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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.71 OF 1999

The State of Maharashtra

..Appellant.

V/s.

Uttam Vasant Mane,

Age: 23 years, R/o. Visapur,

Taluka Tasgaon, District Sangli

..Respondent.

Mrs.S.V.Sonawane, APP for appellant-State.

Mr.S.P. Thorat for respondent.

CORAM : A.M.BADAR, J.

DATED : 25TH APRIL, 2016

ORAL JUDGMENT

1. This is an appeal filed by the State challenging the judgment and order passed by the learned J.M.F.C., Tasgaon, District Sangli in Summary Criminal Case No.219/1996 decided on 21st September, 1998, thereby acquitting the accused for offences punishable under section 304A of the Indian Penal, 1860 and section 184 of the Motor Vehicles Act, 1988.

2. Facts in brief leading to the institution of the present case can be summarized as under:-

(a) PW1 Shankar Ekanath Patil is the maternal grandfather of deceased Banti @ Sadhana Sankpal. He set the criminal law in motion on 28th February, 1996 alleging that by rash and negligent driving of the jeep bearing registration No.MH-10/C-366, the respondent / accused caused the death of said Banti @ Sadhana Sankap, a child, aged about 1½ years.

(b) According to the prosecution case, the daughter of informant Shankar Patil came to his house for the purpose of delivery. She was accompanied by her children. On 28th February, 1996 on of her child namely, Banti was playing in the vicinity of the house of her maternal grand-father Shankar Patil (PW1). At that time, a jeep bearing registration No.MH-10/C-366 driven by respondent-accused came in a rash and negligent manner from the side of Turuchi village and gave dash to the Banti Sankpal causing her instantaneous death. The accident was disclosed to informant Shankar Patil by one Jaywant Patil and after visiting the spot, informant PW1 Shivaji

Patil lodged report of the accident with police station, Tasgaon resulting in registration of the Crime bearing No.43/1996 against the respondent / accused. The dead body of Banti was then sent for autopsy. Panchanama of the spot of incident was recorded. Statements of witnesses came to be recorded and on completion of routine investigation, charge-sheet for the offences punishable under section 304A of the Indian Penal Code, 1860 and 184 of the Motor Vehicles Act, 1988 came to be filed. Accordingly, Summary Case bearing No.219/2016 came to be registered.

(c) Particulars of the offence came to be explained to the accused and he pleaded not guilty and claimed to be tried.

(d) In order to bring home the guilt to the accused, the prosecution has examined as many as eight witnesses. Informant Shankar Ekanath Patil was examined as PW1 at Exhibit-17. The F.I.R. lodged by him is at Exhibit-18. Vasant Anant Joshit was examined as PW2 at Exhibit-19. He visited the spot soon after the accident. Babasaheb Maruti Patil was examined as PW3 at Exhibit-20. He is a panch witness to the

inquest panchanama and spot panchanama. Dr.Mahesh Sadashiv Welnenkar, the autopsy surgeon is examined as PW4 at Exhibit-25. The post mortem report is at Exhibit-26. Sanjay Pundlikrao Rawal, Inspector of motor vehicles is examined as PW5 at Exhibit-19. He has examined the jeep alleged involved in the accident. Shakil Shamshuddin Mulla, an eye witness to the accident is examined as PW6 at Exhibit-32. Baburao Mahadeo Sankpal, paternal grand-father of deceased Banti, who also claims to be an eye witness is examined as PW7 at Exhibit-34. PW8 Vishwajit Narayan Bulbule is the Investigating Officer of the crime in question.

(e) After hearing the parties, the learned J.M.F.C. Tasgaon by the impugned judgment and order dated 21st September, 1998 was pleased to acquit the respondent / accused for offences punishable under section 304A of the Indian Penal Code and section 184 of the Motor Vehicles Act by granting benefit of doubt to him.

3. Heard Mrs.Sonawane, the learned Additional Public Prosecutor appearing for the State. She vehemently argued that evidence of PW6 Shakil Mulla and PW7 Baburao Sankpal

is sufficient to hold that the respondent / accused was driving the jeep in question in a rash and negligent manner and thereby caused death of Banti Sankpal. According to the learned Additional Public Prosecutor, there is no reason to disbelieve the trust-worthy account of the incident in question coming from the mouth of PW6 Shakil Mulla and PW7 Baburao Sankpal.

4. As against this Mr.Thorat, the learned counsel appearing for the respondent / accused submitted that the impugned judgment and order passed by the learned J.M.F.C. is perfectly correct and a probable view which is in consonance with evidence adduced by the prosecution is taken by granting the benefit of doubt to the respondent / accused.

