

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.260 OF 2013

RAMKISHOR GANGARAM PANDHRO)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Yashpal Thakur, Appointed Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 21st SEPTEMBER 2017

JUDGMENT :

1 By this appeal, the appellant / accused is challenging the judgment and order dated 8th January 2013 passed by the learned Ad-hoc Additional Sessions Judge-3, Thane, in Sessions Case No.355 of 2011, thereby convicting him of offences punishable under Sections 279 and 304(Part II) of the Indian Penal Code (IPC) as well as under Sections 85 and 185 of the Motor Vehicles Act. For the offence punishable under Section 279

of the IPC, he is sentenced to suffer rigorous imprisonment for 3 months with a direction to pay fine of Rs.500/- and in default, to undergo simple imprisonment for 15 days. For the offence punishable under Section 304 (Part II) of the IPC, the appellant / accused is sentenced to suffer rigorous imprisonment for 5 years apart from direction to pay a fine of Rs.1,000/- and in default, to undergo rigorous imprisonment for 1 month. For the offence punishable under Section 85 of the Motor Vehicles Act, he is directed to pay fine of Rs.500/- and in default, to undergo simple imprisonment for 15 days. For the offence punishable under Section 185 of the said Act, he is sentenced to suffer simple imprisonment for 1 month.

2 Facts in nutshell leading to the prosecution of the appellant / accused are thus :

(a) The appellant / accused was working as a cleaner on a bus bearing no.MH-04-G-7661 owned by PW10 Travera Nurvas Britto. On 14th April 2011, at about 10.45 p.m., according to the prosecution case, the appellant / accused under influence of

alcohol drove the said bus in high speed as well as in rash and negligent manner, without taking due care of the condition of the road as well as the traffic. His act was rash and negligent as to endanger human life and personal safety of others. In the process of driving the said bus under influence of alcohol, he caused death of a pedestrian named Razia Majid Chaudhary by giving dash of the said bus and injured PW6 Pushpa Bhatt. The incident was witnessed by PW1Deepak Kataria (First Informant), PW3 Dashrath Shingane, PW4 Mukesh Sohni, PW5 Yunus Shaikh and PW6 Pushpa Bhatt. All these eye witnesses as well as other persons present at Jaisal park Chowpatty apprehended the appellant / accused on the spot itself and gave him in custody of police.

(b) Police then sent the appellant / accused for medical examination to Municipal Hospital, Borivali, where he was examined by PW11 Dr.Prabhakar Sagaonkar. The bus driven by the appellant / accused came to be examined by Inspector of the R.T.O. – PW8 Rajendra Patole.

(c) Police collected report of postmortem examination of Razia Chaudhary, so also papers of medical treatment of PW6 Pushpa Bhatt. On completion of investigation, the appellant / accused was charge-sheeted.

(d) In order to bring home the guilt of the appellant / accused, the prosecution has examined in all eleven witnesses. The defence of the appellant / accused seems to be that of total denial. However, he did not enter in the defence.

(e) The learned trial court by the impugned judgment and order dated 8th January 2013 was pleased to convict the appellant / accused of offences punishable under Sections 279 and 304 (Part II) of the IPC as well as for those punishable under Sections 85 and 185 of the Motor Vehicles Act. He was sentenced accordingly. Feeling aggrieved by the said judgment and order, this appeal.

3 I have heard Shri Yashpal Thakur, the learned advocate appointed for the appellant / accused. He argued that evidence of

record does not show that the appellant / accused is guilty of any rash and negligent driving, endangering human life or personal safety. He further argued that the offence punishable under Section 304 (Part II) is not made out by the prosecution as evidence on record does not suggest that the act alleged against the appellant / accused was committed by him with a knowledge that it is likely to cause death of a human being. It is further argued that there is no evidence on record to show that the appellant / accused had driven the bus in question without holding a valid driving license. Therefore, the appellant / accused deserves acquittal.

