

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 13 OF 2015

PRADEEP N. SHETGAONKAR

S/o. Namdev Shetgaonkar,

R/o. H.No. 154/2, Nadora, Bardez, Goa. ... Applicant

Versus

STATE OF GOA

Through Pernem Police Station ... Respondents

Shri Prasheeln Lotlikar, Advocate for the applicant.

Shri S.R. Rivankar, Public Prosecutor for the respondent - State.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 16th January, 2020

Pronounced on: 21st January, 2020

JUDGMENT:

The applicant has taken exception to the judgment of conviction rendered by the learned JMFC dated 01/10/2012 and which has been confirmed by the Sessions Court in appeal vide its judgment and order dated 29/01/2015. The parties would be referred to as the applicant and the State for brevity's sake hereinafter.

2. The State had arraigned the applicant as an accused in the FIR No.70 of 2009 for the commission of the offences punishable under Section 279, 338 and 304A IPC on the charge

that on 29/04/2009 at 12.15 hours, the applicant while driving the mini truck bearing the registration No.GA-03-T-4941 from Kansarwane towards Chandel had driven the truck on a public road in a rash and negligent manner as to endanger human life and thereby dashed against the Activa Scooter bearing No.GA-03-F-4763 at Chandel causing grievous hurt to the rider and the pillion who subsequently succumbed to his injuries. The learned JMFC held him guilty and convicted him for the offences punishable under Section 279, 338, 304A IPC and Section 134 (a) and (b) of the Motor Vehicles Act, 1988 (the Act, for short) sentencing him to different terms of imprisonment apart from fine and which came to be upheld in appeal by the learned Additional Sessions Judge, Mapusa.

3. Heard Shri P. Lotlikar, learned Advocate on behalf of the applicant who contended that the learned JMFC convicted and sentenced the applicant to undergo simple imprisonment of 2 months for the offence under Section 279 IPC, one month simple imprisonment for the offence under Section 338 IPC and three months for the offence under Section 304A IPC apart from 10 days simple imprisonment for the offence under Section 134 (a)

and (b) of the Act. The learned JMFC misread the evidence on record and so too the Additional Sessions Judge when there was no evidence on record to show that the applicant was rash and negligent. He adverted to the impugned judgment rendered by the two Courts below, referred to the evidence of the injured and the eyewitness and submitted that there was no clarity in the case of the State against the applicant. There was no legal evidence to sustain the conviction against the applicant and therefore it was a fit case to interfere with the judgments below. He placed reliance in **State of Karnataka v/s. Satish** [(1998) 8 SCC 493] and **Pandurang Sitaram Bhagwat v/s. State of Maharashtra** [(2005) 9 SCC 44] while wrapping up his arguments that there was a palpable error in the passing of the impugned judgments and besides the panchanama was suspicious and doubtful.

4. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State submitted that the State had amply made out a case of negligence by the applicant. It is evident from the panachanama and sketch that it had driven from the left to the right side of the road i.e. wrong side while proceeding from Kansarwane to Chandel and dashed the Activa scooter rider

causing grievous injuries to one and death of the pillion rider. He too adverted to the evidence on record and submitted that as there was no error in the judgments rendered by the Courts below and therefore the judgment of conviction had to be upheld. Shri P. Lotlikar, learned Advocate in reply contended that the concurrent findings of the Courts below were based on no evidence and therefore it was a fit case to interfere with the judgment while exercising the power of revision. He once again referred to the evidence of Manguesh Pw2 particularly in cross-examination to show that the State had not established its case beyond all reasonable doubts and therefore an interference was called for with the judgment under challenge.

5. In **State of Karnataka**(supra), the Hon'ble Apex Court held that merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness". 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".

