

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.257 OF 2002

Hamza Mohd. Ibrahim Ansari	]	
Age - 34 yrs., Oc. : Taxi Driver,	]	
R/at. Room No.1, Rahiman Building,	]	
Gosht Bazar, Madanpura, Mumbai-400 008.	]	... Applicant

Versus

The State of Maharashtra.	]	
(At the instance of Dr. D. B. Marg	]	
Police Station, Mumbai).	]	... Respondent

Mr. Ganesh Gole a/w Mr. Ritesh Ratnam & Mr. Ateet Shirodkar for Applicant.
 Ms. M. H. Mhatre, APP for State.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 29 MARCH, 2019

ORAL JUDGMENT :-

1. This is a Revision Application filed by the original accused in C.C.No.769/P/1987 on the file of the learned Additional Chief Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. The Applicant was tried on the charges of commission of offences punishable under Sections 279 and 337 of the IPC as well as under Section 89(a)(b) of the The Motor Vehicles Act, 1939. At the conclusion of the trial, vide Judgment and Order dated 20/03/2001, the Applicant was convicted

for commission of offence punishable under Section 279 of the IPC and was sentenced to suffer S.I. for 3 months and to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer S.I. for 2 months. The Applicant was also convicted for commission of offence punishable under Section 337 of the IPC and was sentenced to suffer S.I. for 3 months and to pay a fine of Rs.500/- and in default of payment of fine, to suffer S.I. for 1 month. The Applicant was acquitted from the charge of commission of offence punishable under Section 89(a)(b) of The Motor Vehicles Act, 1939.

2. The Applicant had challenged the conviction and sentence by preferring Criminal Appeal No.112 of 2001 before the Court of Sessions for Greater Mumbai. The Appeal was dismissed by the learned Additional Sessions Judge, Greater Mumbai, vide his Judgment and Order dated 6th June, 2002. The Applicant has challenged these orders in this Criminal Revision Application.

3. Brief facts as per the prosecution case are as follows :

On 11th March, 1986 at about 9.35 a.m., one Yasin Charolia was going to her bank to deposit an amount of Rs.39,868/-.

She was carrying a bag containing the cash amount. At that time, one person came near her and robbed her of the cash amount at the point of razor. According to the prosecution case, he was accompanied by his accomplices. All of them sat in a taxi bearing no.MRO 7515. The prosecution case is that the said taxi was driven by the present Applicant. The Applicant drove his taxi rashly and negligently and gave dash to 4 pedestrians who suffered injuries. The FIR was lodged by Yasin. The investigation was carried out and the police filed 3 charge-sheets i.e. C.C.Nos.768/P/87, 769/P/87 and 770/P/87. Out of them, two cases i.e. C.C.Nos.768/P/87 and 770/P/87 were committed to the Court of Sessions on 02/11/1988. The prosecution filed an application vide Exh.A in C.C.No.769/P/87 for committing that case also to the Court of Sessions. It was contended that C.C.No.769/P/87 should also be committed to the Court of Sessions since the evidence and witnesses were common with the other two cases. It was also contended that the evidence shows that there was possibility that all the accused had conspired to commit robbery. The learned Addl. Chief Metropolitan Magistrate, 18th Court, Girgaon, Mumbai, vide his order dated 13/07/1990, rejected the application by observing that the incident concerning C.C.No.769/P/87 was not an incident arising

out of the main incident of robbery. The learned Judge further observed that the offence of robbery was already completed before the accused sat in the taxi. He further observed that, therefore, the incident of accident could not be part of the same transaction and that there was no nexus between these two offences. The record shows that this order was not challenged and the present Applicant faced the trial in C.C.No.769/P/87 for the afore-mentioned offences.

4. During trial, the prosecution examined 7 witnesses and the accused examined one witness in his defence. PW 1 Yasin Charolia was the first informant who had lost her cash in the robbery. PW 2 Police Naik Vinod Sawant was on duty at the junction of Alibhai Premji Marg and Dr. D. B. Marg. He had arrested the accused. PW 3 Smt. Ginni Modi and PW 5 Pyarelal Jaiswal were two of the injured persons. PW 4 Dr. Lalwani had examined the injured namely Navnath Kamble, child Indraraj and one Rajaram Rajjat. PW 6 ACP Vinayak Patil had conducted the investigation. PW 7 PI Rajan Katdare had assisted in the investigation carried out by PW 6.

