

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 217 OF 2005

Mahendra Madhukar Jagdale
Age 21 years, Occ. Driver
R/o. Ranjangaon Ganpati,
Tq. Shirur, District Pune

...Applicant

versus

The State of Maharashtra
Copy to be served to the
Public prosecutor, High Court
at Judicature at Bombay,
Bench at Aurangabad

...Respondent

.....
Mr. R.P. Bhumkar, advocate for the applicant
Mr. P.K. Lakhotiya, A.P.P. for the respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2019

ORAL JUDGMENT:-

1. By way of this criminal revision application, the applicant-accused challenges the judgment and order of conviction passed by the J.M.F.C. Pathardi, dated 10.5.2004 in S.C.C. No. 225 of 2003 and the said judgment and order is confirmed by the I Ad-hoc Additional Sessions Judge, Ahmednagar by judgment and order dated 11.7.2005 in Criminal Appeal No. 53 of 2004.

2. Brief facts giving rise to the present criminal revision application are as follows:-

a) The complainant Raju is resident of village Karanji and he is running a Hotel named as Samadhan, abutting to Nagar-Pathardi road at Karanji. The said hotel is situated to the southern side of Nagar-Pathardi road. On 16.6.2003 at about 3.00 p.m., the complainant was present in front of his hotel alongwith one Ashok Kshetre. At that time, he heard a loud sound and after hearing the said sound, he found that one person was lying on the road in injured condition and one truck bearing registration No. MH-20-A-6964 was proceeding towards Pathardi. Thus, the complainant Raju chased the truck on motorcycle and he was succeeded in stopping the said truck at a distance of half kilometer away from hotel Samadhan. He caught hold of the truck driver, who is the present applicant-accused. The truck was loaded with goods. Thereafter, complainant Raju had lodged a complaint Exh.18. On the basis of his complaint, crime No. 64 of 2003 came to be registered with concerned police station for the offence punishable under Section 304-A of I.P.C. The investigating officer has prepared inquest panchanama Exh.13 and also drawn spot panchanama and seizure panchanama of the truck. It has been revealed that the rear wheel of the said truck was passed over the head of the deceased and in consequence thereof, the deceased died on the spot.

b) After completion of investigation, the investigating officer submitted charge sheet against the applicant-accused for the offences punishable under Sections 279, 304-A of I.P.C. and under Sections 134/177 of the Motor Vehicles Act. The learned Judge read over and explained the charge to the accused. The accused pleaded not guilty to the same and claimed to be tried. In order to substantiate the charge levelled against the accused, the prosecution has examined in all six witnesses. After completion of the evidence of prosecution witnesses, the statement of applicant-accused under Section 313 of Cr.P.C. came to be recorded. The defence of the applicant-accused was of total denial as well as that he was not driving the vehicle in rash and negligent manner.

c) After hearing both sides, the learned J.M.F.C. Pathardi, by judgment and order dated 10.5.2004 passed in S.C.C. No. 225 of 2003, convicted the applicant under Section 279 of I.P.C. and sentenced him to suffer R.I. for three months and to pay fine of Rs.500/- i/d to suffer S.I. for 15 days and further convicted him for the offence punishable under section 304-A of I.P.C. and sentenced him to suffer R.I. for six months and to pay fine of Rs.3000/- i/d to suffer S.I. for three months. The amount of Rs.2000/-, out of the realized fine amount was directed to be given to the parents of deceased Sayaji Bhaurao Markad by way of compensation under Section 357

of Cr.P.C. The learned Magistrate has directed that the substantive sentences shall run concurrently. The appeal preferred by the applicant-accused bearing Criminal Appeal No. 53 of 2004 came to be dismissed by learned I Ad-hoc Additional Sessions Judge, Ahmednagar by the judgment and order dated 11.7.2005. Hence, this criminal revision application.

3. Learned counsel for the applicant-accused submits that there is no direct evidence in this case. The prosecution case entirely rests upon the circumstantial evidence. Learned counsel submits that the trial court as well as the appellate court considered the position of vehicle and the spot of accident and though there is no direct reference of maxim "*res ipsa loquitur*" so as to shift the burden on the accused, the learned Magistrate has held that it was for the accused to explain about the accident in question since the prosecution has proved the basic facts and failing therein, further held that the prosecution has proved the case against the accused. Learned counsel submits that the maxim "*res ipsa loquitur*" is inapplicable in criminal proceedings. It is always for the prosecution to prove the case beyond reasonable doubt against the accused. Learned counsel submits that even if the said maxim "*res ipsa loquitur*" is applied to the facts and circumstances of the present case, the attendant circumstances on record indicates that the said

maxim cannot be attracted in the facts and circumstances of the present case. On the basis of the attendant circumstances, the inference about rash and negligent driving on the part of the applicant-accused could not have been drawn.