4 I have also heard the learned APP, who supported the impugned judgment and order and argued that the appeal is devoid of merits.

5 I have carefully considered the rival submissions and also perused the record and proceedings including the evidence – oral as well as documentary – adduced by the prosecution.

6 As stated in foregoing paragraphs, PW1 Deepak Kataria, PW3 Dashrath Shingane, PW4 Mukesh Sohni and PW5 Yunus Shaikh are eye witnesses to the incident in question. PW6 Pushpa Bhatt is the injured witness and as such, one of the victims of the crime in question. Congruous evidence of PW1 Deepak Kataria, PW3 Dashrath Shingane, PW4 Mukesh Sohni and PW5 Yunus Shaikh shows that the incident took place at about 10.45 p.m. of 14th April 2011 at Jaisal park Chowpatty. Evidence of all these witnesses goes to show that it was the appellant / accused who was driving the bus bearing registration no.MH-04-G-7661. In unison, all these four eye witnesses have deposed that the appellant / accused drove the bus in zigzag manner and at high speed. He lost control over the bus at the turning and entered in Jaisal park chowpatty, where pedestrians were taking walk. Eye witnesses have stated that the bus came from fisherman's chawl towards Jaisal park and after losing control over the steering wheel, the bus driven by the appellant / accused ran over pedestrian Razia Chaudhary and dashed PW6 Pushpa Bhatt. Evidence of these eye witnesses is consistent to the effect that the

bus driven by the appellant / accused gave dash to a tree and thereafter it dashed a wall and iron barricade and it stopped only after giving a dash to a wall.

7 As per version of PW1 Deepak Kataria, PW3 Dashrath Shingane, PW4 Mukesh Sohni and PW5 Yunus Shaikh, the appellant / accused who was driving the bus at the time of the incident in question came to be apprehended on the spot itself while he was attempting to flee. He was found to have consumed alcohol. Then, he was given in custody of police.

8 There is nothing in cross-examination of all these witnesses to disbelieve the mode and manner of the incident stated by them in their chief-examination. Evidence of all these witnesses reveals that bus was being driven in high speed as well as in a zigzag manner. While taking a turn on the road, because of losing the control of the appellant / accused, it entered in the Chowpatty area where Razia Chaudhary came to be run over by the said bus and PW6 Pushpa Bhatt came to be injured on being

dashed by it. Negligence is a breach of duty and lack of proper care in doing something. It is want of attention and doing of something which a prudent man would not do. Criminal negligence is gross and culpable negligence upon failure to exercise reasonable and proper care which was imperative duty of the accused to have exercised. In the case in hand, eye witnesses who had an occasion to see the appellant / accused on the spot immediately after the incident are stating that he was under influence of liquor having consumed alcohol. PW11 Dr.Prabhakar Sagaonkar had examined the appellant / accused immediately after the incident. This Medical Officer has deposed that pupils of the appellant / accused were found dilated, his co-ordination was poor and his mouth was smelling alcohol. This evidence is sufficient to hold that the appellant / accused had consumed alcohol while driving the bus in an area having heavy traffic at Mumbai. Then, the eye witnesses are stating that the appellant / accused was driving the bus in high speed as well as in zigzag manner because of which on turn of the road, he lost control and entered Jaisal park chowpatty. The defence has not disputed the

report of postmortem examination of Razia Chaudhary which showed that she died because of polytrauma caused due to the vehicular accident. Similarly, evidence of PW6 Pushpa Bhatt – an injured witness shows that she sustained injury on her left leg because of dash of the bus. This witness has also deposed about driving of the bus by the appellant / accused in high speed and its dash to deceased Razia Chaudhary as well as to a tree and wall. Evidence of this witness shows that she attempted to flee from the spot on seeing the bus coming in her direction, but she could not escape from the dash.

