

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.576 OF 2015

CHANDRAKANT LAXMAN CHOUKHANDE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ajay A. Joshi, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 12th APRIL 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the judgment and order dated 17th April 2015 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.413 of 2012, thereby convicting the appellant/accused for offences punishable under Sections 304(Part II), 325 and 427 of the Indian Penal Code as well as under Section 184 of the Motor Vehicles Act, 1988. For the offence punishable under Section 304 (Part II) of

the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 4 years apart from payment of fine of Rs.500/- and default sentence of simple imprisonment for 1 month. For the offence punishable under Section 325 of the Indian Penal Code, he has been sentenced to suffer rigorous imprisonment for 2 years apart from payment of fine of Rs.500/- and default sentence of simple imprisonment for 1 month. For the offence punishable under Section 427 of the Indian Penal Code, he has been sentenced to suffer rigorous imprisonment for 6 months. Rigorous imprisonment of 2 months is awarded to him for the offence punishable under Section 184 of the Motor Vehicles Act, 1988.

2 Facts in nutshell leading to the prosecution of the appellant/accused are thus :

- (a) The appellant/accused was the employee of Prashant Kamgar and Suraksha Rakshak Sanstha which was hired by the Pune Municipal Corporation for driving its goods vehicle for transporting garbage. The incident in question took

place on 3rd June 2010. On that day, the goods vehicle bearing Depot No.182 and Registration No.MH-12-AH-5258 owned by Pune Municipal Corporation was entrusted to the appellant/accused as a driver for transporting the garbage.

- (b) The incident took place at about 12.30 noon of 3rd June 2010 at the road at market area of Village Pirangut. The goods vehicle bearing Depot No.182 driven by the appellant/accused came at the market area of Village Pirangut. At that time, at the road side stall of Bajirao Pawale, Tata 207 pickup vehicle bearing Registration No.MH-12-DG-2504 was parked. Similarly, the Max Jeep bearing Registration No.MH-12-BG-1034 in which passengers were sitting was also parked on that road. Indica car bearing Registration No.MH-06-J-5820 and Maruti Zen car bearing Registration No.MH-01-CA-7108 was also at the spot of the incident. The goods vehicle belonging to Pune Municipal Corporation driven by the appellant/accused bearing Registration No.MH-12-AH-5258

gave dash to all these vehicles as well as road side stalls which ultimately caused death of five persons and injuries to about 19 persons. The four wheeler vehicles on the spot were extensively damaged, so also the road side stalls.

- (c) Upon witnessing the incident, PW1 Prakash Pavale informed the police and called ambulance. He then lodged report of the incident Exhibit 7 which resulted in registration of Crime No.83 of 2010 for offences punishable under Sections 304, 279, 337, 338, 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988. Injured were taken to the Sahyadri Hospital for medical treatment. Dead bodies were sent for autopsy. PW16 Narayan Nhyahalte, Police Inspector of Paud Police Station, visited the spot and prepared Spot Panchnama Exhibit 38. He recorded statement of witnesses and collected Death Certificates and Reports of postmortem examination of dead bodies. The appellant/accused came to be arrested and on completion of investigation, the charge-sheet came to be filed.

- (d) The Charge for offences punishable under Sections 304, 325, 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988, came to be framed against the appellant/accused. He pleaded not guilty and claimed trial.
- (e) In order to prove the Charge leveled against the appellant/accused, the prosecution has examined in all sixteen witnesses. First Informant Prakash Pavale is examined as PW1 and the First Information Report (FIR) lodged by him is at Exhibit 7. Kedarnath Gholap, Vitthal Gaikwad, Sunita Pavale, Leelabai Akhade, Sulabai Kamble, Kantabai Pandhare, Namdeo Ubhe, Vasant Ubhe and Malan Kamble are examined as PW2 to PW10 whereas Pradeep Chavan, Kamal Gore and Dattu Balkawade are examined as PW12 to PW14. They are injured witnesses. PW11 Mahendra Khaire is the owner of Tata 207 pickup vehicle and is employer of deceased Balinder Roy. Executive Engineer of Vehicles Department of the Pune Municipal Corporation namely, Kishor Pol, is examined as PW15.

Investigating Officer Narayan Nhyahalte, Police Inspector of Paud Police Station, is examined as PW16. The Spot Panchnama is at Exhibit 38.

