

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 3 OF 2007

Harmendersing Heerasingh Madnoorkar,
Age : 35 years, Occu. Service, ...Applicant
R/o Gokulnagar, Nanded.

Versus

The State of Maharashtra ...Respondent

.....
Mr. P.P.Mandlik, Advocate holding for Mr.Amol
Gandhi, Advocate for Applicant.
Mr. A.P.Basarkar, A.P.P. for Respondent.
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CORAM : V.M.DESHPANDE, J.

DATE : 16TH APRIL, 2019

ORAL JUDGMENT :

01. By the present revision, the applicant is challenging the Judgment and Order passed by learned Additional Sessions Judge, Nanded dated 19.12.2006 in Criminal Appeal No. 57/2002. By the said, though the learned Judge of the Appellate Court has partly allowed the appeal filed on behalf of the applicant, the conviction imposed upon the applicant in S.C.C. No. 1636/2001 dated 30.3.2002 by the learned Chief Judicial Magistrate, Nanded for the offences punishable under Sections 279 and 337 of Indian

Penal Code, was confirmed, thereby the applicant was directed to suffer simple imprisonment for 6 months for the offence punishable under Section 279 and six months for the offence punishable under Section 337 of the Indian Penal Code and also was required to pay fine of Rs. 1,000/- and Rs. 500/- respectively.

02. I have heard Mr. P.P.Mandlik, the learned Counsel holding for Mr. Amol Gandhi, the learned Counsel for the applicant and Mr. A.P.Basarkar, the learned A.P.P. for the State. The learned Counsel for the applicant strenuously urged before me that the Courts below has committed mistake in convicting the applicant especially when the medical report does not show that the applicant was under the influence of liquor. He also submitted that the material witnesses were not examined by the prosecution. Resultantly, there is a miscarriage of justice. Hence, the impugned Judgments are required to be quashed and set aside.

03. Per contra, the learned A.P.P. supported the impugned Judgments.

04. According to the prosecution case, on 17.4.2001, the first informant Ashok Bhutte - a

Police Constable was a pillion rider of a two wheeler, which was driven by one Subhash Kavthekar. According to the prosecution, the incident occurred near Yatri Niwas Chowki, in view of the high speed, motor cycle came from the opposite direction, which was driven by the applicant, which gave dash. Resultantly, the first informant sustained bleeding injury on his left leg and fingers. The first information report states that at the relevant time, the applicant was under the influence of liquor. The time of incident was 00.15 hours.

05. After the completion of the investigation, the charge-sheet was filed.

06. In order to prove the guilt, the prosecution has examined two witnesses, the first informant PW-1 Ashok and PW-2 Dr. Yogesh Mohanrao Kokadwad. The evidence of PW-1 Ashok is in the line of the first information report. The evidence of Dr. Yogesh would show that he examined both the first informant as well as the applicant-accused in the G.G.M. Hospital, Nanded. Exh. 16 is the medical certificate of first informant. It shows that he suffered two contusions – one at left knee and another at left ankle and one contused lacerated

wound admeasuring 1/2 cm x 1/2 cm on left third toe. Even, the applicant also suffered injury near his right eye-brow. The applicant is not denying that at the relevant time, his vehicle involved in an accident with the vehicle, on which the first informant was pillion rider.

07. A specific case of the prosecution is that at the relevant time, the applicant was under the influence of liquor and he was driving the motor cycle in such condition. By now, the law is well crystallized that the speed alone is not the criteria to record a finding that the accused was driving the vehicle in the rash and negligent manner. In that behalf, the learned Counsel for the applicant has rightly placed reliance on the decision of this Court in **Bashir Janubhai Pathan V/s State of Maharashtra, reported in (2014(3) Bom. C.R. (Cri.) 791).**

08. Though the applicant was brought in the Hospital for his medical examination, blood samples or urine sample were not drawn by the Doctor. Dr. Yogesh in his cross-examination has specifically admitted that the examination of blood as well as urine is essential for conclusion of exact

percentage of alcohol. Exhibit-11 shows that the doctor at the relevant time though found that the applicant has consumed a liquor, however, he was not under the influence of liquor.

09. Further, Exhibit-11 is conspicuously silent that at the time of examination, the applicant's mouth was smelling alcohol. In that view of the matter, not drawing the sample of blood and urine for testing the same, in my view straight way we can not reach to the conclusion that at the relevant time the applicant had consumed the liquor. Even trail in that respect was also not investigated by the Investigating Officer.

10. Worth to observe is that from the line of cross-examination of first informant, it was the defence that the applicant was not responsible for the accident. On the contrary, Subhash, who was driving the vehicle on which the first informant was a pillion rider was under the influence of liquor and he gave dash to the vehicle. For the reasons best known to the prosecution when Subhash was neither medically examined nor he was examined as a prosecution witness, resultantly, the prosecution case suffers from drawing adverse inference against

it. From the cross-examination of Dr. Yogesh, it is clear that the injuries suffered by the first informant are possible due to falling down from running motor cycle. In view of this, non-examination of Subhash assumes its own importance.

11. Conspectus of the above discussion shows that the prosecution has not proved its case beyond reasonable doubt against the applicant that he was responsible for driving the vehicle in rash and negligent manner endangering the life of other person.

12. Consequently, the benefit of the doubt has to be extended in favour of the applicant. Resultantly, I pass following Order;

O R D E R

(i) Revision is allowed.

(ii) The Judgment and Order of conviction in S.C.C. No. 1636/2001 dated 30.3.2002 by the Chief Judicial Magistrate, Nanded and confirmed by Additional Sessions Judge, Nanded dated 19.12.2006 in Criminal Appeal No. 57/2002 dated 19.12.2006 for the

offences punishable under Sections 279 and 337 of Indian Penal Code, is hereby quashed and set aside.

(iii)The applicant is acquitted from all the charges.

(iv)His bail bonds stand canceled.

(v)Revision is disposed of. Rule is made absolute in above terms.

[V.M.DESHPANDE]

JUDGE

Dahibhate/