

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL APPEAL NO. 316 OF 2002

State of Maharashtra

... Appellant

Vs.

Balkrushna Dattatraya Savant  
R/o Dahigaon, Tal: Malshiras,  
Dist. Solapur.

... Respondent

Mr. S. R. Agarkar APP for the State.  
None for Respondent.

**CORAM: SMT.SADHANA S.JADHAV, J.**

**DATED : MAY 16, 2017.**

**JUDGMENT:**

1) The State of Maharashtra, being aggrieved by the Judgment and Order dated 15/09/2001 passed by Judicial Magistrate First Class, Malshiras in Summary Trial Case No. 944 of 1998, thereby acquitting the accused of the offence punishable under section 279, 304 (A) of the Indian Penal Code and under sections 184, 3 (1)/181,177 (11) of Motor Vehicles Act, has filed the present appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

(i) On 17/04/1998, one Kalyanrao Kadam, informed the police that when he was passing through Nakure Vasti on Dahigaon Kurbavi Road, he saw a crowd. He stopped and inquired. It was seen that one Bapu Mulani had died on the spot as he was dashed by an unknown vehicle. The police had reached the spot and had made inquiries. The information received through Kalyanrao Kadam was treated as statement on the basis of which crime no. 26 of 1998 was registered. Police had prepared the spot panchanama and inquest panchanama. The bicycle of the deceased was lying on the spot. It was in a damaged condition.

(ii) There was an iron chain of 7 locks on the spot and it was clear that it was of a tractor. It was seen that two locks were new and remaining 5 locks were old. The police had seized iron chain and had seized the same while recording the spot panchanama. It is at Exhibit 30. Police had recorded the statement of 3 witnesses on 18/04/1998. One of the witnesses namely Dilip

Sawant had disclosed that he had repaired the said iron chain belonging to the tractor of Balkrishna Sawant. He had also mentioned the registration number of the vehicle which he had repaired.

3) On 20/04/1998, statement of one Kabir Mulani was recorded and he had disclosed the registration number of the said vehicle as MVL 8416. It is pertinent to note that statement of Dilip Sawant was also recorded on 20/04/1998. The registration number of the tractor was given by Dilip Sawant. Respondent herein happens to be owner of the said tractor and hence, he was arrested and charge-sheeted for offence punishable under sections 279, 304 (A) of the Indian Penal Code and under sections 184, 3 (1)/181,177 (11) of Motor Vehicles Act.

4) It is pertinent to note that P.W. 4 Dilip Sawant has been declared hostile by the prosecution. He had resiled from his earlier statement. There was no substantive evidence to implicate the accused. Prosecution has examined P.W. 6 Kabir Mulani who has claimed to be an eye witness to the incident. According to P.W. 6, On 17/04/1998, he had been to Natepute. He had rented

a bicycle and was going to Chandrapuri from Natepute. Near Nakure Vasti, he had seen deceased was riding bicycle and he was just ahead of P.W. 6 at a distance of 25 to 30 feet. He had seen a tractor proceeding in a high speed and had given dash to the bicycle of Mulani. According to P.W. 6, he had even raised shouts to stop the tractor, however the tractor had not stopped. According to him, he had seen the driver of the tractor and has identified the respondent as the person who was driving the tractor at the relevant time.

5) It is pertinent to note that P.W. 6 is a relative of the deceased Bapu Mulani. He has admitted in the cross-examination that he had not chased the tractor. He had not been to the house of the relatives and had not informed about the death of Bapu Mulani. He had not disclosed about the incident to anybody and had left for Bombay after 3-4 days. Upon perusal of the original records and proceedings, it appears from the charge-sheet that Kabir Mulani was the original resident of Panchwad, Tal. Khatav, District Satara. That there was no reason for Kabir Mulani to be at the relevant spot. The conduct of the witness of not informing the relatives or the police on the very same day speaks for volumes for itself. He has stated that he had been to Bombay

within 3-4 days, however, evidence of Investigating Officer indicates that statement of Kabir Mulani was recorded on 20/04/1998. It is therefore, more than clear that there is no material evidence on record which would clearly establish that the deceased Bapu Mulani had sustained dash by tractor which was being driven by the accused. There is no material on record to even indicate that the respondent happens to be the owner of the said tractor. The learned Sessions Judge has assigned justifiable reasons for recording acquittal in favour of the respondent. In the absence of any cogent and convincing evidence, the only conclusion that could be drawn is that accused is not guilty of the offence charged against him. No interference is warranted. Hence, following order.

### **ORDER**

- (i) Appeal stands dismissed.
- (ii) The Judgment and Order dated 15/09/2001 passed by Judicial Magistrate First Class, Malshiras in Summary Trial Case No. 944 of 1998 is upheld.

- (iii) Bail bonds of the respondent/accused stand cancelled.
- (iv) Appeal stands disposed of.

**(SMT. SADHANA S. JADHAV, J.)**