- (f) Defence of the appellant/accused was that of total denial. He did not enter in defence. In his statement under Section 313 of the Code of Criminal Procedure, he contended that he was not at fault but false case is registered against him.
- (g) After hearing the parties, the learned trial court was pleased to convict the appellant/accused of offences punishable under Sections 304 (Part II), 323 and 427 of the Indian Penal Code as well as under Section 184 of the Motor Vehicles Act, 1988. Accordingly, he was sentenced as indicated in the opening paragraph of this judgment.

3 I have heard the learned advocate appearing for the appellant/accused. He argued that the learned trial court erred in relying evidence of PW15 Kishor Pol for arriving at the conclusion

that there was no fault in the vehicle in question. The Accident Report at Exhibit 47 shows that because of dislocation of the steering wheel rod, the vehicle was not roadworthy. The prosecution has not examined Inspector of the Motor Vehicles from the Office of the Regional Transport Office. PW15 Kishor Pol was not present on the spot of the incident at the time of the incident. The learned advocate further argued that finding of the trial court that the appellant/accused was knowing that the act is likely to cause death is *per se* illegal. Similarly, conviction of the appellant/accused for the offence punishable under Section 325 of the Indian Penal Code is also illegal. The prosecution case that the appellant/accused was driving the vehicle is not proved beyond reasonable doubt. The witnesses are not stating presence of the appellant/accused at the time of the incident in question, and therefore, identity of the appellant/accused is not established.

4 The learned APP supported the impugned judgment by pointing out that the Accident Report Form at Exhibit 47 shows that the steering rod was dislocated from the gear box due to

impact of the incident, and therefore, it cannot be said that the incident of dashing several vehicles was purely an accident. The learned APP also drew my attention to the documentary evidence in the form of record of the Pune Municipal Corporation to show that the garbage vehicle which dashed several vehicles and stalls was, infact, entrusted to the appellant/accused for driving.

5 I have carefully considered the relevant submissions and also perused the Record and Proceedings. One of the grounds for assailing the impugned judgment and order is to the effect that the offence punishable under Section 304(Part II) is not made out in the facts and circumstances of the case, which relates to the accident caused by dashing of the garbage vehicle of the Pune Municipal Corporation to other vehicles at Pirangut Square. The law on this aspect is settled by the Honourable Apex Court in the matter of **Alistar Anthony Pareira vs. State of Maharashtra**¹.

Paragraph 41 of the said judgment reads thus :

“41 Rash or negligent driving on a public road with the knowledge of the dangerous character and

1 (2012) 2 Supreme Court Cases 648

the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law - in view of the provisions of the [IPC](#) - the cases which fall within last clause of [Section 299](#) but not within clause 'fourthly' of [Section 300](#) may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under [Section 304](#) Part II IPC. [Section 304A](#) IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description."

6 It is, thus, clear that if the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then the death is of culpable homicide falling under Section 299 of the Indian Penal Code. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating

his state of mind. There can be knowledge of likely consequences without any intention and criminal culpability is determined by referring to what a person with reasonable prudence would have known and would have done in the given circumstances.

7 With this, let us see the situation at the place of the incident in question where the goods vehicle belonging to the Pune Municipal Corporation dashed several vehicles and road side stall. The location of the spot and situation prevalent thereat is brought on record by the defence during cross-examination of PW1 Prakash Pavale. Similarly, the same is reflected from the Spot Panchnama Exhibit 38 proved by PW16 Narayan Nhyahalte, Police Inspector. The spot of the incident was the road passing from the market area of Village Pirangut. The Spot Panchnama shows that it was a narrow road having 23 feet width. On both sides of that road, there were road side stalls, shops and hotels. From cross-examination of PW1 Prakash Pavale, it is brought on record that the road was proceeding from Pune passing to Village Pirangut going towards Paud and Mangaon in District Raigad.

That road, as seen from cross-examination of PW1 Prakash Pavale, was a road of heavy traffic. Vegetable vendors and fruit vendors were having stalls on both sides of the road where the incident took place. The State Transport bus used to take stop at that road and when such stop was taken by the State Transport bus, then entire traffic at the spot of the incident used to get affected. At the spot of the incident, vehicles carrying passengers going towards Paud used to stop for collecting passengers.

8 The Spot Panchnama Exhibit 38 goes to show that on the spot of the incident, Maruti Zen car bearing Registration No. MH-01-CA-7108, Indica car bearing Registration No. MH-06-J-5820, Max Jeep bearing Registration No. MH-12-BG-1034 and Tata 207 pickup vehicle bearing Registration No. MH-12-DG-2504 were there. Thus, the spot of the incident was found to be the spot having rush of people as well as vehicles at the time of the incident in question. It was on the narrow road having vegetable and fruit vendors on both sides apart from stalls, shops and hotels.