6. **Pandurang Bhagwat**(supra), was an appeal directed against the judgment and order passed by the High Court of Bombay whereby and whereunder the revision application filed by the appellant came to be dismissed ex-parte. The Appellant was a Constable in the State Reserve Police who was charged for the alleged commission of the offences punishable under Sections 354, 323, 504, 506 read with Section 34 IPC. One Dilip Phadtare was a monthly tenant under the Appellant in one of the rooms in his house situated at Dund. It was not in dispute that quarrels used to ensue between the other tenants on the one hand and the said Dilip Phadtare and his wife on the other. It was also not in

dispute that the Appellant had asked Dilip to vacate the tenanted premises and he was also said to have been in search of other premises. On 10.04.1993, at about 5.15p.m., the Appellant was said to have entered into the said tenanted premises, when the wife of Dilip Phadtare was watching a movie on the television with her sons Shivaji and Amol and enquired about her husband. She told him that he was not at home and thereupon he allegedly entered into the room, closed the door and outraged her modesty by embracing her from backside and touched her breasts.

7. In **Pandurang Bhagwat**(supra) at that time Dilip came back and found Alka abusing the Appellant. On questioning as to what had happened; he was assaulted by fists and kicks while the other three accused thereafter also allegedly came there and assaulted both of them giving rise to the commission of the stated offences and the trial. The Judicial Magistrate, First Class, Daund, by a judgment and order disbelieved the story as disclosed in the First Information Report as regards threats given to her husband and otherwise found the appellant guilty of the commission of the offences of outraging her modesty by the learned Magistrate and sentenced him accordingly. The appeal at

his instance came to be dismissed by the Additional Sessions Judge Baramati. A revision application filed by the appellant was dismissed by the High Court in terms of the impugned judgment holding that both the Courts below have appreciated the evidence on record and found the accused guilty and there was no error of law committed by any of the Courts.

8. In those facts coming to paragraph 6 of **Pandurang Bhagwat** (supra), the Hon'ble Apex Court held that the High Court, in their considered opinion, should not have refused to exercise its revisional jurisdiction on the ground that no question of law had arisen therein inasmuch as in terms of Section 397 of the Code of Criminal Procedure, the correctness, legality or propriety of any finding, sentence or order may fall for consideration of the Revisional Court and in particular having regard to the fact that the prosecution case should have been tested from the angle that the Trial Judge had acquitted all the three accused persons who are said to have shared a common intention with the Appellant not only in relation to the offences under Sections 323, 504 and 506 IPC but also in relation to the offence committed by the Appellant under Section 354 thereof and

in those circumstances held the Appellant entitled to be given the benefit of the doubt and set aside the judgment.

9. A cursory perusal of the evidence would be in order to appreciate the contention of Shri Lotlikar, learned Advocate for the applicant and Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State. In that context, the Pancha witness who had been examined stated that he had acted as such to the panchanama of the scene of accident drawn on 29/04/2009 at Chandel with another when they were shown the road at the accident spot proceeding from Kasarvane to Chandel having a width of 4.5mts. with a slight turn if one proceeds in that direction. He had seen a Canter in a cross position as one proceeds to Kasarvane to Chandel on the right hand side of the road and a black colour Activa scooter near the driver side wheel of the Canter. There was a scratch mark of the length of 4mts. from the back tyre of the canter and besides there were damages to its right side such as mudguard and bumper.

10. His assertion that the point of impact was shown by him at point 'B' in the sketch is of no significance inasmuch as he was a witness after the accident and not one who had stated that the

point of impact was shown by the affected party or the injured witness. His testimony therefore is of no significance to the case of the prosecution. The witness Manguesh Pw2 had stated that he was near the water plant at Chandel when he saw the accident on 29/04/2009 at 12.15pm involving a truck and a scooter. The truck was going from Mapusa and the scooter was proceeding in the opposite direction. The scooter was on the right side of the road if one proceeds towards Kasarvane. The truck came and dashed against the scooter on the right hand side of the scooter as one proceeds from Chandel to Mapusa. There was a rider and pillion rider on the scooter which was driven by one Dasharath while the pillion was one Premanand. The rider had fallen down and sustained grievous injuries to his hand, head and leg while the pillion was flung and sustained injuries to his head and face and succumbed to it. There was a slight turn when one proceeds in the direction of Chandel otherwise the road was straight. The scooter was fallen underneath the truck and had sustained damages on its front portion. There were no damages to the truck. He stated during his cross-examination that on the relevant day at around 12.15p.m. He was at the hotel of one Pradeep to

have tea. There were 10-12 other persons present in the hotel which was at a distance of 25mts. from the scene of accident.

