

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.495 OF 2000.**

The State of Maharashtra] ... Appellant

V/s.

Ashok Pandurang Vihulekar,]
r/o vihule, Rohidas Wada,] Respondent
Tal. Mangaon, Dist. Raigad] Ori. Accused

Ms. Rajeshree Gadhvi, APP for Appellant State.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JUNE, 2015.

ORAL JUDGMENT :

1. The State has preferred this appeal challenging the judgment of acquittal dated 14th March, 2000, passed by Judicial Magistrate First Class, Mangaon, in Summary Case No.42 of 1998, thereby acquitting the respondent accused for the offence

punishable under sections 279, 304(A) of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

2. The facts, as are necessary, for deciding this appeal may be stated thus :-

On 17th January, 1998 at about 3.30 p.m. respondent accused was driving S.T. bus bearing No.MH-12/F-2876 from Shrivardhan to Mangaon. While he was taking ST bus in Mangaon S.T. stand from Mumbai Goa High way, as per prosecution case, he drove the said bus in high speed and in rash and negligent manner which resulted in the dash to pedestrian by name Malu Tambe. As a result thereof, Malu fell down, sustained injuries and was declared to be dead when he was taken to Mangaon Cottage Hospital.

3. The information of the accident was given to the police by respondent accused himself. P.W.3 Head Constable Dharmaji Patil rushed to the hospital and made inquest panchanama. Then he recorded the spot panchanama and statements of witnesses. Further to completion of investigation,

he filed chargesheet in the court. Prior to that he has also lodged complaint on behalf of State against respondent accused for the offence punishable under Sections 279, 304(A) of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

4. Trial Court recorded the plea of respondent to which he pleaded not guilty and claimed trial. In support of its case, the prosecution examined three witnesses viz. P.W. 1 Chandrabai Tambe and P.W.2 Premchand More; both are eye witnesses to the incident and lastly P.W.3 Investigating officer Head Constable Dharmaji Patil.

5. On appreciation of their evidence, the trial Court was pleased to acquit the respondent holding that the prosecution has failed to prove necessary ingredients of both the offences.

6. This judgment of the trial Court is challenged in the appeal by the learned APP submitting that there is evidence of two eye witnesses on record which clearly depicts rashness and negligence on the part of respondent accused. Hence the trial Court has committed an error in disbelieving their testimony and

in acquitting the respondent.

7. Learned counsel for respondent has remained absent. Hence after going through the record of the case and considering the submissions advanced by learned APP, this appeal is being decided.

8. The defence in the case has admitted the spot panchanama Exh.6, inquest panchanama Exh.5 and postmortem report Exh.7. Therefore, the death of Malu as a result of accident is proved in the case. The only issue for consideration is whether the accident has occurred due to rash and negligent driving of respondent. On this aspect, no doubt the prosecution has examined two eye witnesses. However, out of them, P.W.1 Chandrabai, in her cross-examination has admitted that she cannot tell how the accident took place. Hence her evidence is not helpful to the prosecution case to prove the manner in which the accident has occurred so as to infer any rashness and negligence on the part of respondent.

9. Second eye witness examined by the prosecution is

Premchand More. According to his evidence, while he was present on the ST stand, he saw deceased Malu going from Highway to northern side of stand, at that time the bus driven by the respondent from backside took turn in high speed and gave dash to Malu. As a result, Malu fell down. Thus, the only allegation made by him in his evidence before the Court against respondent is that the bus was being driven in speed. Now merely from the fact that the vehicle was driven in speed, rashness and negligence cannot be inferred on the part of vehicle driver. Such rashness and negligence has to be proved on record because accident can occur on account of negligence of the pedestrian also or it can be on account of the error of judgment also. In the present case, there is nothing in the evidence of P.W.2 Premchand to attribute entire blame for the said accident on the part of respondent.

10. Except for the evidence of these two eye witnesses, there is no other evidence on record adduced by the prosecution and the evidence of these two witnesses is not sufficient to prove the guilt of the respondent. Hence the trial Court has

rightly acquitted respondent. In this appeal no inference is warranted in the judgment and order of trial Court as the view taken by the trial Court is not only the probable view but the only view. Hence appeal stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]