

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO.2 OF 2015.

Shri Dinkar Sakharam Dalvi,
S/o Mr. Sakharam Dalvi,
Aged about 42 years, married,
Occupation Driver,
R/o At Post Ispurli Tal. Karveer
District Maharashtra.

.... Petitioner.

Vs.

State (through)

1. Public Prosecutor,
High Court of Bombay at Goa
Altinho Panjim Goa.

2. Police Inspector
Ponda Police Station,
Ponda Goa.

.... Respondents.

Shri Rohan Desai, Advocate for the petitioner.

Shri Mahesh Amonkar, Additional Public Prosecutor for the respondents.

Coram:- PRITHVIRAJ K. CHAVAN,J.

Reserved on:-6th June 2019.

Pronounced on:-14th June 2019.

JUDGMENT:-

The petitioner has challenged the judgment and order dated 1.12.2014 delivered by the Additional Sessions Judge, Panaji in Criminal Appeal No.120/2012, whereby the learned Judge has

confirmed the judgment and order of conviction and sentence passed by the learned Judicial Magistrate, First Class Ponda (for short "JMFC") on 29.8.2012 by which the petitioner was sentenced under Sections 279, 304-A of Indian Penal Code(for short "IPC") and under Sections 134(a) and (b) of the Motor Vehicles Act (for short M. V. Act")

2. Brief facts, can be summarised thus:-

On 19.8.2006 the petitioner was driving his truck bearing registration no.MH-09-L-757 from Village Shiroda to Sanvordem at about 7.30a.m. The truck was loaded with some goods. A minor boy aged about 15 years (victim) was proceeding on his bicycle from Digas Panchwadi to Mapa. The petitioner, at the relevant time, while overtaking a stationary bus which had stopped for passengers, gave a violent dash to the bicycle of the victim who was on his correct side and thereby caused his instantaneous death due to crushing of his head under the wheel. The truck stopped ahead at a distance of 20 metres. The petitioner fled away from the scene without giving medical aid to the victim. It is alleged by the prosecution that the truck was being driven by the petitioner rashly and in a fast speed ignoring the traffic rules.

3. An offence came to be registered against the petitioner

with Ponda Police Station under Sections 279, 304-A IPC and Sections 134(a) and (b) of the M. V. Act.

4. After conducting the scene of offence panchanama, inquest and after recording the statements of the witnesses, the Investigating Officer laid a chargesheet in a Court of Judicial Magistrate, First Class, Ponda. After recording the evidence of the witnesses, the learned JMFC, convicted and sentenced the petitioner to pay fine of Rs.1,000/- and in default to undergo simple imprisonment for 10 days for the offence punishable under Section 279 of IPC. He is sentenced to undergo rigorous imprisonment for four months and fine of Rs.5000/-, in default to undergo simple imprisonment for 15 days for an offence punishable under Section 304-A IPC. Petitioner is also convicted and sentenced to pay fine of Rs.100/- each for the offences punishable under Sections 134(a) and 134(b) of the M. V. Act. The learned JMFC, *inter alia*, directed an amount of Rs.5000/- to be paid as a compensation to the family of the victim.

5. The petitioner preferred an appeal before the learned Additional Sessions Judge, Panaji. The learned Additional Sessions Judge, dismissed the appeal confirming the findings arrived at by the trial Court and maintained the sentence.

6. Shri Rohan Desai, learned Counsel appearing for the petitioner drew my attention to the testimony of PW4 Rama Naik, an eye witness, by stating that he is an interested witness who knows the family of the deceased. This witness had noticed the accident from a distance of about 50 metres and that too after the accident was over and, therefore, according to the learned Counsel, he cannot be said to be an eye witness. It is further argued that there has been delay in recording the statements of the witnesses. The Investigating Officer did not investigate into the aspect as to whether the bus was really moving on that road or whether there were passengers in the bus, and if yes, why their statements have not been recorded.

