

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.43 OF 2016

Ms.Alpana Pruthvish Chakravarti ... **Appellant/Applicant**
V/s.

Shri.Gautam Anna Kharate & Anr. ... **Respondents**

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Ms.Vrishali R Raje, Advocate for the Appellant/Applicant.

Mr.Pratap B. Kakade, Advocate for the Respondent No.1.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 16th NOVEMBER 2016.

P.C.

1 By this appeal, the appellant is challenging the Judgment and Order passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application No.486 of 2014 thereby setting aside the conviction and sentence imposed upon the respondent No.1 by the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai in Criminal Case No.428/PW/2012.

2 Heard the learned counsel appearing for the applicant/appellant. She vehemently argued that the Revision Petition was not maintainable. The learned Additional Sessions Judge entertained the same and acquitted the respondent No.1 of the offence punishable under Sections 279, 338 of the Indian Penal Code. On

merits, the learned counsel for the applicant argued that there was evidence on record to show that the bus was not having any mechanical defect. Spot panchanama shows that the accident took place far away from the footpath. The learned advocate was at pains to point out that the accident took place because of rash and negligent driving of the respondent No.1/accused. My attention was drawn to deposition of informant Alpana and other witnesses such as Rajesh Khatke, Sajid Abdul Bashir Khan, Rajaram Gawali, so also to the documentary evidence adduced by the prosecution in order to bring home the guilt to respondent No.1. The learned counsel further argued that with voluminous evidence adduced on record by the prosecution it is established that on 23/02/2011 respondent No.1 drove the bus on public way in rash and negligent manner so as to cause danger to human life and by giving dash to informant Alpana caused grievous hurt to her.

3 I have gone through the evidence adduced by the prosecution in order to prove guilt of respondent No.1/accused.

4 According to the prosecution case, the incident took place on 23/02/2011 in the morning hour near Garware Square of Vile Parle (East). It is alleged that respondent No.1/accused drove four wheeler vehicle bearing Registration No.MH-01-AP-0206 in rash and negligent manner so as to endanger human life and by giving dash to informant-Alpana caused grievous hurt to her.

5 Perusal of evidence of Alpana Chakaravarti does not show that the accused was driving the vehicle in a rash and negligent

manner. What is stated by Alpana is to the effect that at the time of the incident, for crossing the road, she was standing on the road. Her statement further discloses that at that time one bus came from Andheri Station and gave dash to her. With this statement of Alpana, it is hard to infer that the respondent/accused was driving the bus in rash and negligent manner so as to endanger the human life.

6 P.W.No.2 Rajesh was conductor of the bus driven by respondent/accused. His evidence shows that the bus suddenly stopped and when he got down, he saw one woman in injured condition. This evidence is also of no use to infer commission of offence alleged against the accused.

7 P.W.No.3 Sajid is a panch to the spot panchanama. The spot panchnama shows that the spot of the accident is at a distance of 14 feet from the footpath. The spot panchnama indicates that the informant was standing on the road. It has come in the cross-examination of the informant that she was not even crossing the road from the zebra crossing.

8 P.W.No.4 Rajaram is Traffic Inspector working with the BEST. His evidence merely shows that he visited the spot after the accident.

9 For proving offence punishable under Section 279 and 338 of the Indian Penal Code, it is incumbent on the part of prosecution to establish that the accused had drove the four wheeler vehicle in rash

and negligent manner so as to endanger human life. The standard for judging this aspect is a standard meant for a prudent man. There is no evidence on record to show that the bus was being driven in a rash and negligent manner by the accused. Therefore, no illegality can be found in the Judgment and Orders of the Court below in acquitting the accused of the offences alleged against him.

10 It is argued that the Revision challenging the order of conviction was not maintainable. Perusal of the impugned Judgment of the learned Additional Sessions Judge goes to show that he has appreciated the evidence and has examined the aspect whether the accident took place because of rash and negligent driving of the accused. In fact, perusal of the impugned Judgment shows that the learned Additional Sessions Judge has examined the matter in detail virtually by exercising the powers of the Appellate Court. Therefore, it cannot be said that merely because the proceedings were tried as Revision Petition, the outcome thereof amounts to illegality.

11 In view of forgoing reasons, no case for leave to appeal is made out. The appeal is, therefore, dismissed.

(A. M. BADAR J.)