

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 362 OF 2004

The State of Maharashtra
Through PHC V. No. 1053
Shankar Hiraji Nikumbhe,
City Police Station, Dhule.
PSO City Police Station, Dhule.

.. Appellant
(Original Complainant)

Versus

Bandusing Rahusing Rathod,
Age 48 years, Occu. Service,
R/o. Mehindale Shivar,
Hipass Road, SRPF Bldg.
No. 7, Room No.1.

.. Respondents
(Original Accused)

Mr. R. B. Bagul, APP for Appellant. ...
Mr. Chaitanya C. Deshpande h/f. Mr. C. R. Deshpande, Advocate for
Respondent sole.

...

CORAM : K.K. SONAWANE, J.

DATED : 20th JANUARY, 2018.

JUDGMENT :-

1. The appellant – State of Maharashtra preferred the present appeal under Section 378 of the Criminal Procedure Code (for short “Cr.P.C.”) against the impugned judgment and order of acquittal of respondent-original accused for the offence punishable under Sections 279, 337, 338 and 457 of Indian Penal Code (for short “IPC”) read with Sections 184 and 181 of Motor Vehicles Act, 1988 (for short “M.V.Act.”) in Summary Criminal Case No. 1247 of 2002 dated 10th February 2004.

2. It has been alleged on behalf of prosecution that on 29-05-2001 the first informant Shakil Mohamad Vazir Ansari and his friend Abdul Latif Abdul Bari Ansari were proceeding on their vehicle Luna Moped bearing registration MHS-98 from Dhule-Sakri road. When they reached in front of Pingale School on the road leading from Dhule to Sakri, that time one motor bike bearing registration No. MH-18-C-6591 came speedily from the opposite direction. The respondent-accused was driving the motor bike in a very rash and negligent manner and gave dash to Luna moped of the first informant- Shakil Mohamad. The first informant Shakil Mohamad and his friend Abdul Latif, who was pillion rider, both were sprawled on the ground. The pillion rider Abdul Latif sustained fracture injury on his right leg. He was immediately escorted to the Government Civil Hospital for medical treatment. The first informant- Shakil Mohammad filed the report of accident to the concerned police of City Police Station, Dhule. Pursuant to report, the inquiry was initiated to ascertain cause of accident by taking entry in the station diary vide accident report No. 37 of 2001. The police personnel Shri. Nikumbhe rushed to the scene of occurrence and drawn panchnama of spot in presence of panchas. It was transpired that the accused-respondent was driving his motor bike in a rash and negligent manner on a public road so as to endanger to the life and safety of persons. Therefore, the Police Head Constable Shri. Nikumbhe filed the First Information Report (FIR) on behalf of prosecution and set the penal law in motion. The alleged accused was the police personnel employed as PSI in State Reserve Police Force, Dhule. Therefore, the investigation was entrusted to the senior police personnel Shri. U.M.

Dhobi. He recorded statement of witnesses acquainted with facts of the case. The Investigation Officer collected relevant documents of medical certificate, etc. After completion of investigation, he preferred chargesheet against the accused before the learned Magistrate, Dhule.

3. After compliance of procedural formalities, the learned Magistrate framed the charge against the respondent-accused. He denied the charge and claimed for trial. The prosecution examined in all seven witnesses in this case to bring home guilt of the accused. Learned Magistrate appreciated entire facts and circumstances in the light of evidence adduced on record and arrived at the conclusion that the prosecution failed to prove the charge of rash and negligent driving on the part of respondent-accused. It was also concluded that driving of the vehicle was not so endanger to the life and personal safety of the others. There was no mischief causing damage to the property. In such circumstances, the learned Magistrate exonerated the respondent-accused for the allegations nurtured on behalf of prosecution and passed impugned judgment and order of acquittal which is the subject matter of the present appeal.

4. In order to bring home guilt of the accused, prosecution examined injured P.W.No.1 Abdul Latif Abdul Bari Ansari. He has sustained fracture injury to his right leg during the mishap. The P.W.No.1 deposed that on 29-05-2001 in the wee-hours of the night at about 10.00 p.m. he and his brother Shakil Mohamad had been to Moglai area on Luna Moped. When they were proceeding from Dhule-Sakri road, that time one motor bike came speedily from the opposite direction and gave dash to their Luna Moped. His brother Shakil

Mohamad was driving Luna Moped, whereas, he was pillion rider. Due to dash by the motor bike of the accused, they both fallen on the ground. He sustained fracture injuries to right leg. Thereafter, he was escorted to the hospital for medical treatment.

5. The P.W.No.2 Shakil Mohamad stepped into shoe of P.W.No.1 Abdul Latif and stated the similar facts of occurrence of the mishap due to dash to his Luna moped by the motor bike of the respondent-accused. He stated that the pillion rider Abdul Latif received fracture injury to his right leg. Thereafter, he was admitted in the Government Hospital for medical treatment. The P.W.No.2 Shakil Mohamad filed report to the police about occurrence of accident on the public thoroughfare leading from Dhule to Sakri town.

