

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

CRIMINAL APPEAL NO. 89 OF 2002

The State of Maharashtra

... Appellant
(Orig. Complainant)

V/s.

Shivlal Anjilal Soni,
R/o. Korba Mithagar,
Mahatma Phulewadi,
Wadala, Mumbai - 400 037.

... Respondent
(Orig. Accused)

.....
Mr. A.S. Shitole, A.P.P. for the Appellant - State.
.....

CORAM : S.B. SHUKRE, J.

DATED : OCTOBER 19, 2015.

ORAL JUDGMENT :-

This is an Appeal preferred against the judgment and order dated 18th August, 2001, passed by the learned Metropolitan Magistrate, 29th Court, Dadar, Mumbai, thereby acquitting the respondent for the offence punishable under Section 304-A of the Indian Penal Code (hereinafter referred to as "IPC", for short).

2 Briefly stated, the facts of the case are as under:

It has been alleged that at about 5.30 p.m. on 5th August, 1996, the respondent drove his Fiat car bearing registration No.MH-01-S-2118 in a rash and negligent manner, and thereby gave a dash to the deceased Smt.Aalu Boman Irani, who was crossing Dr. Ambedkar Road, infront of a shop near Masjid area, which resulted in the death of Smt. Aalu Irani. On these allegations, a charge for the offence punishable under Section 304-A of the IPC was framed against the respondents. As he pleaded not guilty to the same, he was tried for the said offence in accordance with law. On merits of the case, the learned Magistrate found that prosecution failed to prove beyond reasonable doubt the charge framed against the respondent and, therefore, by his judgment and order dated 18th August, 2001, acquitted the respondent of the said offence. Not being satisfied with the same, the State has preferred the present Appeal.

3 I have heard the learned A.P.P. for the Respondent - State. None is present on behalf of the respondent. I have carefully gone through the impugned judgment and order. I have also gone through the record of the case.

4 Although, P.W.1 Smt. Dolly Irani has stated that her deceased sister Smt. Aalu Irani was crossing Dr. B. A. Road in front of bread shop in the Masjit area at zebra crossing after the traffic signal had turned green for pedestrians to pass, there is a doubt about this version as in the complaint vide Exhibit-3, P.W.1 Smt. Dolly Irani has not stated anything about the same. It is the defence of the respondent that the Fiat car was being driven in a lawful manner by observing the traffic rules and that the Fiat car was passing by that road only after the traffic signal for the vehicular traffic had turned green. It is also the case of the respondent that deceased Aalu Irani had tried to cross the road when the traffic signal was red for the pedestrians to pass and it is because of this fact that the driver of the Fiat car could not see the deceased Aalu Irani crossing the road nor could he had anticipated her to be standing in the road suddenly, when the traffic signal was red for the pedestrians to do pass from the road. This defence of the respondent gets strengthened from the fact that the independent witness P.W.3 Shri. Dolly Kuper who was the eye witness to the accident, does not say anywhere in his evidence anything about the traffic signal being either green or red at the time of the accident. This fact of the traffic signal

being green either for the pedestrians or the vehicular traffic to pass from the road being crucial to the prosecution case, ought to have been proved by the prosecution beyond reasonable doubt. Same has not been done by the prosecution and, therefore, in my view, benefit of doubt would have to be given to the respondent. This is what the learned Magistrate has done in the instant case. The view taken by the learned Magistrate cannot be said to be perverse or impossible or illogical. Therefore, no case could be said to be made by the prosecution for making any interference with the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)