7. PW4 Rama Naik cannot be branded as an interested witness merely because he was acquainted with the family of the victim. He is a natural witness who has no reason to give false evidence against the petitioner. It would be unfair to discredit his testimony only because he was at a distance of 50 metres from the spot of accident. It is not the case of the defence that the victim was hit by any other vehicle. It is not the number of witnesses who are required for proof of any fact but the quality of evidence. It does not make the prosecution case untrustworthy only because the Investigating officer did not record the statements of the passengers

in the bus. The passengers could have hardly noticed the accident from inside the bus in view of the fact that the truck had already overtaken the bus before giving a dash to the bicycle of the victim.

8. The learned Counsel has also stressed on the requirement of a certificate under Section 65(B) of the Evidence Act in order to prove the digital photographs of the scene of occurrence produced by the prosecution. The learned Counsel drew my attention to the testimony of the petitioner who examined himself as a defence witness in the box, wherein it has been testified by him that the victim was standing on the seat of the bicycle and was paddling and in that process he suddenly turned the handle of his bicycle and dashed against diesel tank of the truck. The learned Counsel thus, attributed rashness and negligence on the part of the victim and, therefore, prayed for setting aside the impugned judgment.

9. On the other hand, Shri Mahesh Amonkar, learned Additional Public Prosecutor argued that the fact of accident and death of the victim has been admitted by the petitioner himself in his evidence before the trial Court. He drew my attention to the photographs and the panchanama wherein the tyre marks of the truck were clearly seen on the extreme right side of the road on the mud indicating as to how the petitioner was rash and negligent at the time

of overtaking a stationary bus. The blood marks which spilled over the door of the cabin of the truck indicates that boy was crushed under the front wheel of the truck.

10. The crucial evidence of an eye witness PW4 Rama Naik, indicates that on the fateful day of the accident he resumed his duties at "*Karunath Bhagwati Co-operative Society, Mapa, Panchawadi.*" Since there were no customers he was standing outside the society when he noticed a mini bus proceeding from Shiroda to Sanvordem. The truck was proceeding from Shiroda to Sanvordem which was overtaking the mini bus. At that time he noticed the victim on his bicycle proceeding from Digas Panchawadi to Mapa to bring kerosene. While overtaking the bus the said truck gave a dash to the bicycle due to which the victim fell on the tar road. He sustained head injuries. His bicycle fell on the katcha road. The truck after hitting the bicycle proceeded further and stopped at a distance of 20 metres. His evidence further indicates that the driver of the truck fled away from the scene without giving any medical aid and without informing the police. It is specifically testified that the truck was being driven in a fast speed while overtaking the bus. He has categorically deposed that the registration number of the truck was MH-09-757. According to this witness the road at the scene of occurrence is a straight road having clear visibility.

11. Nothing could be elicited in his cross which would render his testimony unbelievable barring few suggestions. It is suggested that the legs of the victim were not reaching the paddles and that he was standing and cycling at the relevant time which the witness said that he had not seen it. This does not mean that this witness has deposed falsely, as normally a person only can see a boy riding the bicycle. It is not expected of a common spectator to minutely notice whether the legs of the boy were reaching to the paddles or otherwise.

12. PW1 Deepak Naik in whose presence scene of occurrence panchanama was drawn by the Investigating Officer has clearly testified that the width of the tar road near the accident spot was around 5 metres. He also testified that the blood stains and the hair were noticed on the cabin towards the driver side of the truck which clearly falsifies the defence of the petitioner that the said boy dashed against the diesel tank which is in the midst of the truck. It is a clear case where scalp of the victim was crushed underneath the front wheel and, therefore, blood stains were found on the inner part of the cabin's door with some scalp hair. The boy was lying in the midst of the road with a crushed head and brain matter lying on the road.

13. Evidence of panch witness also indicates that the truck stopped at a distance of 15 metres from the spot of the accident which is also indicative of the fact that the truck was not in a moderate or normal speed though it was driven by the petitioner from the locality. If a bus was standing on the road at the relevant time, the petitioner ought to have taken proper care and caution before overtaking the said bus. He could have stopped behind the bus as it appears from the record that despite noticing the said bus, the petitioner tried to overtake it without reducing the speed of his truck. It is testified by PW1 Deepak Naik that the bicycle was damaged. The front wind screen of the truck was damaged as it was an outrage of the public gathered on the spot which is normally seen in any case of accident.

