

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

CRIMINAL APPEAL NO. 621 OF 2003

The State of Maharashtra .. Appellant
Through Police Station,
Jawaharnagar, Aurangabad.

Versus

Prakash Rajaram Harale .. Respondent
Age.30 years, Occ. Driver, [original
R/o.Bharatnagar, Garkheda accused]
Parisar, Aurangabad.

Mr.C.S.Kulkarni, APP for the appellant.
Mr.D.R.Markad, Advocate [appointed] for respondent/Sole.

CORAM : S.M.GAVHANE, J.
RESERVED ON : 20.01.2018
PRONOUNCED ON : 30.01.2018

J U D G M E N T :-

1. The appellant – State has filed this Appeal against the judgment and order dated 18.07.2003 passed in SCC No.145 of 2003 by learned Judicial Magistrate, F.C., Aurangabad, thereby acquitting respondent – Prakash Rajaram Harale (original accused) of the offences punishable under sections 279, 337, 427 and 304-A of the Indian Penal Code [for short “the IPC”].

2. The brief facts of the prosecution case are as under :-

. On 09.10.2002 at about 09.00 a.m. Near Amarpreet Hotel, Aurangabad on Jalna Road the accused drove his tourist vehicle i.e. travel bus bearing No. MH-01-H-5505 [hereinafter referred to as "the offending bus"], in rash and negligent manner and thereby gave dash to one Scooty which was driven by Vandana Baburao Chide Patil and caused injuries to her head. She was admitted in Kamalnayan Bajaj Hospital. After receiving information of the incident, her husband - Baburao rushed to Kamalnayan Bajaj Hospital. He found that the deceased sustained injuries on her head. Therefore, he went to Jawahar Nagar Police Station. His statement was recorded. Treating the same as FIR, crime No.282 of 2002 for the offence under sections 279, 337 and 427 of the IPC was registered and the Head Constable Jawale (PW-7) started the investigation. He went to the spot where he prepared

spot panchanama in presence of panchas as well as recorded statements of witnesses. So also the Investigating Officer recorded statement of the injured by issuing letter to the Hospital authorities. While taking treatment in the above said hospital, deceased died on 12.02.2002 and thereafter offence under section 304-A of the IPC was added in the crime already registered against the accused. After completion of the investigation, PHC Jawale arrested the accused and filed charge-sheet against the accused, in the Court of the 6th JMFC, Aurangabad, alleging that the accused drove offending bus rashly and negligently and due to said act, caused death of the deceased – scooty rider.

3. The learned JMFC framed charge against the accused for the offences punishable under sections 279, 337, 427 and 304-A of the IPC, to which the accused pleaded not guilty and claimed to be tried. His defence was denial.

4. To prove charge against the accused the prosecution has examined in all seven witnesses and relied upon spot panchanama and post-mortem report. Considering said evidence adduced by the prosecution, the Trial Court held that the prosecution has failed to prove offences under sections 279, 337, 427 and 304-A of the IPC against the accused and acquitted him of the said offences by the impugned judgment and order. Therefore, this appeal against acquittal by leave, which was granted as per order dated 15.09.2004.

5. The learned APP submits that evidence of eye witnesses PWs 5,6 and 7 is believable and sufficient to prove aforesaid offences against the accused and death due to accidental injuries is not in dispute.

6. The learned Advocate for the accused has supported the impugned judgment and submits that the evidence led by the prosecution is not sufficient to prove that the act of the accused in driving the

offending bus was rash and/or negligent and therefore the Trial Court has rightly held that the said material ingredients of offences alleged against the accused are not proved and therefore the Trial Court has rightly acquitted the accused of the offences with which he was charged.

7. I have carefully considered the submissions of the learned APP and learned advocate for accused and with their assistance I have perused the evidence adduced by the prosecution. Also I have perused the impugned judgment.

8. The prosecution has alleged that on 09.10.2002 at about 09.00 a.m. in the square in front of Hotel Amarpreet, Jalna Road, Aurangabad, accused drove offending bus rashly or negligently and dashed scooty and caused hurt to the deceased scooty rider. Due to the said act ultimately he caused death of the scooty rider – Vandana Chide Patil. To prove the said fact, the

prosecution has mainly relied upon the evidence of eye witnesses Pws 3,5 and 6.

