

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.60 OF 2014**

Mr. Sumedh Shetye,
S/o. Mr. Sitaram Shetye,
Age 26 years,
R/o. Rudreswar Colony,
Harwale, Sanquelim – Goa.

.... Applicant

V/s

STATE
Through Public Prosecutor,
High Court of Bombay at Goa Bench,
Panaji-Goa.

.... Respondent

Shri Ravi Gawas, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on :- 9th September, 2019

Pronounced on :-26th September, 2019

JUDGMENT :

Legality, propriety and correctness of the impugned judgment and order of conviction passed by the learned JMFC, Valpoi and upheld by the Additional Sessions Judge, Mapusa has been impugned by the applicant by invoking the revisional jurisdiction of this Court.

2. A few facts germane for the decision of the petition can be summarised thus :

On 14/08/2010, at about 14.10 hrs. the applicant was driving a Tata Sumo Jeep bearing registration no.GA-01-J-1636 from Honda to Pissurlem, Sattari. He was driving in a rash and negligent manner on a straight road. When he reached at Shantinagar, he violently dashed against the injured PW3 Luno Gaude, who was walking on the katcha road. The dash resulted into grievous injuries to the victim. It is the case of the prosecution that the applicant drove his jeep towards wrong side i.e. to the extreme right side of the road and dashed the victim. The offending vehicle, thereafter, fell in the adjoining field after dashing against a tree.

3. The Investigating Officer rushed to the spot. He completed the investigation by drawing a spot panchanama, recording the statements of the witnesses including a few eye witnesses. The injured was referred for medical examination. The offending vehicle was inspected by the Road Transport Officer. After the investigation, a charge sheet was filed in the Court of JMFC, Valpoi under Sections

279, 337, 338 IPC.

4. The learned Magistrate after recording the plea of the applicant and after having gone through the evidence of the prosecution witnesses, convicted and sentenced the applicant to undergo simple imprisonment for two months of the offence punishable under Section 279 of IPC, *inter alia*, payment of fine of ₹1,000/- and in default to undergo simple imprisonment for one month and to undergo simple imprisonment for three months of the offence punishable under Section 338 of IPC, *inter alia*, payment of fine of ₹1,000/- and in default simple imprisonment for one month. The sentences were directed to run concurrently.

5. The learned Additional Sessions Judge, in an appeal No.79/2012 maintained the judgment and order of conviction by dismissing the appeal on 10/11/2014.

6. Shri Gawas, the learned Counsel for the applicant took me through the evidence of the prosecution witnesses as well as the impugned judgment. It is vehemently urged that it was the victim who

was responsible for the said accident as he suddenly tried to cross the road. According to the learned Counsel, the applicant was driving the offending vehicle cautiously from the left side of the road with a speed of 40 kms. per hour. The learned Counsel also took exception to the testimonies of eye witnesses, as according to him, they are interested witnesses, who were acquainted with the victim. The learned Counsel has also tried to bring on record certain inconsistencies in the testimonies of prosecution witnesses. He has also raised doubt about the spot panchanama by contending that it was not drawn in the presence of pancha witness. The learned Counsel has, therefore, prayed for setting aside the impugned judgment and order of conviction passed by the Courts below.

7. On the other hand, Shri Amonkar, the learned Additional Public Prosecutor strongly supported the impugned judgment and order by stating that there is absolutely no room for any doubt that the applicant had driven the vehicle in such a rash and negligent manner, which is evident from the testimonies of eye witnesses, which indicate as to how the applicant swerved the vehicle towards the wrong side. The learned Additional Public Prosecutor brushed aside the contention

of the applicant that the victim was trying to cross the road and thereby resulting into an accident. He drew my attention to the sketch annexed with the panchanama showing the brake marks, indicating the speed and rashness with which the offending vehicle was being driven by the applicant.