5. With the assistance of the learned counsel appearing for the parties, I have carefully perused the record and proceedings, including the evidence adduced by the prosecution. The entire case of the prosecution rests on the ocular version of the incident coming on record from PW6 Shakil Mulla and PW6 Baburao Sankpal. The death of Banti

Sankpal, a child aged about 1½ years in the accident in question is not in doubt. Evidence of autopsy surgeon PW4 Mahesh Welnenkar is duly corroborated by the post mortem report at Exhibit-26. This evidence goes to show that Banti @ Sadhana Sankpal died due to shock caused because of fracture of skull with subdural haematoma. Inquest notes duly proved by PW3 Babasaheb Patil, panch witness, goes to show that death body of Banti Sankap was having head injuries. This evidence is sufficient to show that a child named Banti Sankpal died homicidal death.

6. Now, let us examine whether the prosecution has proved that it was the accused who by rash, negligent as well as dangerous driving of the jeep bearing registration No. MH-10/C-366 caused the death of Banti Sankpal and thereby made himself liable for punishment as provided under section 304A of the Indian Penal Code and section 184 of the Motor Vehicles Act.

7. At the outset, it needs to be kept in mind that rash and negligent act implies omission to do something which reasonable and prudent person guided by the consideration

which ordinarily regulates human affairs would do. Rash and negligent driving postulates doing something which a prudent and reasonable person guided by similar consideration would not do. The speed of the vehicle - high or slow by itself does not amount to rash and negligent act on the part of driver of a vehicle. The rash and negligent or dangerous act implies lack of ordinary care and prudence which is expected of a person of ordinary prudence.

8. Let us now turn to the evidence of PW6 Shakil Mulla. He is an handcart owner and used to sell cold drinks in front of the school. He claims to have witnessed the incident while standing at his handcart. It is in his evidence that on the date of incident at about 10.45 to 11.00 a.m. while he was doing his business by standing at the handcart, a jeep came from Turuchi side and a girl came under the said vehicle. He deposed that at the time of the accident, the girl was proceeding ahead of the jeep and the driver of the jeep was talking to somebody by leaning out of the said jeep. Let us examine what this witness has deposed in his cross-examination. His cross-examination reveals that he was behind the jeep and the victim girl was in front of the jeep. He

admitted in his cross-examination that nobody was talking with the driver of the jeep at the time of the incident in question. His cross-examination shows that except him, nobody else was present at the spot of incident. Cross-examination of this witness as such makes it clear that the driver of the jeep was not talking with anybody while driving the jeep as claimed by him in chief-examination. As this witness was behind the jeep, he was not in a position to witness what was happening ahead of the jeep. It can be said that that PW6 Shakil at the most had witnessed the accident while being at the backside of the jeep. This material elicited from this witness in the cross-examination makes it difficult to assign rashness or negligence on the part of the driver of the jeep in causing the accident.

9. The next witness relied by the prosecution in support of the charge is PW7 Baburao Sankpal, the paternal grand-father of the deceased. In chief-examination itself, this witness has stated that he is unable to state as to how the accident took place and who is responsible for the incident in question. He claims to be in front of the hotel when the incident in question took place. As per his version, when he

was near the hotel, a jeep came from Turachi side. The driver of the jeep was talking with two persons who were outside the jeep. PW7 Baburao Sankpal further deposed that the driver of the jeep could not notice his grand-daughter Banti and as such, the jeep gave dash to his grand-daughter causing her death. This witness was particular in stating that at the time when the driver of the jeep was talking with others who were outside the jeep, the jeep was in motion. Cross-examination of this witness reveals that the jeep was proceeding slowly.

10. The learned trial Court disbelieved the version of PW7 Baburao Sankpal as improbability had crept in the evidence of this witness. It is hard to believe that driver would drive the jeep by keeping it in motion and at the same time would speak with the outsiders. The learned trial Court further doubted presence of this witness on the scene of offence by holding that neither PW6 Shakil Mulla nor PW3 Babasaheb Patil had named this person as an eye witness to the incident in question. PW6 Shakil Mulla had categorically deposed that the only person present at the spot witnessing the accident. With this material on record, the conclusion of the learned trial Court that presence of PW7 Baburao Sankpal on the spot and

he witnessing the incident is doubtful, cannot be said to be improbable view of the learned trial Court.

11. So far other witnesses are concerned, they are not eye-witness to the incident in question. As such, their evidence is of no assistance to come to the conclusion that the accident had happened because of the dangerous as well as rash and negligent driving of the vehicle in question by the respondent / accused, causing death of Banti @ Sadhana Sankpal.

12. The view taken by the learned trial Court as such cannot be said to be unreasonable and perverse view of the evidence on record while acquitting the respondent / accused. No compelling or substantial reasons can be seen from the evidence available on record to disturb the finding of acquittal of the respondent / accused recorded by the learned J.M.F.C. Tasgaon. In the result, the appeal fails and the same is hereby dismissed.

(A.M.BADAR, J.)