

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

CRIMINAL APPEAL NO.424 OF 2003
WITH
CRIMINAL APPLICATION NO.3434 OF 2016

Sanjay s/o Murlidhar Yede,
Age 23 years, Occu. Driver,
R/o Morgaon, Taluka and
District Beed

..Appellant

Versus

State of Maharashtra

..Respondent

Mr A.N. Nagargoje, Advocate for appellant
Mr R.V. Dasalkar, A.P.P. for respondent

CORAM : A.M. DHAVAL, J.

DATE : 20.1.2018

ORAL JUDGMENT

1. This appeal is by the accused challenging his conviction under Section 353 of Indian Penal Code and sentencing him to suffer rigorous imprisonment for one year and to pay fine of Rs.3,000/-, in default rigorous imprisonment for one month and to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month for offence punishable under Section 179 of Motor Vehicles Act, passed by learned IV Additional Sessions Judge, Beed in Sessions Case No.155 of 2002.

2. As per F.I.R. Exh.11, filed by P.W.1 Laxman, Assistant Traffic Inspector, S.T. Department, Beed, on 20.1.2002 at 11.45 a.m. in Beed-Manjarsumba ghat, he along with a team formed for checking illegal transport of passengers was standing. That time, one jeep carrying passengers came from Manjarsumba side. The police and members of

S.T. Department tried to halt it but the jeep driver did not halt the jeep and straightway gave a dash to P.W.1 Laxman with intention to commit his murder. P.W.1 Laxman sustained injuries to his hands and legs and became unconscious. The police and his colleagues present there brought him to the Civil Hospital at Neknoor and thereafter to Civil Hospital, Beed. Accordingly, he lodged F.I.R. against the driver of Marshal jeep No.MH-23-E-2009. The F.I.R. was registered under Sections 307, 353, 279 of the Indian Penal Code and Sections 179, 177, 66, 192A of Motor Vehicles Act at C.R.No.8/2002. In supplementary statement, he was shown a person as driver of the said jeep and the accused was identified by him as driver of the jeep. Thereafter, the police drew spot panchnama, recorded statement of owner of the jeep and other witnesses present on the spot and after completion of investigation, the charge-sheet was submitted in the Court. In due course, learned IV Ad hoc Additional Sessions Judge, Beed framed charge at Exh.5 for the above referred offences. The accused pleaded not guilty. The prosecution examined nine witnesses. It is defence of the accused that he was not driving the jeep. The learned IV Additional Sessions Judge, Beed convicted the accused for minor offence punishable under Section 353 of Indian Penal Code and under Section 179 of Motor Vehicles Act and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.3,000/-, in default rigorous imprisonment for one month under Section 353 of Indian Penal Code and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month under Section 179 of Motor Vehicles Act. Hence, this appeal.

3. Mr Nagargoje, learned Counsel for the appellant argued that the accused was not driving the said jeep, which was involved in giving dash to P.W.1 Laxman. He argued that the only evidence in this regard is of P.W.4 Mohan Rathod and P.W.7 Harihar Pathak. P.W.7 Harihar Pathak is owner of the jeep. He has turned hostile and has not deposed anything against the accused. P.W.4 Mohan identified the accused, but his evidence shows that he is not trustworthy and reliable. It is inconsistent with the other evidence. The evidence of rest of the witnesses does not show involvement of the appellant. Hence, the appeal be allowed.

4. Per contra, learned A.P.P. Mr Dasalkar argued that the Investigating Officer had made enquiry with P.W.7 Harihar. That time P.W.7 Harihar had disclosed the name of the appellant and had also produced copy of driving licence of the appellant. Therefore, the said evidence along with evidence of P.W.4 Mohan should be believed and the conviction should be upheld.

5. The points for my consideration along with my findings are as under:

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|------|---|---------------|
| (I) | Whether the accused intentionally gave dash of his jeep to P.W.1 Laxman while he was discharging his official duties ? | .. Not proved |
| (II) | Whether the accused has willfully disobeyed the directions of the authorities and thereby committed offence under Section 179 of the Motor Vehicles Act ? | .. Not proved |

(III) What order ?

