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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1349 OF 2003

The State of Maharashtra

..Appellant.

V/s.

Sunil @ Sonaya Jalindar Madake,
Age 22 years, Occupation Agriculture,
R/o. Kavathepiran, Taluka Miraj.,
District Sangli

..Respondent.

Mr.P.H. Gaikwad-Patil, APP for the Appellant-State.

Mr.Nikhil Pawar i/d. Mr.Tejpgal Ingale for the Respondent.

Coram : N.M.Jamdar, J.

Date : 30 June 2017

ORAL JUDGMENT

The appeal is filed by the State of Maharashtra challenging the judgment and order dated 6 August 2003 passed by the learned Judicial Magistrate First Class, Sangli acquitting the Respondent-accused of the offences punishable under sections 279, 337, 338 and 427 of the Indian Penal Code, read with section

section 177 of the Motor Vehicle Act.

2. According to the prosecution, on 25 February, 2003 at about 3.00 p.m. at village Kavthepiran, Taluka Miraj, District Sangli the Respondent-accused rashly and negligently drove his M-80 Scooter and caused injuries to the pedestrians. The prosecution examined four witnesses, namely the panch witness, two injured pedestrians and the investigating officer. The learned Magistrate after considering the evidence found that the rashness and negligence of the Respondent-accused was not proved and proceeded to acquit the Respondent-accused.

3. I have heard Mr.P.H.Gaikwad-Patil, learned APP for State and Mr.Nikhil Pawar, learned counsel for the Respondent.

4. The incident in question could lead a civil liability as well as a penal liability. The burden of proof in respect of both these liabilities are different. In the present case, the learned Magistrate has observed that the case that the Respondent was driving his scooter at a excessively high speed could not be believed, as there was a crowd and traffic in view of a fair in the village. I have seen the evidence of the injured wherein he has categorically denied that there was a heavy rush due to the fair in the village. The panch witness in the cross-examination, however has admitted that there was a fair in the village on the date of the incident and there was a

rush. The panch witness is an independent witness examined by the prosecution, therefore, it appears that the injured was suppressing the factum of heavy rush on the road, which could make driving the scooter at an excessive high speed difficult. Considering this anomaly in the evidence of the prosecution witnesses and other contradictions, the learned Magistrate has acquitted the Respondent. The scope of appeal against acquittal is settled. Unless the order passed by the trial Court is a perverse, the appeal Court would generally not reverse the order of acquittal. In the present circumstances, it cannot be said that the order passed is perverse. The appeal is accordingly dismissed.

(N.M.Jamdar, J.)