8. PW3 Luno Gaude, who is the injured had promptly lodged his complaint with the police on the very day. In his evidence before the Trial Court he has categorically deposed that at the relevant time he was proceeding from his house at Shantinagar towards Wadakade, Honda on the katcha road when the offending vehicle came from opposite direction in a fast speed towards the wrong side and dashed against his waist. The vehicle stopped further at a distance of about 20 metres. The injured was walking on the katcha road on its left side. An unsuccessful attempt has been made to rebut his testimony by the defence. There is no dispute, obviously, after an accident some people gathered around the spot of incident. It is also not in dispute that PW3 Luno was rushed to the hospital where he was examined by PW10 Dr. Poonam Gaonkar, who was attached to the Goa Medical College as a Chief Medical Officer. PW3 Luno had sustained the following

injuries as per the evidence of PW10 Poonam Gaonkar :

- (i) Swelling tenderness deformity of right knee caused by blunt object within 6 hrs. of duration and grievous in nature.
- (ii) Laceration which was 2x0.5x0.5cm on right upper eye lid caused by blunt object within 6 hrs. of duration and simple in nature.
- (iii) Laceration with swelling 2x1x1cm on the right hand caused by blunt object within 6 hrs. and grievous in nature.
- (iv) Tenderness at hip joint which was caused by blunt object within 6 hrs. duration and grievous in nature.
- (v) X-ray of the pelvic with both hip showed evidence of comminuted fracture of right iliac wing.
- (v) X-ray of right hand showed evidence of fracture base of right forth metacarpal with fracture shaft of 5th metacarpal and x-ray of LS spine was normal.
- (vi) X-ray of the right knee joint showed fracture of right proximal tibia and x-ray left knee showed fracture of lateral femoral condyle of left femur.

The expert had issued a medical certificate which is proved at Exhibit 51. There is no effective cross-examination of this witness except a suggestion that the aforesaid injuries are possible if a person falls from a height with velocity on the hard and rough surface. It is

nobody's case that the injured fell from height with velocity on a very hard and rough surface. The injury sustained by the injured PW3 Luno are indeed grievous as is evident from the testimony for which there is corroboration from the certificate as well as from the evidence of PW5 Dr. Swapnil Salelkar. PW5 Dr. Swapnil had first examined PW3 Luno and noticed following injuries:

- (i) CLW 3x0.5cm on the right upper eye lid,
- (ii) CLW 4x0.5cm on the right hand posterialy,
- (iii) abrasion 1x0.5cm left leg,
- (iv) abrasion 2x1cm on left leg.

9. PW4 Yesso Palyekar is an eye witness. He was a natural witness, who was walking from Honda towards his house when he noticed the offending vehicle being driven in a fast speed which dashed against the injured by swerving it to the wrong side of the road. He testified that the said vehicle went at a distance of 15 to 20 metres and, thereafter, dashed against a tree. After the dash, the injured who was walking on a katcha road fell on the ground resulting into injuries. It was this witness, who removed the injured from the paddy field. The injured was taken to the hospital in an ambulance and then he was shifted to the Goa Medical College. It is testified that

the injured had sustained injuries to his hands and legs. He had also testified that the vehicle in question was a Sumo Jeep bearing no.1636. It is not disputed that even the appellant had helped in removing the injured from the paddy field. There is no dispute about the identity of the appellant. However, that itself would not mitigate the seriousness of the offence.

10. The testimony of PW4 Yesso remained unshattered during cross baring some suggestions which are insignificant. Merely because he is acquainted with the injured does not render his testimony unbelievable for the simple reason that he was a chance witness. His testimony cannot be discarded only on that ground. By doing so, would tantamount to doing injustice to the injured. The cross-examination rather substantiated the version of the injured as regards the manner in which the offending vehicle was being driven by the appellant and the dash given to the injured by swerving to the wrong side of the road. It is brought on record by the prosecution that it was a straight road and there were no turns or diversions. The appellant could very well see the injured who was walking on his left side. It is not even the case of the defence that there was some

mechanical defect in the vehicle due to which it suddenly swerved towards the wrong side of the road. The Accident Report Form indicates that the motor vehicle was mechanically fit. The relevant extract of the said Accident Report Form is as under:

2	Description & registered number of vehicle (if a lorry, axle weight should be given)	Tata Spacio. Light Motor Vehicle Colour – white No.GA-01-J- 1636
3	Condition of brakes & brake connection	In order
4	Condition of steering, steering arms and connections and engine control	In order
5	Condition of gear box and differential	In order
6	Frame (side, front and rear members)	In order
7	Wheels, axles and springs (front & rear)	In order
9	Was accident, in the opinion of the Examining Officer, due to any mechanical defects in the vehicle. (This opinion to be expressed in serious case)	M.V. is mechanically fit.
13	Damages	(i) right hand side front fender, right hand side rear view mirror and bonnet were

found damaged,
(ii) Front
bumper found
damaged on the
right hand side,
(iii) left hand
side front fender
found with a
slight dent,
(iv) left hand
side front
indicator, right
hand side rear
window glass
and front
number plate
were missing.

