

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.132 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

AJAY DINKAR INGULKAR)...RESPONDENT

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

CORAM : A. M. BADAR, J.

DATE : 13th JANUARY 2017.

P.C. :

1 By this application, the applicant / State is seeking leave to challenge the judgment and order dated 3rd September 2016 passed by the learned JMFC, Bhore, in Summary Criminal Case No.5 of 2013 thereby acquitting the respondent / accused of offence punishable under Section 279, 304A, 337, 338 427 of IPC and under Sections 184, 134(b) read with Section 177 of the Motor Vehicles Act, 1988.

2 Heard the learned APP appearing for the applicant / State. He argued that eye witness account given by PW2 Shraddha, who is injured in the crime in question, proves the offence alleged against the respondent / accused. The learned APP submitted submitted that Police Patil has also played role in assisting the prosecution. Therefore, according to the learned APP, the learned trial court erred in acquitting the respondent / accused.

3 The learned APP has produced on record photocopies of entire deposition as well as proved documents constituting record and proceedings of the case.

4 I have carefully considered the submissions advanced by the learned APP and also perused the record made available by the learned APP including deposition of witnesses and proved documents.

5 According to the prosecution case, Mahendra Ramchandra Gaikwad along with his daughter Shraddha Mahendra Gaikwad (PW2) were proceeding towards Pune by motorcycle bearing Registration No.MH 12 GQ 3307, at about 2 p.m. a pick up jeep bearing registration no.MH 12 EF 8017 driven by the respondent / accused came from the opposite direction, took a turn towards Kamthadi Phata and gave dash to the motorcycle of the victim causing the accident. The report of this incident came to be lodged by PW1 Sahebrao Gaikwad – brother of Mahendra Gaikwad on the next day of the incident which has resulted in registration of Crime No.173 of 2012 against the respondent / accused. During the course of investigation, statement of witnesses came to be recorded, spot panchnama was recorded, the vehicle was examined through the Officers of the R.T.O. and ultimately charge-sheet came to be filed against the respondent / accused. After due trial, the learned JMFC, Bhore, was pleased to acquit the respondent / accused of all offences.

6 Though the prosecution has examined in all seven witnesses, in order to bring home the guilt to the respondent / accused, except evidence of PW2 Shraddha Gaikwad, who is an eye witness to the incident in question, evidence of other witnesses is not of much assistance to the prosecution case. They are official witnesses who had acted as panch witnesses as well as aided investigation. PW1 Sahebrao Gaikwad is the First Informant who lodged the FIR on the basis of hearsay information received by him.

7 PW2 Shraddha Gaikwad has deposed that when she was proceeding as a pillion rider on the motorcycle of her father Mahendra Gaikwad on 14th November 2012, a jeep driven by the respondent / accused came from opposite direction in fast speed and turned towards Kamthadi Phata. PW2 Shraddha Gaikwad deposed that the said jeep gave dash to the motorcycle from right side causing the accident. As per her version, she was injured in the accident, so also her father. The motorcycle was damaged in the accident.

8 Evidence of PW2 Shraddha Gaikwad as well as first Informant Sahebrao Gaikwad goes to show that after six months of medical treatment, Mahendra Gaikwad died because of injuries suffered in the accident.

9 During the course of trial, the prosecution has proved the spot of the incident, so also the spot panchnama. Similarly, injuries on person of victims of crime were also proved.

10 The only question which needs to be answered is whether it is proved by the prosecution that the respondent / accused drove the pickup jeep in rash and negligent manner so as to cause death of Mahendra Gaikwad, grievous hurt to PW2 Shraddha Gaikwad and that in the said process, he caused damage to the motorcycle amounting to mischief. If keeping in mind these aspects, evidence of PW2 Shraddha Gaikwad is perused, then what is stated by her in her deposition is only to the effect that the jeep came in opposite direction in fast speed and turned towards Kamthadi Phata. What was the fast speed as per

notion of Shraddha Gaikwad is not explained by her in her deposition. Speed is a relative concept and varies from person to person. Merely the fast speed by itself does not amount to rash and negligent act. Rash and negligent act depicts want of due care, caution and attention, which a person of ordinary prudence would take if placed in similar situation. There is no iota of evidence regarding the fact, that the respondent / accused had failed to take reasonable care expected of a prudent person while driving the vehicle in question. Evidence on record adduced by the prosecution does not reflect any rash and negligent act on the part of the respondent / accused.

11 In this view of the matter, I am of the considered opinion that the learned trial court has properly appreciated the evidence on record and ultimately came to the conclusion that charges leveled against the respondent / accused are not proved. It cannot be said that the impugned judgment is perverse or that the view taken by the trial court is not a plausible view based on the evidence available on record.

12 In the result, the application is rejected and consequently the appeal is dismissed.

(A. M. BADAR, J.)