The Appeal is allowed
The conviction and
sentence is set aside

- REASONS -

6. The prosecution has examined nine witnesses. P.W.1 Laxman is the injured witness and the informant. P.W.2 Pralhad, Assistant Traffic Inspector, P.W.3 Vishnu, Head Constable and P.W.4 Mohan Rathod, Police Constable were members of the team which was checking the vehicles at Manjarsumba chowk at the relevant time. All of them deposed that one Marshal Jeep bearing registration No.MH-23-E-2009 came from Manjarsumba side and the team members gave signal to stop the vehicle, but the driver did not stop the vehicle. When P.W.1 Laxman tried to stop the vehicle, there was deliberate dash of the jeep to him and the jeep proceeded ahead. He had sustained serious injuries to his knee and due to the dash, he became unconscious. He stated that he was first taken to hospital at Neknoor and thereafter to Civil Hospital at Beed. He has lodged F.I.R. Exh.11. Subsequently, the accused was shown to him and he identified that he was the driver of the jeep, which gave dash to him. The material part of his evidence is that he has admitted that he had not seen the accused prior to the incident. He had not seen the driver of the vehicle. His rest of the evidence is not under challenge.

7. P.W.2 Pralhad and P.W.3 Head Constable Vishnu have deposed similarly and have given similar admissions that they had not seen the driver of the jeep at the time of incident. P.W.4 Police Constable

Mohan Rathod has also deposed the incident as per evidence of P.W.1 to 3 but he stated that he had seen that the accused was driving the said jeep. In cross-examination, P.W.4 Mohan has stated that he had disclosed to P.W.1 Laxman about the name of the accused before lodging of the F.I.R., but name of the accused is not there in the F.I.R. His evidence that at the time of lodging of F.I.R., the jeep was parked at the police station, Neknoor is contrary to the evidence of Investigating Officer, who has stated that the jeep was subsequently attached.

8. P.W.5 Devidas is Head Constable, who has recorded the F.I.R. Exh.11. His evidence is not material. P.W.6 Jalindar Rasal is a panch witness. He has turned hostile. He has merely admitted his signature on spot panchnama Exh.20. P.W.7 Harihar is the owner of the jeep. He denied that he had employed the accused as a driver of the said jeep. Learned A.P.P. cross-examined him with the permission of the Court, but he has given no admissions.

9. P.W.8 Medical Officer Veer has deposed that on 20.1.2002, at 1.30 p.m., he examined P.W.1 Laxman and noticed following injuries on his person:

- (1) Abrasion on left side of left knee joint, 3 x 1 cm irregular in shape;
- (2) Swelling on the right wrist joint

He suspected fracture at injury no.2. He did not take X-rays in respect of injury no.2. The certificate issued by him is at Exh.28.

10. P.W.9 A.P.I. Ashok Amle has carried out the investigation. He has deposed about the investigation. He admitted that the informant was not knowing the name of the accused at the time of lodging of F.I.R. He had not held identification parade.

11. After carefully considering the evidence on record, I find that there is no dispute that P.W.1 Laxman was discharging his duties of checking vehicles with regard to illegal trafficking and at that time a jeep gave him deliberate dash and he sustained injuries. The injuries were not of serious nature so as to attract the punishment under Section 307 of Indian Penal Code.

12. I, however, find that there is no evidence to show that the accused was driver of the said jeep. The jeep was not belonging to him. It was belonging to P.W.7 Harihar. P.W.7 Harihar has turned hostile. The identification by P.W.4 Mohan is not reliable. His evidence that he had disclosed the fact to the informant before lodging F.I.R. is falsehood. Considering all the facts, the convictions under Section 353 of Indian Penal Code and Section 179 of Motor Vehicles Act is not sustainable. Hence, the order:

- ORDER -

(I) The Criminal Appeal is allowed.

(II) The Judgment delivered by learned IV Additional Sessions Judge, Beed in Sessions Case No.155 of 2002 convicting the appellant under Section 353 of Indian Penal Code and sentencing him to suffer

rigorous imprisonment for one year and to pay fine of Rs.3,000/-, in default to suffer rigorous imprisonment for one month, and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month, for offence punishable under Section 179 of Motor Vehicles Act, is hereby set aside.

(III) Fine amount, if deposited by the appellant, be refunded to him. His bail bonds stand cancelled.

(IV) In view of disposal of Criminal Appeal, Criminal Application No.3434 of 2016 stands disposed of.

(A.M. DHAVAL, J.)

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