

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

CRIMINAL APPEAL NO.164/2016

Dnyaneshwar S/o Dattatraya Kangare
Age: 29 Years, Occ: Labour,
R/o: Suregaon, Tq.Newasa,
Dist.Ahmednagar, At present
residing at Loni (kh.),Tq.Rahata
Dist.Ahmedpur

..APPELLANT

VERSUS

1] The State of Maharashtra
(Through Government Pleader,
High Court of Bombay Bench at
Auranabad.)

2] Deepak S/o Damodhar Markali
Age 35 years, Occu-Driver
R/o Newasa (Bk), Tq.Newasa,
Dist.Ahmednagar.

.. RESPONDENTS

Mr.Y.B.Pathan, Advocate for appellant.
Mr.A.V.Deshmukh, APP for Respondent-State
Mr.Sachin S. Kotkar,Adv.for respondent no.2.

**CORAM : V.L.ACHLIYA,J.
DATE : 18TH OCTOBER, 2016**

ORAL JUDGMENT :-

By consent, appeal is finally heard at the stage of

admission.

2] The present appeal is filed under Section 372 of Cr.P.C. by son of deceased Dattatraya Dhondiba Kangare who died in motor vehicle accident.

3] By the present appeal, the appellant has challenged the judgment and order dated 28/1/2016 passed in S.T.C.No.176/2007 by Judicial Magistrate, First Class, Newasa, Dist.Ahmednagar, whereby learned JMFC has closed the proceeding after examining one witness and acquitted the accused. The appeal is preferred on various grounds which includes undue haste shown on the part of the learned Magistrate in disposal of the proceeding which according to the appellant resulted into serious miscarriage of justice.

4] I have heard learned counsel for the appellant, APP for the State and counsel representing accused-respondent no.2 and further perused the record and proceedings.

5] The fact is not in dispute that accused was charge sheeted for committing offence under Sections 304(a), 279,

337, 338, 427 of IPC and Sections 184, 134(a) (b)/177, 3(1), 181, 146/196, 130/177 of Motor Vehicle Act with allegations that at the relevant time of the accident he was driving the tempo trax jeep bearing Registration No.MH/20/E/9638 in rash and negligent manner and gave dash to the motor cycle driven by the deceased which resulted into causing his death on the spot. On the basis of complaint lodged by Rajendra Pandharinath Shinde said offences came to be registered against respondent no.2 vide Cr.No.208/06 dated 23/11/2006 with police station, Newasa. After registration of offence, investigating officer conducted investigation. He visited the spot of incident, prepared the panchanama of scene of occurrence and recorded the position of both the vehicles as well as other circumstances. During the course of investigation, the investigating officer recorded statements of number of witnesses which includes Jagannath Gaikwad, Kailash Shinde, Ranjit Tarde, Harichandra Patare, Narayan Shinde, Rambhau Kangire. In the charge sheet filed, prosecution has cited as many as fifteen witnesses to be examined in support of the case of prosecution.

6] It appears from the record that for years together, the

matter remained pending due to non availability of accused for trial. All of a sudden, learned Magistrate has taken up the matter for evidence and closed the proceeding by recording statement of only one witness. Learned Magistrate has observed that whatever facts the witness has deposed can be termed as hearsay evidence. No serious efforts were made to secure the presence of witnesses. Hurriedly the case was closed on 25/1/2016 and accused came to be acquitted. Being aggrieved, appellant has preferred this appeal.

7] Learned counsel for the appellant has pointed out from the record and proceedings that undue haste was shown on the part of learned Magistrate in deciding the case. He has pointed out that there are number of witnesses cited by the prosecution which includes the witnesses to the incident, who were neither summoned nor examined in the case. He has submitted that it is not necessary that in each and every case there should be eye witness to the incident. The case can also be decided based on circumstantial evidence. According to him, the learned Judge has committed gross error in acquitting the accused without summoning and examining the important witnesses cited by the prosecution.

8] On the other hand, learned counsel for the respondent no.2 submits that case was pending since 2006. In spite of issuance of summons to the witnesses, the witnesses have not appeared before the Court. On due consideration of the facts of the case and non attendance of the witnesses, the learned Magistrate has closed the proceeding. In this context, the learned counsel has invited attention to order dated 25/1/2016 passed by learned Magistrate.