6. The prosecution made an abortive attempt to adduce the evidence of P.W.No.3 Sayyad Ajgar Ali and P.W.No.4 Ravindra Saindane, who were the panch witnesses of spot panchnama recorded by the P.W.No.6 P.H.C. Nikumbhe. These panchas received an opportunity to witness the alleged incident of accident occurred at the relevant time on Dhule-Sakri road in Moglai area resulting into fracture injury to pillion rider Abdul Latif. But, P.W.No.3 Sayyad Ajgar Ali and P.W.No.4 Ravindra Saindane made volte-face and refused to nod in favour of prosecution. They were declared hostile and cross-examined on behalf of prosecution. But the efforts did not evoke result to bring on record any sort of incriminating circumstances for adverse inferences against the accused.

7. The prosecution examined P.W.No.5 Dr. Bharat Gohil to prove the injury certificate of the pillion rider P.W.No.1 Abdul Latif. The injury certificate is at Exhibit-23. Admittedly, there was fracture injury to the right leg of P.W.No.1 Abdul Latif.

8. The prosecution examined P.W.No.6 P.H.C Shankar Nikumbhe and P.W.No.7 I.O. Ukhardu Dhobi to bring on record the circumstances about investigation carried out in this crime. P.W.No.6 PHC- Nikumbhe took the entry in station diary vide motor accident report No. 37 of 2001 and swung into action for inquiry to ascertain the cause of accident. Thereafter, he preferred FIR (Exhibit-28) on behalf of prosecution and set the penal law in motion against the respondent-accused. The prosecution sanction was also obtained under section 197 of Cr.P.C. to proceed further against respondent-accused in this matter, who was Government servant and employed as P.S.I. in S.R.P.F. Dhule.

9. The overall scrutiny of the evidence adduced on record reflects that the entire prosecution case is rests on the evidence of P.W.No.2 Shakil Mohamad, who was driving the Luna Moped and P.W.No.1 injured Abdul Latif, who was pillion rider to prove the factum of rash and negligent driving of the motor bike involved in the accident. It is to be noted that the alleged incident of accident in between motor bike of accused-respondent and the vehicle Luna Moped driven by P.W.No.2 Shakil Mohamad was occurred on public thoroughfare abutting to the shops and residential houses of denizens of Moglai area. The alleged accident was occurred in the night hours at about 9.45 p.m. to 10.00

p.m. In the cross-examination, P.W.No.2 Shakil Mohamad and P.W.No.1 Abdul Latif conceded that there was a dark at the relevant time on the scene of occurrence. In such circumstances, it would be unsafe to draw inference that the alleged incident was caused only due to rash and negligent driving of the accused-respondent. Moreover, in the absence of evidence of any independent eye-witness of the incident, it would be cumbersome to appreciate that there was no fault on the part of P.W.No.2 Shakil Mohamad, who was driving Luna moped at the relevant time of accident. It would be reiterated that the alleged accident was occurred on the public thoroughfare having vehicular traffic. The adjoining shop owners or denizens of the area must have received opportunity to watch the incident. But, the prosecution did not take endeavour to adduce evidence of any of these witnesses in this case. The exact location of spot of accident also remained unproved on behalf of prosecution. The panch witness of spot panchnama P.W.No.3 Sayyad Ajgar Ali and P.W.No.4 Ravindra Saindane turned hostile. In such circumstances, it would be difficult to determine the exact location of spot of incident to draw inference that the offending vehicle was driven rashly and negligently by the accused at particular point of time of incident.

10. It is the settled principle of law that the speed of the vehicle could not be a decisive factor to arrive at the conclusion of rash and negligent driving of offending vehicle. It is imperative for the prosecution to prove that the alleged offending vehicle must have been driven at a particular point of time of accident in a rash and negligent manner on a public road so as to endanger human life or likely to be

caused hurt or injury to any other person. In the matter in hand, it has been proved that the P.W.No.1 Abdul Latif received the fracture injury to his right leg in the mishap occurred involving the vehicle Luna Moped of P.W.No.2 Shakil Mohamad and motor bike of accused-respondent. But, the circumstances available on record are not sufficient to arrive at the conclusion that the accused had driven his motor bike in a rash and negligent manner so as to endanger to the life of human being.

11. Admittedly, there was a dark on the spot at the time of occurrence of alleged incident. The prosecution failed to prove the exact location of the spot of accident to determine the factum of rash and negligent driving by the accused. The vehicle Luna moped of the P.W.No.2 Shakil Mohamad was the vehicle not ment for carrying pillion rider. The P.W.No.1 Abdul Latif was pillion rider of the alleged accident. He sustained fracture injury to his leg. The possibility of occurrence of alleged accident due to fault on the part of P.W.No.2 Shakil Mohamad, driver of Luna moped could not be ruled out. These circumstances created serious flaw in the prosecution case.

12. In view of aforesaid discussion, it is unjust and improper to cause any interference in the findings of acquittal of accused expressed by the learned trial Court. There is no impediment to hold that the learned trial Judge has correctly appreciated the entire evidence on record in its proper perspective. The conclusion drawn by the learned trial Court to exonerate the accused for the charges pitted against him appears just, proper and within purview of law. There is no error or infirmity in the findings expressed by learned trial Court. Absolutely, there is no iota of evidence in this case to bring home guilt

of the accused for the charges pitted against him. Therefore, the circumstances do not permit to cause any interference in the impugned judgment and order of acquittal passed by the learned trial court. In contrast, it deserves to be made absolute and confirmed. Hence, appeal being devoid of merit stands dismissed. No order as to the costs.

Sd./-

[K. K. SONAWANE]
JUDGE

rrd.