5. PW 1 Yasin Charolia has mentioned as to how the incident had taken place and how she was robbed at the point of a razor. She has also deposed that she had not seen the accused or even the taxi driver. She was declared hostile.

6. PW 2 Police Naik Vinod Sawant was on duty at the relevant time at the junction of Alibhai Premji Marg and Dr. D. B. Marg. On 11/03/1986 at about 9.30 a.m., he saw a taxi bearing registration no.MRO 7515 proceeding in fast speed from Bombay Central towards Dr. D. B. Marg. Members of public, including 2 motorcyclists, were chasing the taxi. The taxi was intercepted by those motorcycle riders. This witness reached there and saw that the present Applicant was driving the taxi. There were 2 passengers. One was sitting in the front and the other was sitting at the back. The person on the back seat was having a razor in his hand.

7. PW 3 Smt. Ginni Modi was standing near Minerva Cinema with her one year old child. The taxi gave a dash and the child was thrown on the road. She went to Nair Hospital with her child for medical treatment. She has deposed that her child was admitted to

the hospital for a period of 3 days. Similarly, PW 5 Pyarelal Jaiswal was crossing the road near Minerva Cinema and at that time, he was given a dash by the Applicant's taxi. He also suffered injuries.

8. PW 4 Dr. Lalwani has deposed that he had examined one Navnath Kamble who had suffered following injuries :

- (i) Right hand hematoma dorsal - 2 inch X 1/2 inch,
- (ii) Right shoulder scapular region swelling - 2 inch X 2 inch,
- (iii) Minor abrasion over swelling - 1 inch X 1 inch,
- (iv) Painful movement of right shoulder.

This witness had examined the child namely Indraraj and the child was referred to KEM Hospital. He has not deposed about the injuries suffered by the child. PW 4 had also examined one Rajaram Rajjat who had suffered following injuries :

- (i) Minor abrasion on Left elbow and forearm - 1cm X 1cm and 3cm X 2cm,
- (ii) Contusion on right forearm - 2cm X 2cm
- (iii) Minor abrasion on left foot dorsal - 1cm X 1cm.

9. The Applicant examined one Dr. Loya as his defence witness. The Applicant was referred to Dr. Loya who was attached to Nair Hospital. The Applicant was referred to Dr. Loya by the police themselves. Dr. Loya has deposed that the Applicant had suffered one injury on the neck which was subcutaneous deep having dimension of 2 inch X 1/4 inch.

10. After recording the evidence, the learned trial Judge recorded the statement of the Applicant under Section 313 of the Cr.P.C. wherein the Applicant has taken a specific defence that he was plying his taxi in the usual course of his daily business. At the time of the incident, 4 passengers forcibly entered his taxi and he was forced to drive fast at the point of a razor. He was assaulted on chest and face and was assaulted with a razor below his left ear on the neck. After recording the evidence and the statement of the Applicant, the learned trial Judge heard both sides and was pleased to convict the Applicant and sentenced him as mentioned earlier. The learned trial Judge observed that the incident has taken place and the prosecution has proved that in the incident, four persons had suffered injuries. According to the learned Judge, the offences punishable under

Sections 279 and 337 of the IPC were made out though the offence punishable under Section 89(a)(b) of The Motor Vehicles Act, 1939 was not made out.

11. The Appellate Court accepted the reasoning of the learned trial Judge and dismissed the Appeal.

12. I have heard Mr. Ganesh Gole, learned Counsel for the Applicant and Ms. M. H. Mhatre, learned APP for State. With their assistance, I have gone through the record and proceedings of the case.