14. The sketch of the accident spot drawn by the Investigating Officer indicates that the width of the road is about 5 metres. On the either side there is one metre katcha road. The truck in question was on its extreme right side at a distance of about 3.30 metres from the right edge of the road. After giving dash to the victim the truck went ahead at a distance of 15.10metres and stopped at the left side of the road proceeding from Shiroda to Sanvordem.

15. Quite interestingly, in his defence evidence the petitioner admits that at the relevant time he was proceeding towards

Sanvordem and saw the boy coming on the bicycle. According to him, the victim was standing on the seat and cycling the paddles which is something strange and unbelievable as to how one can stand on the seat of a bicycle and paddle the same? According to the petitioner the victim was not properly riding the bicycle and in that process he was about to fall in the gutter while the petitioner was looking at the boy minutely. Here itself it is evident that even though he noticed the boy who was said to be not properly riding his bicycle, the petitioner, despite minutely noticing the same, did not attempt to control the speed of his truck or stop overtaking the bus in order to save the boy, as admittedly the width of the road was 5 metres and the petitioner could have taken due care in applying the brakes of the truck which could have saved the life of the victim boy. Even otherwise, the defence of the petitioner appears to be improbable, unacceptable and unbelievable for the simple reason that it was incumbent on his part to take proper care while driving a heavy motor vehicle on a small road. There is no question of the boy hitting the diesel tank as there is nothing on record indicating that the victim dashed against the diesel tank.

16. In his cross examination by the prosecution, the petitioner admits that he noticed the boy from a distance of about 20 metres. He also admits about the width of the road to be of 5 to 5.50 metres

which was sufficient enough for two vehicles to pass. Thus, there was sufficient time for the petitioner to stop the truck. The petitioner has categorically admitted in cross that blood stains were seen on the tyre and not on the diesel tank as stated by him. Thus, false defence has been raised by the petitioner.

17. PW2 Keshav Naik acted as a panch witness at the time of inquest in Goa Medical College morgue Bambolim. In substance, he testified that he had noticed injuries on the right hand side of forehead of the deceased and the inner portion of the forehead was hollow and inner portion was visible. There was blood seen on his head, nostril etc. The deceased also had injuries on the wrist of his right hand.

18. PW2 Keshav Naik had also seen the incident. According to him on 19.8.2006 he was going for his business at Shiroda and when he reached at Mapa just before the spot of the accident, he met his friend with whom he was talking. He noticed the boy who just passed them on his bicycle and was carrying an empty plastic can on his bicycle. After five minutes a mini bus crossed them which was coming from Shiroda and going to Sanvordem direction. This witness had noticed a crowd near the Society's fair price shop. He also noticed the driver of the truck getting down and was running towards

Sanvordem direction when the crowd started shouting "*Dhara Teka*" means "Catch him". However in the cross examination PW2 Keshav Naik admits that he had not actually seen the dash given by the truck. However his evidence is relevant as he was near the spot at the time of the incident and had noticed the petitioner running away from the spot. This would definitely be in breach of Section 134(a) of the M. V. Act in which the petitioner had failed to provide any medical aid to the victim and instead, escaped. His testimony could not be shattered during cross examination.

19. PW6 Dr. Mannar Kantak, had conducted post mortem examination over the dead body of the victim on 20.8.2006. He clearly opined that the injuries on the person of the deceased can be caused in a motor vehicular accident. In cross a single question was asked whether injuries sustained by the victim could be caused if the victim comes in contact with the moving vehicle to which he answered in the affirmative. The observation of Dr. Kantak in the Autopsy report is as under:-

"Open, lacerated, perforating, crushing injury with reddish irregular margins seen for whole fronto-temporoparietal aspect of scalp of the head on the right side of 15 X 7 cms X cranial cavity deep with missing portion of the scalp tissue and part of the

right fronto-temporoparietal bones with multiple comminuted fractured pieces of remaining parts of the said same bones and whole right cerebrum of brain tissue missing along with the overlying torn meninges with left side inner table of the right remaining cranial bones and base of skull of right side and medial aspect of left cerebrum of brain exposed and seen from the outer scalp injury opening.