9. Before considering the evidence of PWs 3,5 and 6, it is necessary to know meaning and distinction between rash and negligent act. In the case of **Krishna Bahadur Chetri Vs. State of Assam, 1979 Cri.L.J.1258 (Gauhati High Court)**, in para 14 it is observed as under :-

"14. xxxxxx There is a marked distinction between a rash act and a negligent act. In the case of a rash act the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not and sometimes with the optimism that they will not, and often with the belief that the author has taken sufficient precautions to prevent their happenings. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused to have adopted. Negligence implies, an omission to do something which a reasonable man,

guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and a reasonable man would not do. Thus culpable negligence is acting without the consciousness that the illegal or mischievous act will follow, but in circumstances which saw that the actor or the author has not exercised the caution incumbent upon him and if he had he would have had the consciousness. The imputability arises from the neglect of civil duty of circumspection. This is the law settled by their Lordships in Bhalchandra Waman Pathe V. The State of Maharashtra 1968 SCD 198. xxxxx"

10. Bearing in mind the above distinction between a negligent act and a rash act, I proceed to consider the evidence of above eye witnesses. The evidence of PW-3 Kamalbai Pawar is that at the material time of incident, she as well as deceased Vandana were teacher in Shivaji Girls High School, Aurangabad. On the day of incident, she as well as the deceased were going on their separate vehicles to the school and the vehicle of the deceased was in front of her vehicle. She deposed that when they reached at Amarpreet square, one travel bus gave dash to the deceased. Due to said dash, the deceased fell down and became unconscious. She informed the incident to her

school and then to the husband of the deceased. The driver of the said travel bus admitted the deceased in Kamalnayan Bajaj Hospital, Aurangabad. Then she was shifted to Dhoot Hospital, Aurangabad for better treatment. The accused before the Court was driving the said bus at the time of accident. The deceased died during treatment in Dhoot Hospital, Aurangabad. In the cross-examination, she denied that she never witnessed the incident.

11. The evidence of PW-5 — Sandip Chavan is that prior to 3-4 months of recording his evidence on 09.04.2003, he was coming from bus stand, leaving his uncle at his house at Vishnu Nagar. When he reached at Amarpreet square on Jalna Road, he saw that one travel bus came in high speed from the front side and gave dash to a scooty rider woman, who was coming from Savarkar square towards Amarpreet square. Said bus was stopped at some distance by the driver. He stated that the accused present before the Court was driving the bus at the time

of accident. In the cross-examination, he has denied that the driver of travel bus was not driving the bus in high speed. So also he denied that the accused was not driving said bus at the time of accident.

12. The evidence of PW-6 Jitendra Toshniwal is that the incident took place 8 months prior to recording his evidence on 16.06.2003. At that time he was going by auto-rickshaw from Mondha Naka towards Paithan Road and when their rickshaw came near Amarpreet Hotel, one of the passengers from their rickshaw got down. At that time one private bus came from Mondha Naka area and said bus gave dash to one scooty driver, which was crossing the road. Due to dash, the scooty driver i.e. one lady fell down on the divider and sustained injury. After the accident the bus was stopped at some distance and said driver came near the spot of accident. He stated that he can identify the driver, if he comes before him. There is no proper identification of accused-driver of the said bus by this witness.

13. On perusal of the ocular evidence of PWs 3,5 and 6, it is clear that their evidence is not shattered in the cross-examination on behalf of the accused. On considering the evidence of Pws 3 and 5 an inference can be drawn that at the material time of the accident, the accused was driving the offending bus. The evidence of Pws 3 and 6 is not sufficient to infer that the said accused was driving the offending bus, rashly or negligently as both these witnesses have not stated anything regarding speed of the bus at the relevant time of the accident or regarding manner of driving of bus by the accused. The evidence of PW-5 as referred above shows that at the material time of the accident one travel bus came in high speed from front side and gave dash to ons scooty rider woman, who was coming from Savarkar square towards Amarpreet square. He has also not stated about the speed of the bus at the relevant time of the accident. His uncorroborated evidence that the bus came in high speed is not sufficient to infer

that the bus was driven by the accused either rashly or negligently.