9] In order to appreciate submissions, I have thoroughly perused the record and proceedings. On perusal of the record and proceedings, I am convinced that the learned Judge of the trial Court has shown undue haste in disposal of the proceeding. The charge sheet was filed in the year 2006. Since after filing of charge sheet the accused appears to be not attending the proceedings. The roznama of the proceeding reflects that from 2007 onwards till 2011, the accused was absent though repeatedly warrants were issued. Since after filing of charge sheet the accused appeared first time on 9/4/2012 and the learned counsel for the accused gave consent to admit the spot panchanama, post mortem report by dispensing with its formal proof and same were admitted in evidence and marked as Exh.13 and 14. Vide application Exh.15, learned APP moved an application to issue summons to the prosecution witness. Since

thereafter there was no progress in the case and accused also remained absent and various orders were passed to issue warrant to secure the presence of accused. It is rather surprising that when the case remained pending for years together for seeking presence of the accused, all of sudden the accused appeared on 19/3/2014 and moved an application for cancellation of warrant. The roznama of the proceeding reveals that the summons issued to the witnesses were not returned. On 25/1/2016, the accused was absent. In absence of accused the evidence of one witness was recorded and the order has been passed to close the evidence of the prosecution. The order dated 25/1/2016 passed by learned Judge reads as under :

“Heard Id. APP. Ld. APP. Submitted that, prosecution has examined one witness. Perusal of evidence of evidence of P.W.1, it reveals that the said witness was at his home and got the information about the accident from one Rajendra Shinde. Thus, the evidence of prosecution witness is hearsay evidence. Summons to other witnesses were issued, however, failed to come nor the the report is received. Considering the said fact, the prosecution does not want to examine any further witnesses and thet evidence be closed. Considering the said facts, I proceed to pass following order :

ORDER

- 1] Evidence of prosecution is hereby closed.
- 2] No incriminating evidence against accused to record statement u/s 313 of

Cr.P.C., hence statement of accused u/s 313 of Cr.P.C. is dispensed with.”

10] In my view the manner in which the trial Court has conducted the proceeding has certainly resulted into causing serious miscarriage of justice to the family of the victim. Perusal of the charge sheet reflects that the case is entirely based upon circumstantial evidence. There was no eye witness to the incident. The spot panchanama and post mortem report were admitted in evidence by dispensing with its formal proof. There are witnesses who have visited the spot and deposed as to what they have found on the spot immediately after the incident, which includes the location of the motor cycle, the injured, position of jeep and other circumstances. It was expected on the part of the learned Judge to have given full opportunity to prosecution to examine the witnesses. If report in respect of service of summons were not submitted, then the Magistrate was not expected to have acted as silent spectator. He should have exercised his powers to secure the report of service and compelled the concerned officer to serve the summons and submit report. The role of learned APP also appears to be doubtful. It was expected on the part of learned APP to have taken all necessary steps to secure the presence of witnesses. Such approach to close the proceeding by examining one witness is certainly not appreciable. No doubt the case is of 2006 and the

Court was expected to decide the same in expeditious manner. But the expeditious disposal of the case cannot be at the cost of ignoring the right and interest of the victim involved in the case. In the process of dispensation of justice not only the right of accused to have speedy disposal of case to be guarded but the rights and interest of victim also needs to be protected by Courts of law.

11] Perusal of the charge sheet reflects that prosecution has cited number of witnesses to prove its case. One amongst them is the person who had seen the accused driving the jeep in question immediately prior to the incident. Only for the reason that there is no eye witness to incident cited by prosecution, the Court cannot at once come to conclusion that there is no evidence in the case and proceeding is liable to be closed. I am therefore of the view that it is a fit case to set aside the impugned judgment and order and refer back the matter for fresh decision from the stage at which the proceeding was closed by directing the trial Court to allow prosecution to lead further evidence so as to ensure that in the process of dispensation of justice the interest of victim is also protected. Hence I am not inclined to allow the appeal and pass following order :

ORDER

I] Criminal Appeal No.164/2016 is partly allowed to the extent of setting aside the impugned judgment and order dated 28/1/2016 in S.T.C.No.176/2007 passed by learned JMFC at Newasa, Dist.Ahmednagar. The case is remanded back to trial Court to decide the proceeding afresh by giving full opportunity of hearing to prosecution to summon and examine witnesses though cited but remained to be examined.

II] The trial Court is also directed to ensure that the presence of all material witnesses cited by the prosecution is secured and if necessary the trial Court shall exercise its power to compel the witnesses to remain present in the Court.

III] The appellant is granted liberty to make appropriate application before the trial Court to assist the prosecution.

IV] The accused/respondent no.2 is directed to appear before the trial Court on 21/11/2016 and dates subsequent thereto.

V] The trial Court is directed to decide the matter expeditiously and ensure that the case is decided within six months w.e.f. 21/11/2016.

(V.L.ACHLIYA,J.)

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