

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.151 OF 2017
WITH
CRIMINAL APPLICATION NO.160 OF 2017

Tanaji Babaso Madane)...Applicant
V/s.
State Of Maharashtra)...Respondent

Mr. Umesh Pawar, Advocate for the Applicant.

Mr. Ameet Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 30th MARCH, 2017.

P.C. :

Admit. Heard finally with consent of the parties.

2 By this revision petition, the revision petitioner-accused is challenging the judgment and order passed by the learned Additional Sessions Judge, Islampur, Dist: Sangli in Criminal Appeal No.22 of 2013 thereby allowing his appeal partly by maintaining his conviction for the offence punishable under Sections 279 and 304-A of IPC but reducing the sentence for the offence punishable under Section 304-A of the IPC to three

months RI and directing him to pay compensation of Rs.20,000/- within a period of one month and in default to undergo further RI for two months.

2 The learned trial magistrate had convicted the revision petitioner of the offences punishable under Sections 279 and 304-A of the IPC and he was sentenced to suffer SI for three months with direction to payment of fine of Rs.500/- and in default to undergo further SI for 7 days for the offence punishable under Section 279 of IPC and RI for one year apart from payment of fine of Rs.2,000/- and in default to undergo further SI for one month for the offence punishable under Section 304-A of the IPC.

3 I heard the learned advocate appearing for the revision petitioner/original accused at sufficient length of time. The learned advocate argued that identity of the revision petitioner-accused is not in dispute and the revision petitioner is admitting panchanama at Exhibit 16. By drawing my attention to the panchanama, the learned advocate argued that width of the road was 19 feet with kaccha road of 5 feet width on each side of that road thereby making total width of road to 29 feet. He further

argued that the incident took place on the Eastern side of the road and 10 feet away from the side of the road. The learned advocate further argued that the panchanama shows that the tanker was standing in the middle of the road. As such, in his submission it cannot be said that by driving the tanker from wrong side of the road, the revision petitioner had dashed victim of the crime in question and has caused her death. He further argued that evidence of P.W.2-Somaji Sadgar, the first informant in this case is totally contrary to his version in FIR, Exhibit 18. As such, his evidence cannot be made use of to convict the revision petitioner-accused. In submission of the learned advocate for the revision petitioner, P.W.4-Meerabai Bandgar-mother of the victim has accepted the fact that road was not wide road and it was having pot holes. It was her duty to hold her daughter by hand and the incident in question took place because of negligence of P.W.4-Meerabai. By drawing my attention to the evidence of P.W.3-Rama Sadgar, the learned advocate argued that presence of this witness on the scene of occurrence is really doubtful. This witness has stated that he had asked his name to the driver of the tanker

meaning thereby that the tanker driver was apprehended on the spot but infact arrest of the accused was shown on 17.1.2011. It is further argued that though it is alleged that tanker was driven in fast speed and from wrong side of the road, nobody else was injured in the incident in question and, therefore, case of the prosecution is not free from reasonable doubt.

4 The learned APP supported the impugned judgment and order by contending that evidence on record justifies conviction and resultant sentence.

5 I have carefully considered the rival submissions and also perused the record and proceedings. The applicant/accused has been convicted of the offence punishable under Section 279 and 304-A of the IPC. Rash and negligent driving so as to endanger human life is an essential ingredient of the offence punishable under Section 279 of IPC. Similarly, causing death by doing any rash and negligent act is ingredient of the offence punishable under Section 304-A of IPC. Criminal negligence is defined by Section 304-A of IPC means gross and culpable negligence or failure to exercise reasonable and proper care which

was imperative duty of the accused to have exercised. In order to bring home guilt in respect of such offences, it is incumbent on the prosecution to establish that rash and negligent act of the accused was the proximate cause of death of the victim. Direct nexus between the death and rash and negligent act is required to be established by the prosecution for establishing such offences. Keeping in mind these principles, let us examine whether a case is made out for exercising revisional jurisdiction of this Court by demonstrating that the impugned judgment and order suffers from perversity or procedural irregularity.

6 According to the prosecution case by indulging in rash and negligent driving of the tanker bearing no.MH-10-Z-0779 which at the relevant time was loaded with molasses and was proceeding from Vategav sugar factory to Vategav, the revision petitioner caused the death of female child aged about 5 years namely, Rajubai Ramdas Bandgar. It is seen from the record that the deceased Rajubai was proceeding with her mother P.W.4- Meerabai on the day of incident i.e. on 15.1.2011. Version of Meerabai is to the effect that when she was proceeding towards

left side of the road along with her daughter, tanker came from direction of Karkhana and gave dash to her daughter and, thereafter her daughter came under rear wheels of that tanker. This witness deposed that her daughter died on the spot because of the dash given by the tanker. It is elicited from her cross-examination that the road on the spot of the incident was not wide enough and it was having pot holes. This witness denied the suggestion that children were proceeding negligently on the road and has admitted that 4 other ladies had accompanied her.

7 Another witness to the incident is P.W.3-Rama. As per version of this witness when he was talking with Narayan near spot of the incident, he saw that the tanker came from direction of Karkhana and gave dash to a female child and that female child died on the spot. This witness has identified the revision petitioner as driver of the tanker. Suggestions given to this witness in cross-examination came to be denied by him.

8 P.W.2-Somaji is the first informant having lodged FIR at Exhibit 18. Evidence of this witness was rightly discarded by the appellate Court as this witness has stated wrongly that tanker

came from Vategav side.

9 Thus, even if we ignore version of P.W.2-Somaji in respect of the incident in question, evidence of P.W.3-Rama Sadgar and P.W.4-Meerabai goes to show that tanker loaded with molasses came from the direction of Karkhana in fast speed and gave dash to female child causing instantaneous death on the spot. It was ahead on collusion. Rash and negligent act is required to decided on the touch stone of belief of a prudent person. Negligence is breach of duty or lack of proper care in doing something. When the defence has suggested to P.W.4-Meerabai that road was not having enough width and it was infested with pot holes then it becomes duty of the driver of the heavy vehicle particularly when proceeding from karkhana towards Vategav village to drive it slowly and carefully and as such it was incumbent on the part of the driver of the tanker to take care as is expected from prudent person while driving such a heavy vehicle. If he fails to take such care then he becomes guilty of a rash and negligent act.

10 Now let us apply the principle of *res ipsa loquitur* to the case in hand as spot panchanama is not disputed by the

defence. Even otherwise it came to be proved through the evidence of P.W.2-Somaji Sadgar by the prosecution. A witness may lie but the document cannot and that is how principle of *res ipsa loquitur* can be invoked as things speak for themselves. If situation prevalent on the spot of occurrence reflected from the contemporaneous document i.e. spot panchanama recorded on the very same date of incident is taken into account then it is seen that after giving dash to the minor female child, tanker proceeded further and travelled distance of 37 feet before coming to the halt. Impact of the dash given by the tanker to the minor female child was can be seen from the spot panchanama. Brain matter of the minor female child was found scattered over a long distance during the course of spot panchanama. This evidence unerringly pointed out rash and negligent act on the part of the driver of the tanker and as such, with this documentary evidence, evidence of P.W.3-Rama Sadgar and P.W.4-Meerabai Bandgar gains corroboration.

11 In the result, the impugned judgment and order is

neither suffering from perversity nor from procedural irregularity and as such, the following order:

(1) The revision petition is dismissed.
Consequently, pending criminal application bearing no.160 of 20167 stands disposed of.

(A. M. BADAR, J.)