13. Though the scope of appreciation of evidence in a Revision Application is narrower than that in an Appeal, the present case involves a few important questions of law. First of all, it may be noted that the learned Additional Chief Metropolitan Magistrate, vide his order dated 13/07/1990, had recorded in clear terms that the incident of robbery and the subsequent accident caused by the taxi were two separate incidents having no nexus at all. The said order was not challenged and / or disturbed thereafter. Thereafter, the Applicant faced the prosecution in C.C.No.769/P/87.

14. Subsequently, the important question arises as to whether the Applicant has committed any offence at all; even assuming the prosecution case to be true in its entirety, as far as the deposition of the witnesses is concerned. Having read the deposition of the witnesses, I do not doubt the truthfulness of their version. The injured had suffered injuries because of the dash given by the Applicant's taxi. The Medical Officer has deposed about the injuries suffered by some of the injured witnesses. Though all the injured were not examined by the prosecution but that evidence is not seriously challenged and it can safely be held that 4 persons had suffered minor injuries because of the dash given by the Applicant's taxi.

15. In spite of this, the question still remains as to whether the Applicant has committed the offences punishable under Sections 279 and 337 of the IPC. In this context, it is necessary to reproduce Sections 279 and 334 of the IPC which read thus :

***“279. Rash driving or riding on a public way.-- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*”**

337. Causing hurt by act endangering life or personal safety of others.-- *Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*"

16. Mr. Gole, in his submissions, relied on the Judgment of the Hon'ble Supreme Court in the case of ***Ravi Kapur Vs. State of Rajasthan***¹ where the Hon'ble Supreme Court had considered the term 'rash and negligent driving'. The Hon'ble Supreme Court, in paragraphs 13 and 14, has discussed as to what may constitute 'negligence', as under :

“13. “Negligence means omissions to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.

1 (2012) 9 Supreme Court Cases 284

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 pedestrians 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.”*

17. In paragraph 19, the Hon'ble Supreme Court referred to an earlier Judgment in the case of ***Mohd. Aynuddin Vs. State of A.P.***² and quoted paragraph 9 from the Judgment discussing as to what may constitute a rash act. Paragraph 9 of ***Mohd. Aynuddin's*** case (*supra*), as quoted, reads thus :

“9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.”

² (2000) 7 SCC 72

18. In the present case, the evidence shows that the Applicant did not drive the taxi at higher speed on his own volition. It was the case of the Applicant that he was forced to drive at a high speed by robbers at the point of razor. It is the case of the Applicant that he himself had suffered an injury on his neck caused by razor. The defence witness Dr.Loya has described the injury which was attributable to razor. The Applicant was referred to Dr. Loya by the police themselves. At the relevant time, Dr. Loya was attached to Nair Hospital. The Applicant has sufficiently proved his case on the touchstone of probability. The burden on the Applicant to prove his case was not as heavy as that on the prosecution. Therefore, in my considered view, the Applicant has proved that he was made to drive the taxi at the point of razor and he himself suffered injury on his neck. It is his case that he was under real and reasonable apprehension of suffering grievous injury or even of death at the hands of the culprits who had forcibly entered his taxi. Therefore, it cannot be said that he drove his taxi rashly and negligently on his own volition but he was forced to do so.

19. In the context of the circumstances of this case, Section 106 of the IPC is relevant, which reads thus :

“106. Right of private defence against deadly assault when there is risk of harm to innocent person.-- If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.”

Therefore, though in the process four innocent pedestrians have suffered minor injuries, the Applicant cannot be held guilty of causing those injuries. The Applicant was deprived of his free will because of the real threat of imminent death at the hands of the person carrying razor. Therefore, in the facts and circumstances of the case, the Applicant cannot be said to have committed the offences for which he is convicted and sentenced.

20. With the result, the following order is passed :

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The conviction and sentence awarded by the learned Additional Chief Metropolitan Magistrate, 18th Court,

Girgaon, Mumbai, in C.C.No.769/P/1987 and the order confirming the same passed by the learned Additional Sessions Judge in Criminal Appeal No.112 of 2001, are set aside.

- (iii) The Applicant is acquitted of the charges framed against him.

(SARANG V. KOTWAL, J.)