9 A person of ordinary prudence driving the heavy vehicle transporting garbage is normally expected to take due care and caution while driving such heavy vehicle from the area infested with heavy traffic, narrow road, vendors, stalls and shops. A person of ordinary prudence has knowledge that driving heavy vehicle at a public road is a dangerous thing and likely to result in death of passersby in case of rash or negligent driving. The driver of such a heavy vehicle in the given circumstances is aware of the risk that a death may occur if he commits fault or indulges in rashness and recklessness in driving such heavy vehicle in the area having heavy traffic, market, vehicles and narrow road.

10 Now let us see whether it is established that it was the appellant/accused who was driving the goods vehicle meant for carrying garbage bearing Registration No.MH-12-AH-5258. Evidence of PW15 Kishor Pol, Executive Engineer of Vehicles Department of the Pune Municipal Corporation shows that the said vehicle was belonging to the Pune Municipal Corporation. His evidence shows that each vehicle is given separate depot number

and this vehicle was given Depot No.182. PW15 Kishor Pol has also deposed about maintenance of record in the official course of business by the Pune Municipal Corporation recording allotment of duties and vehicles to the drivers engaged for driving the vehicle. He deposed that the appellant/accused was a contract employee having hired on contract basis through Prashant Kamgar and Suraksha Rakshak Sanstha by the Pune Municipal Corporation. This witness has proved attendance sheet Exhibit 34 maintained by the Pune Municipal Corporation as per provisions of the Minimum Wages Rules 1951, which is at Exhibit 34, which shows that the present appellant/accused was present on work on 3rd June 2010 when the incident in question took place. The Vehicle Allotment Chart Exhibit 35 proved by PW15 Kishor Pol, Executive Engineer, shows that the goods vehicle bearing Depot No.182 and Registration No.MH-12-AH-5258 was entrusted to the present appellant/accused for driving. The Spot Panchnama Exhibit 38 shows that vehicle lying in damaged condition on the spot of the incident which was market area of Pirangut. Evidence of prosecution witnesses including PW1 Prakash Pavale, the First

Informant, shows that the said vehicle gave dash to several vehicles and stalls in the market. The FIR lodged with promptitude by PW1 Prakash Pavale shows that the said goods vehicle dashed several vehicles, stalls and people at large. Thus, with this evidence, the necessary inferential finding which follows is to the effect that it was the appellant/accused, who, upon entrustment of the said vehicle by his principal employer had drove it and dashed it at the market area of Pirangut against several vehicles, stalls and passersby.

11 Evidence of PW2 Kedarnath Gholap shows that he suffered injuries to his head, leg and chest. PW3 Vitthal Gaikwad deposed that he suffered injuries to his ribs while sitting in the Max jeep because of dash of the goods vehicle. PW4 Sunita Pavale deposed that because of dash of the goods vehicle she suffered injuries to her leg and head, whereas PW5 Leelabai Akhade deposed that she suffered injuries to her nose and legs. PW6 Sulabai Kamble deposed that because of dash of the goods vehicle while she was sitting in the jeep, she suffered injuries to

her tongue and hand. PW7 Kantabai Pandhare was sitting in the Indica car and she deposed that because of dash of the goods vehicle, she suffered injuries to her head. PW8 Namdeo Ubhe was selling mangoes at the Pirangut market and he deposed that because of dash of the goods vehicle, he suffered injuries to his leg. PW9 Vasant Ubhe was sitting as a driver in the Max jeep and he deposed that because of dash of the goods vehicle, he suffered injuries to his chest. PW10 Malan Kamble was selling mangoes at the spot and she deposed that because of dash of the goods vehicle, she suffered injuries to back and leg. PW12 Pradeep Chavan deposed that the goods vehicle dashed the Tata 207 pickup vehicle driven by him and ran over Balinder Roy, who was labour of that vehicle. PW13 Kamal Gore was sitting in the Indica car at the time of the incident and she deposed that because of dash of the goods vehicle, her head and back got injured. PW14 Dattu Balkawade, who was selling mangoes, deposed that he got injured because of dash of the goods vehicle. PW11 Mahendra Khaire, owner of Tata 207 pickup vehicle has also deposed about death of his labour Balinder Roy because of

dash by the goods vehicle belonging to the Pune Municipal Corporation.