4. Learned A.P.P. for the respondent-State submits that the applicant-accused has not denied the happening of accident. Learned A.P.P. submits that in terms of the contents of spot panchanama Exh.28, the vehicle truck went in wrong direction and gave dash to the deceased. The same is also evident from the contents of inquest panchanama wherein the spot of the blood is shown towards extremely southern side of the *kaccha* road. Learned A.P.P. submits that in view of the authoritative pronouncement of the Supreme Court in the case of ***Ravi Kapur vs. State of Rajasthan***, reported in **(2012) 9 SCC 284**, the doctrine of “*res ipsa loquitur*” is equally applicable to the cases of accident and not merely to the civil jurisprudence. He submits that the factum of accident having been established, the learned Magistrate with the aid of proper evidence has rightly taken assistance of the said doctrine of “*res ipsa loquitur*”. It is apparent that the accident in this case would not have occurred but for someone's negligence. There is no evidence on record to suggest the possibility that any action of the victim or some third party could be the reason behind it. There was no reason for the

applicant-accused to take his vehicle towards extreme wrong side of the road and give dash to the deceased. Thus, the only inference could be drawn is that the applicant-accused was negligent and he has failed in his duty to take care towards the deceased. Learned A.P.P. submits that both the courts below have taken a correct view and no interference is required.

5. Admittedly, the accident had taken place on Nagar-Pathardi road. The said road is east-west in direction. It is also not disputed that Pathardi town is situated towards east side of the road and Ahmednagar town is situated towards its west side. It is also not disputed that at the time of accident, the vehicle (truck) involved in the accident was proceeding from Ahmednagar to Pathardi i.e. from west to east direction. If it is so, southern side of the tar road is the wrong side for the vehicle proceeding west-east in direction. It is specifically noted in the seizure panchanama of the truck Exh.30 that there were blood spots on the cleaner rear side wheel and also small pieces of brain found on the said cleaner rear side wheel and the mudguard over it. If the prosecution story is accepted that the said vehicle truck went towards wrong direction i.e. towards southern side, then towards southern side, the driver side's front wheel and rear wheel would come. It has not been explained by the prosecution as to how the deceased had come below the cleaner

side rear wheel of the truck. In the case of **Ravi Kapur vs. State of Rajasthan (supra)** relied upon by the learned A.P.P., in paragraph nos. 14, 15 and 20 of the judgment, the Supreme Court has made the following observations:-

“14. The Court has to adopt another parameter, i.e., ‘reasonable care’ in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

15. The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the

IPC that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of 'culpable rashness' and 'culpable negligence' into consideration in cases of road accidents. 'Culpable rashness' is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010)].

20. *In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of res ipsa loquitur is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are*

proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of res ipsa loquitur. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as :

The event would not have occurred but for someone's negligence.

The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

Accused was negligent and owed a duty of care towards the victim."

6. In the light of the ratio laid down by the Supreme Court in the aforesaid case, it is clear that the doctrine of "*res ipsa loquitur*" is equally applicable to the cases of accident and not merely to the civil jurisprudence. However, in the light of the facts as discussed above

in detail, negligence on the part of the applicant-accused is necessary to be examined. The Supreme Court in para 20 of the aforesaid judgment, has held that the aforesaid doctrine can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. The accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. Thus, if the factum of accident having been established, the Court with the aid of proper evidence may take assistance of the attendant circumstances and apply the doctrine of *res ipsa loquitur*. In the above para, the Supreme Court has also observed that the mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence.

7. In the facts of the instant case, if at all the deceased had come below the cleaner side rear wheel of the truck, then there is no scope to draw an inference about negligence on the part of the driver. Even though the spot of accident has been shown towards extreme southern side of the tar road i.e. towards the wrong side of the road, the prosecution has failed to explain as to how deceased had come below the rear wheel from the cleaner side. The said wheel was on the northern side of the tar road. In view of the same, since the prosecution has failed to explain the attendant circumstances, the doctrine of *res ipsa loquitur* is not applicable to the present case. If

the said doctrine of *res ipsa loquitur* cannot be applied to the facts and circumstances of the present case, undisputedly, there is no direct evidence in this case so also other circumstantial evidence to connect the applicant-accused to the crime. It has also come in the evidence that the said truck was fully loaded with goods. It is true that if the vehicle passes through a residential area and if Hotels and shops are on both sides of the road, the driver has to take extreme care. However, even P.W.2 Raju and the other witnesses have not deposed about the manner in which the applicant-accused had driven the vehicle truck.

8. In the circumstances, I am of the considered view that both the courts below have convicted the applicant-accused erroneously by applying the doctrine of *res ipsa loquitur* (though it has not been applied directly). In view of the same, I proceed to pass the following order:-

ORDER

- I. Criminal Revision Application is hereby allowed.
- II. The judgment and order of conviction dated 10.5.2004 passed by learned Judicial Magistrate, First Class, Pathardi in S.C.C. No. 225 of 2003 and the judgment and order dated 11.07.2005 in Criminal Appeal No. 53 of 2004 passed by I Ad-hoc

Additional Sessions Judge, Ahmednagar thereby confirming the judgment and order of conviction passed by the Magistrate, are hereby quashed and set aside.

- III. The applicant accused is hereby acquitted of the offences punishable under Sections 279 and 304-A of I.P.C. in S.C.C. No. 225 of 2003. The fine amount, if paid, shall be refunded to the applicant-accused.
- IV. Criminal Revision Application is accordingly disposed of. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

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