

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.91 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SAMADHAN BHIVAJI PATIL)...RESPONDENT

Mr.A.R.Kapadnis, APP for the Applicant - State.

CORAM : A. M. BADAR, J.

DATE : 22nd MARCH 2017

P.C. :

1 This is an application for leave to appeal by the State seeking to challenge the judgment and order of acquittal of respondent / original accused of offences punishable under Sections 279, 304A, 337 and 338 of the IPC as well as under Section 184 of the Motor Vehicles Act recorded by the learned JMFC, Palus, by the judgment and order dated 31st March 2016 passed in Summary Criminal Case No.219 of 2014.

2 Heard the learned APP appearing for the applicant / State. He argued that with the aid of eye witness account given by PW3 Vaishali Sawant and PW4 Shivaji Nangare, the prosecution has proved alleged offences, and therefore, acquittal recorded by the learned trial court is not correct. It is further argued that the prosecution has placed on record map of the scene of occurrence at Exhibit 35 which depicts rash and negligent act on the part of the respondent / original accused in driving the motorcycle causing the accident which ultimately resulted in death of Rajaram Sawant – husband of PW3 Vaishali Sawant in a vehicular accident. The learned APP argued that evidence of PW3 Vaishali Sawant shows that the respondent / original accused had driven his motorcycle in fast speed whereas evidence of PW4 Shivaji Nangare – an eye witness shows that the motorcycle was driven by the respondent / original accused from the wrong side causing the accident. This, according to the learned APP proves alleged offences.

3 I have carefully considered the submissions so advanced and perused the record made available. The respondent / original accused was charged for offences punishable under Sections 279, 304A, 338 and 338 of the IPC apart from the one punishable under Section 184 of the Motor Vehicles Act. Section 279 of the IPC deals with rash and negligent driving on public way. Section 304A of the IPC prescribes punishment for causing the death of a person by doing any rash and negligent act. Section 337 of the IPC prescribes punishment for causing hurt to any person by doing any act so rashly and negligently so as to endanger human life or personal safety of others, whereas Section 338 of the IPC prescribes punishment for causing grievous hurt in similar manner. Thus, crux of these offences is rash and negligent act endangering safety of a human life. One will have to examine in the light of these ingredients of alleged offences whether the prosecution has pointed out guilt of the accused.

4 If chief-examination of PW3 Vaishali Sawant, the pillion rider on the motorcycle of deceased Rajaram Sawant is

accepted, it only shows that she along with her husband were proceeding on their motorcycle from Sangli - Tasgaon - Palus road towards Palus. This witness testified that at that time, from the direction of Palus, the respondent / original accused came from the left side in fast speed and gave dash to the motorcycle. Except this, PW3 Vaishali Sawant has not stated anything else regarding rashness and negligence of the respondent / original accused. PW4 Shivaji Nangare – an alleged eye witness has stated that on the day of the incident, he was going towards Palus from Sangli. In front of his motorcycle, there was one Hero Honda Splendour motorcycle on which one woman and one male person were traveling. This witness deposed that one person who was riding Bajaj motorcycle came from wrong side and gave dash to the motorcycle on which the woman and the gentleman were proceeding.

5 As against this evidence of the prosecution, the respondent / original accused by entering into the witness box has stated that, as one dog came in between the motorcycle of the

deceased, the deceased took his motorcycle in the wrong direction and dashed against his motorcycle. Suggestions to this effect are also given to PW3 Vaishali Sawant, who denied the same.

6 It is, thus, clear that, PW3 Vaishali Sawant has stated that the respondent / original accused was proceeding in fast speed whereas PW4 Shivaji Nangare has stated that the respondent / original accused came from wrong direction and gave dash to the motorcycle of the deceased.

7 The prosecution is enjoined to prove rash and negligent act in the instant case. Negligence is breach of duty or lack of proper care in doing something. It is want of attention and doing of something which a prudent person would not do. Use of the expression “high speed” is not enough to prove rashness or negligence unless evidence is elucidated from the witness who uses such expression as to what was his or her notion of the speed. Criminal negligence defined in Section 304A of the IPC means gross and culpable negligence or failure to exercise that

reasonable and proper care which it was the imperative duty of the accused to have exercised. There must be a proof that rash and negligent act of the accused was the proximate cause of death and there must be a direct nexus between the death and rash and negligent act.

8 In the case in hand, PW3 Vaishali Sawant has only stated that the respondent / original accused had driven his motorcycle in fast speed. What was her notion about the speed is not even elucidated from her chief-examination by the prosecutor. Hence, her evidence is of no assistance to the prosecution to infer gross culpable rash or negligence on the part of the respondent / original accused. PW4 Shivaji Nangare has merely stated that the motorcycle came from the wrong side and gave dash to the victim. What was his notion about wrong and right direction are not elucidated from his chief-examination by the prosecution. To crown this all, it is the defence of the respondent / original accused that in order to save a dog, which ran over the road, the victim drove his motorcycle in wrong direction, causing the

accident.

9 This is the quality of evidence adduced by the prosecution in order to bring home the guilt to the accused. In the wake of this evidence, by no stretch of imagination, it can be said that the view taken by the learned trial court of acquitting the respondent / original accused is not a plausible view in the matter.

10 In this view of the matter, leave refused.

11 The application is rejected.

(A. M. BADAR, J.)