12 The defence has admitted postmortem reports, inquest notes and death certificates of the persons who died because of impact of the dash given by the goods vehicle of the Pune Municipal Corporation to other vehicles and stalls. Following are the documents which are admitted by the defence :

Exhibit 51 is the Inquest Panchnama prepared on inspection of dead body of Ananta Yenpure showing that his dead body was having several injuries.

Exhibit 52 is the Death Certificate of Ananta Yenpure showing that he died because of cardio respiratory arrest because to fracture of sternum and left clavicle etc.

Exhibit 53 is the Postmortem Report of dead body of Ananta Yenpure which is reflecting several antemortem injuries.

Inquest Panchnama of the dead body of Shalan Yenpure at Exhibit 54 shows several injuries on it

and her Death Certificate at Exhibit 55 shows that the death was due to intracranial haemorrhage and crush injury to brain.

Postmortem report at Exhibit 56 shows that she suffered several antemortem injuries.

Exhibit 57 is the Inquest Panchnama of dead body of Pandurang Botre reflecting several injuries on the dead body and Death Certificate at Exhibit 58 shows that he died because of cardiorespiratory arrest due to hypovolumic shock caused by bleeding from multiple injuries.

Inquest Panchnama of dead body of Balinder Roy at Exhibit 59 shows several injuries on the dead body and Death Certificate at Exhibit 60 shows that Balinder Roy died because of cardiorespiratory arrest caused by hypovolumic shock due to bleeding from several injuries.

Death Certificate at Exhibit 62 shows that Ramchandra Marne died because of head injury.

From this evidence, prosecution has established death of five persons in the incident in question and that death is certainly

amounting to culpable homicide as those deaths were caused by driving the goods vehicle carrying garbage by the appellant/accused from a narrow and busy road of Pirangut market where several vehicles were parked and several stalls and shops were located. The appellant/accused, with yardstick of a prudent person, is supposed to have knowledge of dangerous character of driving the goods vehicle from such location and the result of rash and negligent driving of such vehicle essentially causing death of several persons from the spot.

13 By relying on Accident Report Form at Exhibit 47, it was argued that the incident was a mishap or accident as it was caused due to dislocation of steering rod. However, the Accident Report Form at Exhibit 47 candidly shows that dislocation of the steering rod was because of the impact of the dash. There is no material on record to suggest that the dash of the goods vehicle to other vehicles was because of mechanical fault occurred suddenly in the said vehicle.

14 Net result of the foregoing discussion, as such, establishes the fact that the appellant/accused drove the goods vehicle with knowledge of likely consequence of causing death of several persons from the busy and narrow lane of Pirangut market causing death of five persons namely Ananta Yenpure, Shalan Yenpure, Pandurang Botre, Balinder Roy and Ramchandra Marne. The offence punishable under Section 304 (Part II) of the Indian Penal Code, as such, is established by the prosecution.

15 The prosecution witnesses PW2 to PW10 and PW12 to PW14, as discussed in the foregoing paragraphs, have particularly deposed about sustaining injuries by them in the incident in question. However, none of them have spoken about sustaining grievous hurt nor the prosecution has adduced any evidence to show that these witnesses have suffered grievous hurt in the incident in question. Hence, conviction of the appellant/accused for the offence punishable under Section 325 of the Indian Penal Code cannot be sustained. However, evidence of

these witnesses shows that the appellant/accused had voluntarily caused hurt to them by dangerous means.

16 Similarly, the prosecution has duly established that the appellant/accused is guilty of the offence of mischief as he had ran over various vehicles and stalls causing damage or loss amounting to more than Rs.50/-. He is proved to have driven the goods vehicle in a manner dangerous to public, considering the nature, condition and use of the place where the said vehicle was being driven by him. In the result, the following order :

ORDER

- i) The appeal is partly allowed by altering the conviction of the appellant/accused for the offence punishable under Section 325 of the Indian Penal Code to one under Section 324 of the Indian Penal Code.
- ii) For this proved offence, he is sentenced to suffer rigorous imprisonment for 2 years apart from payment of fine of Rs.500/- and in default, to suffer simple imprisonment for a period of 1 month.

- iii) Conviction of the appellant/accused and the resultant sentence awarded on him for offences punishable under Sections 304(Part II) and 427 of the Indian Penal Code as well as under Section 184 of the Motor Vehicles Act, is maintained.

(A. M. BADAR, J.)