14. The prosecution has relied upon the panchanama of spot of incident (Exh.11), which was prepared by PW-7 PHC Jawale in presence of panchas Sandip Pawankar (PW-1) and Sukhdev Garad. This panchanama does not show tyre marks at the spot of accident so as to say that at the relevant time the offending bus was driven in high speed and rashly by the accused. This panchanama shows that a scooty was laying along the road divider and left side handle of the scooty was bent. So also, left side indicator, headlight and side glass of left side were found broken. The map along with this panchanama shows that the bus was proceeding in East-West direction and the scooty was proceeding in South-North direction and in the square the accident took place and further it shows that the divider on the road was to the North of the spot of the accident. Considering the said situation and directions of both the vehicles at the relevant time of

the accident, if offending bus would have dashed the scooty, right portion of the scooty was required to be damaged. As mentioned above, left front portion of the scooty was damaged. Therefore, it appears that left portion of the scooty was damaged after it was hit against road divider and not essentially due to dash of the bus. In the above said circumstances noted in the panchanama, it can be said that there was some error of judgment while driving their respective vehicles, both by the accused and the rider of the scooty, when the vehicles were passing through the square. Therefore, panchanama (Exh.11) is of no help to the prosecution to infer that the offending bus was in high speed at the relevant time of accident, so as to say that the accused drove the offending bus rashly or negligently.

15. There is no dispute that after the accident the deceased was admitted in Kamalnayan Bajaj Hospital in injured condition and thereafter she died in Dhoot Hospital, while taking treatment on 12.10.2002 as deposed

by her husband Baburao Chide Patil (PW-2) and as deposed by Dr. Inamdar (PW-4), who conducted post-mortem examination on the dead body on 13.10.2002 in Ghati Hospital. As per the evidence of Dr. Inamdar (PW-4) the death of the deceased was caused due to head injury as mentioned in post-mortem report (Exh.16). Thus, on the basis of above evidence an inference can be drawn that death of the deceased was caused due to head injury. But, it cannot be said that the accused caused death of the deceased due to rash and negligent driving, to attract offence punishable under section 304-A of the IPC. So also, the evidence adduced by the prosecution is not sufficient to infer that the accused drove the offending bus either rashly or negligently to attract offence under section 279 of the IPC. The evidence of Dr. Inamdar (PW-4) regarding injury on the person of the deceased as noted in para 17 of the post-mortem report (Exh.16) is not sufficient to infer that the accused caused hurt to the deceased due to rash and negligent act of driving the offending bus to attract offence under

section 337 of the IPC. Thus, I hold that the prosecution has failed to prove offence punishable under sections 279, 337 and 304-A of the IPC. The Trial Court has rightly held so.

16. As regards offence punishable under section 427 of the IPC is concerned, the material allegation against the accused is of rash and negligent driving of the offending bus by him and therefore it cannot be said that the accused caused mischief by causing wrongful loss or damage to the property i.e. scooter of the complainant – husband of the deceased. Therefore, offence punishable under section 427 of the IPC is not attracted and hence the Trial Court has erred in framing charge under section 427 of the IPC against the accused.

17. For all the reasons discussed above, as the prosecution has failed to prove offence punishable under sections 279, 337, 304-A of the IPC against the accused beyond reasonable doubt and as offence punishable under

section 427 of the IPC is not attracted against the accused, the Trial Court has rightly acquitted the accused of the aforesaid offences, with which he was charged by the impugned judgment and order. Said view taken by the Trial Court is a reasonable and possible view. There is no error committed by the Trial Court in appreciating the evidence. As such, there is no ground to interfere with the impugned judgment and order. Thus, the appeal being devoid of merits, same is liable to be dismissed. Accordingly, the appeal is dismissed. Bail bond of the accused stands cancelled.

18. Learned Advocate Mr.D.R. Markad was appointed as amicus curie to represent the respondent. This Court appreciates his assistance in this appeal for coming to a proper conclusion. His fees is quantified at Rs.7000/- (Rupees Seven Thousand Only).

[S.M.GAVHANE, J.]