11. Admittedly, the said hotel was nowhere shown in the sketch forming an integral part of the scene of accident Panchanama. Therefore, it is difficult to believe that the witness could have seen the accident from anywhere in the vicinity from the scene of accident. Besides, he had categorically stated during his cross-examination that he had not stated to the Police that that the scooter was on its right side and the truck came towards the right side and dashed against it. This version supports the case of the accused/applicant in defence that the vehicle had gone to the right side of the road and dashed against the scooter which was coming from the opposite direction. The testimony of this witness therefore fails to inspire confidence that the Canter driver was rash and negligent in driving the vehicle. The position of the Canter was admittedly after the accident and which shows that it had driven to the right side when one proceeds from Kasarvane to Chandel. However, this position was post accident and which does not seriously indicate that the vehicle was driven on the right side of the road and the scooter rider had been given

a dash while it was proceeding on its side of the road towards Kasarvane.

12. Dasharath Pw3 stated that he was riding the scooter on the stated date alongwith his uncle as a pillion and proceeding from Chandel to Kasarvane around 12 noon. On reaching near the water plant at Chandel, a tempo / truck came from opposite direction at speed on its right side i.e. on his left hand side and dashed against the scooter. He was unconscious after the dash and regained consciousness at the G.M.C. Hospital, Bambolim. He had sustained injuries to his right leg and right eye on account of the accident and did not know what injuries were sustained by his uncle but later on learnt that he had expired on account of the injuries. Unlike the factual position, this witness who was rider of the scooter stated that the road at the spot of the accident was straight and there was no curve which belies the position at loco. That apart, he categorically denied the suggestion that he was riding the scooter at a fast speed and that it was he who gave the dash against oncoming Canter.

13. The Investigating Officer HC Gaonkar Pw4 had learnt about the accident telephonically and thereupon registered the MV

accident No.49 of 2009 and proceeded to the spot with the robot staff. He had seen a Canter and an Atila scooter at the spot, made enquiries at the spot and the driver of the Canter ran away after the accident. His investigation revealed that the accident took place as the Canter was proceeding from Kasarvane to Chandel and the Atila scooter was proceeding from Chandel to Kutwal and the driver of the mini truck came on the wrong side of the road and dashed against the Atila scooter. He had drawn the panchanama in the presence of Anil Naik Pw1, prepared the sketch and showed the position of the vehicles that the Atila scooter was lying beneath the front driver's side wheel of the tipper truck. He had recorded the state of the injured Dasharath Pw3, Manguesh Pw2 and another and then lodged the complaint against the driver. Like Manguesh Pw2 and materially Dasharath Pw3 there was no statement at his instance that the Canter driver was rash and negligent in driving the vehicle. Therefore as rightly submitted by Shri Lotlikar, learned Advocate, there was a palpable error in reading the evidence on behalf of the learned JMFC and also the learned Additional Sessions Judge while convicting the applicant as it did for the stated offences. It was clearly lost on the learned Courts below that the point of impact was not

identified even by the injured Dasharath Pw3 much less by the so called eyewitness Manguesh Pw2. There was a serious doubt on the panchanama as drawn showing the position of the vehicles, post accident. The learned JMFC therefore committed a palpable error in passing the impugned judgment and the learned Sessions Judge aggravated the error by confirming the judgment of conviction.

14. In the result, therefore the revision is bound to succeed. i therefore pass the following

O R D E R

The revision is allowed and the impugned judgments of the Courts below are quashed and set aside.

NUTAN D. SARDESSAI, J.

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