11. PW6 Suresh Sawaikar, is also an eye witness, whose evidence reveals that the injured who is his brother-in-law was walking from Wadakade to Honda by the side of the road, when the offending vehicle went to the wrong side resulting into a dash to the injured. According to this witness, the approximate speed of the vehicle was about 40 kms per hour. In his estimate the speed was approximate 40 kms per hour and, therefore, it cannot be said with certainty that the speed of the vehicle was 40 kms per hour. The fact remains that it was driven on a straight road without any traffic and, therefore, the question of speed of the vehicle is not material. PW6 Suresh Sawaikar had corroborated the testimony of earlier two

witnesses in material particulars including PW3 Luno, so as to say that the injured had sustained injuries to his right hand, leg, hip and right eye. The cross-examination of this witness fortifies the fact that he had witnessed the accident from a distance of about 20 metres, while sitting at his house. He had witnessed the vehicle when it was at a distance of about 200 metres from him. As such, there is no reason to disbelieve the testimonies of the aforesaid independent eye witnesses, which find full corroboration from the testimonies of the medical experts. There is no reason for these witnesses to testify against the appellant or have an axe to grind against him.

12. It is quite apparent that the injured PW3 Luno was walking by the correct side of the road that too on the katcha road, which falls outside the tarred portion. It was expected of the appellant to drive carefully and cautiously on a straight road which was without traffic. He ought to have taken care of the traffic rules and proper control of the vehicle. Normally, the vehicle should have been driven by the left side of the road. There was no reason forthcoming as to why suddenly the appellant drove the vehicle towards the right side of the road. The defence of the appellant that the injured himself, while crossing the

road, met with an accident merits to be discarded for the reason that spot panchanama and the sketch annexed with the same (Exhibit 10 colly) clearly depict that the appellant had applied urgent brakes which left its imprints on the road admeasuring about 1.20 metres on the tar road and the total length of the brake marks including the abutting katcha road is about 9.40 metres. One can imagine the speed with which and the manner in which the vehicle must have been driven by the appellant. Had it been driven with a moderate speed, the brake marks would not have extended to such an extent.

13. PW1 Paresh Gawde, who acted as a pancha witness has duly testified about panchanama which was drawn by the Investigating Officer.

14. The sum and substance of the testimony of PW1 Paresh is that he acted as a pancha witness on 14/08/2010 at the request of the police. The panchanama was drawn at the spot of accident which was on Honda Pissurlem Road. He had noticed the Tata Sumo vehicle fallen on the right side of the road when one proceeds from Honda to Pissurlem. He testified that the registration number of the said vehicle

was GA-01-J-1636. The vehicle had turned turtle and was found lying at a distance of 21 metres from the spot of accident.

15. PW3 Luno happens to be the neighbour of this witness. His presence on the spot was quite natural, since the injured PW3 Luno had suffered injuries in the accident. There was nothing wrong for him to act as a pancha witness when he was so asked by the police. He was also a part of the crowd which had gathered there at the relevant time. He testified that he had visited the spot of accident on his own. The contents of the panchanama were read over to him and he found it to be correct as per what he had observed at the spot of accident.

16. PW7 Kamlakant Sawaikar is one more eye witness and is cousin of PW6 Suresh Sawaikar. He testified that he does not remember the time when the accident occurred. He noticed the vehicle bearing no. GA-01-J-1636 proceeding from Honda to Pissurlem. The injured was proceeding from Pissurlem to Honda by the left side of the road, when the said offending vehicle dashed against him. The vehicle was in a fast speed. The injured fell by the

side of the road and the sumo vehicle went ahead in the paddy fields. He rushed towards the injured and lifted him. The injured had sustained injuries on his right side of the body. He had identified the appellant sitting in the dock as the driver of the said jeep. It is brought out in his cross-examination that at the time of the accident he was sitting in his house and had seen the injured walking on the road at a distance of 100 to 200 metres. Except this, there is nothing in his cross-examination.