2. Bruise 10 X 6 cm size, reddish over upper and middle one thirds of back of left forearm region.
3. Abrasion 3 X 2 cm size, reddish over mid back of the left wrist region.
4. Abrasion 2 X 1 cm with loose brown scab formation over front lower mid third thigh on right side."

20. PW8 Virendra Veluskar was attached to Ponda Police Station at the relevant time, who after receiving the information rushed to the spot and noticed the dead body of the victim lying on the tar road with crushed head injuries and brain contents lying on the road in a pool of blood. He noticed 'Hercules' bicycle lying near the dead body and its front wheel was in a bent condition. He also noticed the truck standing on the left side of the road facing towards

Sanvordem and its glasses broken and scattered on the road. This witness drew scene of occurrence panchanama. He called the photographer who took photographs from different angles. He had sent the body for autopsy to the Goa Medical College Bambolim. This witness filed a complaint against the petitioner which is proved at Exh. 40.

21. It was duty of the petitioner to drive the truck at a speed which will not imperil the safety of others using the road. The relationship between the speed and the rashness depends upon the place, time and manner of the accident. Relationship between speed and rashness depends upon the place, time and manner of the accident. Important criteria for deciding whether driving which lead to the accident was rash or negligent would include not only the speed of the vehicle but also the width of the road, density of traffic and other relevant factors. The learned JMFC and lower Appellate Court have correctly and properly appreciated the facts, evidence and circumstances on record to reach a proper conclusion that the petitioner drove his truck to the extreme right by crossing the middle lane resulting into the violent dash to the victim. Death is, as such, a direct result of rash and negligent act of the petitioner sans intervention of another's negligence. He had not exercised a caution incumbent on him. The petitioner, in this case, had indeed committed

breach of his duty due to his omission to drive the truck in a moderate speed even after noticing the victim coming on a bicycle from the opposite direction.

22. The learned Counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in the case of **Anvar P. V. Vs P. K. Basheer and others, (2014) 10 SCC 473**). As per clauses a,b, c & d of Sub Section 2 of Section 65(B) of the Indian Evidence Act secondary evidence relating to admissibility of electronic records can be proved. In the instant case, there is no clear evidence as to whether the photographs tendered on record were in fact from a digital camera. Even if it is presumed for a moment that it was the evidence in electronic form, yet in view of clear admission of the accident by the petitioner involving the truck being driven by him coupled with the fact there were blood stains on the truck, the photographs can be considered only for a limited purpose of corroborating the evidence on record. The ratio laid down by the Hon'ble Supreme Court in the judgment cited supra is no doubt required to be fully made applicable whenever there is question of proof of electronic records as a primary and secondary evidence. It can be made applicable only if the condition referred in said Section are fulfilled. Even though the evidence in the form of photographs is excluded, the prosecution has proved its case beyond all reasonable

doubt.

23. It also reveals from the record that the petitioner, after the accident fled away from the spot leaving the truck and without intimating the incident to the police in breach of Section 134(b) of the M. V. Act. PW8 Virendra Veluskar, PSI, in his cross examination denied the suggestion that the petitioner informed about the accident to the nearest police station and brought the police to the accident spot.

24. Both the Courts below have correctly and properly appreciated the evidence on record. There are no omissions or contradictions nor anything to show that the witnesses examined by the prosecution are unreliable. As a Revisional Court it would not be proper to upset the concurred findings of facts arrived at by the Trial Court as well as the First Appellate Court. The evidence on record is quite clear, trustworthy and unimpeached. The impugned judgment, therefore, does not warrant interference as there is no illegality, impropriety or incorrectness.

25. Consequently, the petition stands dismissed. The judgment and order passed by the learned Additional Sessions Judge, Panaji in Criminal Appeal No. 120/2012 is hereby confirmed.

26. The petitioner shall forthwith surrender before the learned Additional Sessions Judge, Panaji for undergoing sentence.

PRITHVIRAJ K. CHAVAN, J.

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