9 The bus in question came to be examined mechanically after the incident by PW8 Rajendra Patole, Inspector, working with the R.T.O.Thane. His evidence shows that upon examination of the bus bearing registration no.MH-04-G-7661, he did not notice any mechanical or technical defect in the bus. This witness found the brakes of the bus in order. Evidence of this witness corroborates evidence of eye witnesses and indicates that the incident did not happen because of any mechanical or

technical defect in the bus. It, thus, makes it clear that, the incident was a fall out of overt act of the appellant / accused.

10 This is the evidence adduced by the prosecution in respect of the mode and manner of the incident as well as consequence of the incident which resulted in death of Razia Chaudhary and injury to PW6 Pushpa Bhatt. As the appellant / accused is charged for the offence punishable under Section 304(Part II) of the IPC, it is apposite to quote observations of the Hon'ble Apex Court in the matter of **Alister Anthony Pareira vs. State of Maharashtra** reported in **AIR 2012 SC 3802**. Paragraphs 41, 42 and 66 of this need reproduction and they read thus :

“41. A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide

not amounting to murder and punishable under [Section 304](#) Part II IPC.

42. There is no incongruity, if simultaneous with the offence under Section 304 Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under [Section 338](#) IPC.

66. We have also carefully considered the evidence let in by prosecution - the substance of which has been referred to above - and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in the rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control. There is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become invol-

untary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of [Section 304](#) Part II IPC have been successfully established by the prosecution against the appellant. The infirmities pointed out by Mr. U.U. Lalit, learned senior counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under [Section 304](#) Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law.”

11 Viewed in the light of these observations of the Hon'ble Apex Court, it is not possible to find fault with the conviction of the appellant / accused for the offence punishable under Section 304 (Part II) of the IPC for causing death of Razia Chaudhary by giving dash of bus driven by him to her. Ultimately, the appellant / accused had driven that bus to Jaisal Park Chowpatty area of Mumbai, meant for pedestrians, by driving his bus in high and uncontrollable speed. He was very much knowing

the consequence of his act of driving the bus in high speed and in uncontrollable manner. It cannot be said that the appellant / accused was not knowing that the act of driving the bus without even having driving license and that too on consuming alcohol is not dangerous enough to cause untoward events and likely to cause death of a human being because of dash of that vehicle. Thus, from proved facts and circumstances, it is established that the appellant / accused was having knowledge that by his act in driving the bus at high and uncontrollable speed, after consuming alcohol, there is every likelihood of causing death of Razia Chaudhary. Ultimately, this eventuality happened as the bus driven by the appellant / accused had run over Razia Chaudhary causing her death due to polytrauma. Hence, the offence punishable under Section 304 (Part II) of the IPC is proved against the appellant / accused.

12 Evidence on record, thus, establishes that the appellant / accused had driven the bus in such a manner - rashly as well as negligently, so as to endanger human life and personal safety to

others. Consequent result followed because of death of Razia Chaudhary and injuries to PW6 Pushpa Bhatt in the incident in question.

13 Eye witnesses account of the incident shows that it was the appellant / accused who was driving the bus bearing registration no.MH-04-G-7661. Evidence of its owner PW10 Travera Britto shows infact the appellant / accused was employed as a cleaner on that bus. Whether the appellant / accused was holding valid driving license to drive a bus or not is a fact which was especially within the knowledge of the appellant / accused. As such, the burden shifted on the appellant / accused to prove that he was driving the bus under valid driving license. The appellant / accused has failed to discharge this burden and therefore, the prosecution has proved contravention of provision of Section 3 of the Motor Vehicles Act punishable under Section 85 thereof. Similarly, the prosecution has also proved through eye witness account that the appellant / accused drove the bus in high and excessive speed without considering the condition of road as

well as traffic. Offence punishable under Section 185 of the Motor Vehicles Act is duly established from evidence of the prosecution.

14 In the result, the appeal fails, and the same is dismissed.

(A. M. BADAR, J.)