17. By no stretch of imagination, the aforesaid witnesses can be branded as an interested witnesses merely because they happen to be either neighbours or relatives of the injured. The law is settled that if the testimony of interested witnesses is to be accepted, then it will have to be evaluated with caution and should not be mechanically rejected. As already stated, none of the witnesses had any axe to grind against the appellant and, therefore, there is no reason to disbelieve them.

18. PW2 Narayan Kamat is the owner of the said Sumo jeep bearing registration no.GA-01-J-1636 and the employer of the

appellant. According to this witness, after the accident, the appellant gave a call to his wife and informed about the accident and also the injuries suffered by PW3 Luno. Upon getting the said information Narayan Kamat rushed to the spot within 15 minutes.

19. Thus, there is no doubt that the appellant was driving the offending vehicle in rash and negligent manner at the relevant time. There are no material contradictions or omissions on record.

20. It is quite clear from the evidence of the eye witnesses including the injured that the offending vehicle was driven by the appellant not only in a rash manner but with negligence. Negligence is 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. The appellant had consciously risked and driven the vehicle towards the wrong side sans any justifiable reason. It was a public road with no traffic, which makes the act of the appellant more serious, as the manner in which he drove the offending vehicle had resulted in causing grievous injuries to the

complainant. As a matter of fact, Section 279 of IPC is an offence against public safety, which is complete, although it does not result into any injuries to life or property of anyone. It is neither the case of the appellant that there was an error of judgment nor it can be said to be a mere carelessness on his part. It is indeed a criminal negligence which is apparent from the evidence on record.

21. The learned JMFC and the Additional Sessions Judge in the respective judgments have correctly appreciated the evidence on record and reached proper conclusion that the prosecution has proved its case beyond all reasonable doubts. The defence raised by the appellant is unbelievable and unacceptable.

22. Shri Ravi Gawas, the learned Counsel for the appellant has placed reliance on the judgment of the Supreme Court in case of ***State of Karnataka V/s. Satish*** reported in ***1998 8 SCC 493***. Paras 4 & 5 read thus:

“4. Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by "high speed". "High speed" is a relative term. It was for the

prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur". There is evidence to show that immediately before the truck turned turtle, there was a big jerk. It is not explained as to whether the jerk was because of the uneven road or mechanical failure. The Motor Vehicle Inspector who inspected the vehicle had submitted his report. That report is not forthcoming from the record and the Inspector was not examined for reasons best known to the prosecution. This is a serious infirmity and lacuna in the prosecution case."

"5. There being no evidence on the record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. To us it appears that the view of the High Court, in the facts and circumstances of this case, is a reasonably possible view. We, therefore, do not find any reason to interfere with the order of acquittal. The appeal fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged."

23. I am afraid, this ratio would not be of any help to the appellant for the simple reason that even after application of the maxim *res ipsa loquitur*, it is quite clear that the prosecution has

established both “**rashness**” and “**negligence**” on the part of the appellant while driving the offending vehicle. In the case cited supra, there was evidence that the truck turned turtle due to a jerk, which was due to some mechanic failure or otherwise. It is not the case in hand, as the motor vehicle Inspector, who inspected the vehicle and submitted the report qua the offending vehicle, is self explanatory. Such report was not forthcoming in the said case. Thus, there is absolutely no lacuna or infirmity in the prosecution case.

24. It was the duty of the applicant to drive the Tata Sumo 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

applicant drove his Tata Sumo to the extreme right by crossing the middle lane resulting into the violent dash to the injured. Grievous injuries to the injured is a direct result of rash and negligent act of the applicant sans intervention of another's negligence. He had not exercised a caution incumbent on him. The applicant, in this case, had indeed committed breach of his duty due to his omission to drive the Tata Sumo in a moderate speed even after noticing the victim walking on the katcha road.

25. Consequently, the petition stands dismissed. Rule stands discharged. The judgment and order passed by the learned Additional Sessions Judge, Panaji in Criminal Appeal No.79/2012 is hereby confirmed.

26. The applicant shall forthwith surrender before the learned Additional Sessions Judge for undergoing sentence. The applicant shall surrender to his bail bonds.

27. Records and proceedings be remitted to the Sessions Court immediately. Authenticated copy of the judgment be issued to the

applicant forthwith after payment/deposit of requisite charges for the same.

PRITHVIRAJ K. CHAVAN, J.

NH