on the part of the prosecution to point out that the accident did not occur due to any mechanical fault.

The lower appellate court, in my opinion, has considered this aspect incorrectly by misdirecting himself by putting the burden on the accused/applicant to the extent that since the applicant has not taken that stand in his statement recorded under Section 313 of the Code of Criminal Procedure, the benefit cannot be extended in favour of the applicant/appellant. Such an approach on the part of the lower appellate court has resulted into miscarriage of justice.

In criminal case, the burden firmly rests on the shoulder of the prosecution. The accused need not state anything, merely because the accused has not stated in his statement under Section 313 of the Criminal Procedure Code, it cannot be used at his disadvantage.

12] Looking to the quality of the evidence and the fact that in the entire prosecution case there is no evidence

whatsoever in nature to show that the applicant was driving in rash and negligent manner and the prosecution has failed to rule out the possibility about the fact that the accident can occur due to mechanical fault, I see that the benefit of doubt has to be extended in favour of the applicant/accused.

13] In the result, following order is passed.

- (i) Criminal Revision Application is allowed.
- (ii) The judgment and order of conviction, passed by the learned Additional Sessions Judge, Ahmednagar on 6.5.2003, in Criminal Appeal No. 1 of 2000 is quashed and set aside.
- (iii) The applicant is acquitted of the offences punishable under Sections 304-A, 279 and 337 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act.
- (iv) Bail bonds of the applicant/appellant stand cancelled.
- (v) Fine amount, if any paid by the applicant, be refunded to him.

[V.M.DESHPANDE, J.]