

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.639 OF 2003

The State of Maharashtra	...Appellant
vs.	
Sambhaji Ganpat Chavan	...Respondent

Mrs. S.V. Sonawane, APP for the Appellant-State.
Mr. B.C. Joshi, for the Respondent.

CORAM : N.B. SURYAWANSHI, J.

DATE : SEPTEMBER 03, 2019

ORDER

. Heard Mrs. S.V. Sonawane, learned APP for the Appellant-State & Mr. B.C. Joshi, learned counsel for the Respondent-accused.

2. With the assistance of the learned counsel for the parties, I have gone through the record.

3. This Appeal arises out of judgment and order of acquittal passed by the learned Judicial Magistrate First Class, Koregaon in Summary Cri. Case No. 72 of 1998 thereby acquitting the Respondent-accused of offences punishable under section 279, 337 and 304-A of the Indian Penal Code and section 184, 3 read with 181, 134(a)(b) read with 187 of Motor Vehicle Act.

4. The learned APP assailed the judgment and order of acquittal on various grounds including that in spite of there being two eye witnesses to the incident i.e. P.W. 1 Janabai and P.W. 2 Sakhubai, the learned trial Court has failed to appreciate their evidence in the proper prospective. The Respondent-accused has admitted in his statement recorded under section 313 of Code of Criminal Procedure that the accident has taken place and he was driving his vehicle and it met with an accident. Hence, the learned Trial Court ought to have convicted the accused on the basis of evidence brought on record by the prosecution.

5. The learned counsel for the Respondent-accused supported the judgment and order of acquittal stating that there is no sufficient evidence on record to warrant reversal of acquittal. He also placed reliance on the judgment in the case of **Roop Lal vs. The State of Himachan Pradesh, 2018 ALL SCR (Cri) 308.**

6. It is the case of the prosecution that on 23rd October, 1997 deceased Bhagirathibai and P.W. 1 Janabai were sitting on the steps of the house of Bhagirathibai. At that time, the accused driving his

tempo gave dash in which Bhagirathibai suffered grievous injuries. So also P.W. 1 Janabai suffered muffled injuries. Bhagirathibai was taken to the hospital and during the course of treatment she expired on the same day due to the injuries received by her in the accident. The prosecution in support of its case examined P.W. 1 Janabai, P.W. 2 Sakhubai, daughter in law of Bhagirathibai and P.W. 3 Pancha, to the spot panchanama.

7. The evidence of P.W. 1 is not useful as she has simply stated that due to dash of tempo of the accused, the deceased Bhagirathibai sustained injury on her right leg and left thigh. However, there is no medical evidence on record about the injuries suffered by the deceased Bhagirathibai. PW. 1 who had also suffered injuries has admitted that she has not taken any treatment as she suffered only muffled injuries. Though in view of inquest panchanama (Exhibit 35) and death certificate (Exhibit 36) establishes that Bhagirathibai died on 23rd October, 1997 however, the nature of injuries suffered by the deceased Bhagirathibai is not brought on record by the prosecution in the form of medical evidence. There is no evidence on record that the death of Bhagirathibai was a direct result of an

accident. The death certificate is silent about the cause of death. No postmortem report is brought on record by the prosecution. Hence, the prosecution has failed to establish that the death of Bhagirathibai was direct result of the accident.

8. P.W. 2 Sakhubai, daughter in law of the deceased has categorically admitted in the cross examination that she was cooking on the first floor at the time of incident. The learned Trial Court was therefore justified in not believing in her evidence though she claimed to have witnessed the incident.

9. It has also come in the evidence that the spot panchanama does not support the case of the accident. The learned trial Judge has observed that the accused was driving a three wheeler tempo but the said tempo did not suffer any damage on account of accident in question. No marks of dash appeared on the steps of the house of deceased Bhagirathibai. There is nothing on record to show that the accident as alleged by the prosecution, has in fact taken place. P.W. 1 who claims to have witnessed the incident at most could prove that the accused was driving three wheeler tempo, however, her evidence

is not sufficient to warrant conviction in the present case.

10. The first information report was not proved as the complainant is not examined. Even the investigating officer and other material witnesses have not been examined by the prosecution. In this view of the matter, the learned Trial Court was justified in coming to the conclusion that the evidence on record is not sufficient to establish the prosecution case.

11. It is well settled principal of criminal jurisprudence that the prosecution has to stand on its own legs and they have to prove its case beyond reasonable doubt. The prosecution cannot take benefit of the weakness of the defence. Even if for the sake of arguments it is accepted that accused has admitted the fact of accident and that he was driving the vehicle, in the case in hand the prosecution has utterly failed to prove the ingredients of sections 279, 337 and 304-A of the Indian Penal Code and section 184, 3 read with 181, 134(a) (b) read with 187 of Motor Vehicle Act.

12. Taking into consideration the evidence on record and the

judgment of the trial Court, no fault can be found the view taken by the learned trial Court and the finding of acquittal recorded. This Appeal being devoid of any merit is accordingly dismissed.

(N.B. SURYAWANSHI, J.)