

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

CRIMINAL APPEAL NO. 282 OF 1999

The State of Maharashtra

... Appellant
(Orig. Complainant)

V/s.

Jalindar Dnyaneshwar Bankar
Age 29 years, R/o Fugewadi,
Near Salunke Tourist Service,
Pune – 12.

... Respondent
(Orig. Accused)

Mr. P.H. Gaikwad, APP for State.
Mr. R.D. Soni, for Respondent

CORAM : MRS.SWAPNA JOSHI,JJ.

DATE : 01st OCTOBER, 2016

JUDGMENT:

1. This appeal has been preferred against the judgment and order dated 8th March, 1999 delivered in Summary Criminal Case No. 420 of 1995. By the learned JMFC, Khalapur, thereby acquitting the Respondent of an offences punishable under section 304A, 279, 337 and 338 of IPC and 184 of Motor Vehicle Act.
2. Heard, the learned counsel for Appellant-State and the learned counsel Mr. R.D. Soni, for Respondent. I have gone through the record of the case and impugned judgment and the order.

3. The learned APP contended that the acquittal of the Respondent recorded in this case by the learned Magistrate, is perverse and illegal. The learned Magistrate failed to consider that the testimony of alleged eye witness PW-2 who is the mother of the deceased. Per contra, the learned counsel for Respondent submitted that the learned Magistrate has rightly passed the order acquitting the accused. He submitted that, although the Investigating officer PW-4 has stated that he had recorded the statement of the eye witnesses, not a single eye witness was examined by the prosecution. He submitted that in fact the testimony of the mother of the deceased (PW-2) does not throw any light on the alleged incident.
4. I have gone through the entire evidence. The prosecution examined in all four witnesses PW-1 failed to state about the incident before the court PW-2 is the mother of deceased. PW 3 is the panch witness on the point of place of incident and PW-4 is the Investigating officer.
5. The prosecution case in brief is that on 27th January, 1995 at about 5.15 pm one Chhaya Khobragade (PW-2) along with her small daughter Yamini aged about 3 and 1/2 years was returning from hospital to her house by the road which was proceeding from HOC colony to "A" type colony. At that time, one jeep bearing number MR-5087 came from the back side of the complainant in rash and negligent manner and dashed the complainant as well as her daughter. It caused

the death of the small girl Yamini and complainant Smt. Chhaya Khobragade received injury to her right leg. At the relevant time police head constable along with the PSI were on petrolling duty they came to know about the said accident. The complainant as well as her daughter were immediately taken to HOC hospital, however during the treatment Yamini succumbed to the injuries. One Vijay Balkar Munde (not examined) reported about the said accident to Rasayani police station, which was registered as Motor Accident Case No. 4/95. The investigation was carried out by PSI Lad. He visited the hospital recorded the Inquest panchnama of the dead body of Yamini. He sent the dead body of Yamini for postmortem to primary health centre. He recorded the statements of eye witnesses. He recorded the panchnama place of incident and thereafter submitted the charge sheet. The charge was framed by the learned magistrate under section 304A, 279, 337 and 338 of IPC and 184 of Motor Vehicle Act.

6. As far as the testimony of PW-2 is concerned she appears to be the only witness to the incident no other witness has been examined by the prosecution who would have thrown light on the aspect of manner in which the incident had taken place. According to the PW-2 at the time of incident she along with her daughter Yamini were returning from the road located in HOC Colony at that time one jeep came from "A" type colony in high speed manner and gave dash to her as well as her daughter. They both fell down and received

injuries. PW-2 received injury to her right leg and her daughter sustained injury on her head. People gathered at that place and PW 2, she and Yamini were taken to HOC hospital. During the cross examination PW-2 denied that her daughter had fallen down, in front of the jeep by releasing her hand. In fact the testimony of PW-2 does not give a clear picture about the alleged accident. It is not clear from the testimony PW-2 as to in which matter the driver was driving the jeep and how actually the incident had taken place. It is also not clear whether there were any other vehicles on the road at the time of accident or there were people on the road at the time of accident. There is a simple version of PW-2 that the vehicle came from "A" type colony in high speed and gave dash to her as well as her daughter. Beside this fact PW-2 has not given the details of the incident. The version of PW-2 does not make clear whether in fact the accused was driving the vehicle rashly and negligently. It is not sufficient, if it is only found that the accused was driving the vehicle in fast speed. The condition of the road as well as the nature of traffic these circumstances are not on record which are necessary to arrive at the conclusion whether the accident was result of rash and negligent driving of the vehicle by the driver. The prosecution has not brought on record the condition of the road as well as the nature of the traffic at the spot. The only version PW-2 that the vehicle came from "A" type road speedily is not sufficient to hold the accused guilty for rash and negligent driving. On going through the spot panchnama, it appears that the vehicle came

from the backside of the victims . In that case, it cannot be said that PW-2 saw the vehicle coming speedily from their backside.

7. It is already discussed above that the prosecution has not examined any other witness who would have thrown light on the aspect of the accident. Thus prosecution has failed to prove that on 27th January, 2015 at about 5.15 p.m. the accused caused the death of Yamini and caused injuries to Chaya by driving the jeep in rash and negligent manner, so as to endanger human life or personal safety of others and without taking into consideration the situation and condition of the road.
8. The view so taken by the learned Magistrate is plausible. It is well settled principle of law that in exercise of its appellate jurisdiction, particularly in appeal against the acquittal, it is not open to this court to substitute its own view with the view taken by the lower court, unless the view taken by the lower court is illegal or perverse or against the principle of law.
9. There are no sufficient grounds made out by the appellant-state to interfere with the impugned judgment and order. In these circumstances, the appeal deserves to be dismissed and accordingly stands dismissed.

(MRS.SWAPNA S. JOSHI, J.)