

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 97 OF 2012

The State of Maharashtra

... Appellant.
(Orig. Complainant)

Vs.

Sagar Narendra Apraj
Age : 30 years,
Residing at Katwan, Tal. : Devgad,
Dist. Sindhudurg.

... Respondent.
(Orig. Accused.)

Mr. Amit Palkar, A.P.P. for Appellant-State.
Mr. Sumit Kothari a/w Smt. Shivani Samel for the Respondent.

CORAM : A.S. GADKARI, J.
DATE : 16th December 2020.

ORAL JUDGMENT :

This is an appeal under Section 378(1) of the Criminal Procedure Code, 1973 (for short, "Cr.PC.") impugning the Judgment and Order dated 18th July 2011 passed by the learned Judicial Magistrate, First Class, Devgad in Summary Criminal Case No. 79 of 2010, acquitting the respondent from the offence punishable under Sections 304(A), 279, 337, 338 of the Indian Penal Code and under Sections 184, 3/181 and 134(a)/177 of the Motor Vehicles Act, 1988.

2. Heard Mr. Palkar, learned A.P.P. for the Appellant-State and Mr. Kothari, learned counsel for the respondent. Perused the record.

3. It is the prosecution case that, on 27th April 2010, at about 10.30 a.m., the respondent without having valid driving licence, was driving a two wheeler motorcycle bearing No.MH-07-J-1235 of Hero Honda company in a rash and negligent manner and gave dash to Master Manohar V. Pathrut, aged about 10 years, at market place on the busy street of Devgad-Nipani Road. Master Manohar V. Pathrut was taken to hospital of Dr. Mhaskar at Kankavali. He succumbed to injuries late in the evening. Police thereafter recorded Crime No. 17 of 2010. The scene of offence panchanama was drawn in presence of Mr. Ravikant M. Chandorkar (PW-1). After completion of investigation, police submitted charge-sheet before the Trial Court.

4. The Trial Court framed charge below Exh.-8. The contents of the charge were read over and explained to the respondent in vernacular, to which he denied and claimed to be tried. The defence of the respondent was of total denial.

The prosecution with a view to bring home the guilt of the respondent, examined in all 12 witnesses. The Trial Court after recording evidence and hearing the learned Advocates for the respective parties,

was pleased to acquit the respondent from the charges framed against him by its impugned Judgment and Order dated 18th July 2011.

5. The record indicates that, PW-1 was the panch witness to the scene of offence/spot panchanama. In his cross-examination he has admitted that, the said panchanama was not prepared in his presence and he signed it in police station.

It is to be noted here that, most of the eye witnesses to the present crime have resiled from their original statements and therefore were declared hostile by the prosecution. In their elaborate cross-examination nothing beneficial to the prosecution has been elicited. Vinod R. Pathrut (PW-8) is the father and Umakant R. Pathrut (PW-9) is the uncle of victim Master Manohar. In their cross-examination, these witnesses have admitted that, at the time of incident they were in their hut, situated opposite side of the road where the accident took place and after hearing the noise of the people, they came out.

6. It thus appears from record that, there is no witness who has identified the respondent as the person who was driving the said motorcycle at the relevant time. The prosecution is unsuccessful in establishing the identity of the respondent as the person who committed the present crime.

7. Perusal of record and the impugned Judgment and Order would indicate that, the Trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order.

There are no merits in the Appeal and is accordingly dismissed.

(A.S. GADKARI, J.)