

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 132 OF 2012**

The State of Maharashtra,
(Through Rural Police Station, Sangli
C.R. No. 14/2009).

....Appellant.

Vs.

Vijay Balasao Koli,
Age 21 years, Occu. Service,
R/at Kavathe-Piran,
Tal. Miraj, Dist. Sangli.

....Respondent.

Mr. S.S. Hulke APP for the Appellant-State.
None for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 28th OCTOBER, 2020.

ORAL JUDGMENT:-

This is an Appeal against acquittal under Section 378(1) of the Code of Criminal Procedure against the impugned Judgment and Order dated 7th February, 2011 passed by the learned 8th Judicial Magistrate, First Class, Sangli in Summary Criminal Case No.1144 of 2009, thereby acquitting the Respondent for the offence punishable under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act.

2 Heard Mr. Hulke, learned APP for the State. Respondent is absent, despite service. Perused the entire record.

3 It was the prosecution case that, on 11th March, 2009 at about 10.30 p.m. on Sangli-Dudhagaon Road, Near Laxmi Junction, the Respondent gave dash of his Hero Honda Motor-Cycle bearing No. MH-10 X-2011 to the Motor-Cycle of deceased, Hindurao Nalawade bearing No. MH-02 V-1457 of Hero Honda make, from its rear end. Due to the said dash, Hindurao Nalawade fell down and received injuries. He was taken to hospital by his brother Ananda Nalawade. Hindurao Nalawade succumbed to injuries while undergoing medical treatment. The intimation of admission of Hindurao Nalawade to Aditya Hospital was given by Dr. Sharad Sawant of Sangli city.

Police thereafter registered a Crime bearing No.14 of 2009 under Sections 279, 304-A, 337, 338 and 427 of the Indian Penal Code read with Section 184 of the Motor Vehicles Act. The police conducted scene of offence punchanama (Exh.21). After completion of investigation, police submitted charge-sheet before the Trial Court.

The Trial Court framed charge below Exh.9. The contents of the said charge were read over and explained to the Respondent in vernacular language, to which he pleaded not guilty and claimed to be tried. The defence of the Respondent was of total denial. He further submitted that, due to the bursting of front wheel tyre of his Motor-Cycle on a narrow road, the said accident took place.

The prosecution in support of its case, examined in all three witnesses. The learned Trial Court after hearing the learned counsel for the respective parties was pleased to acquit the Respondent from the charges framed against him by its impugned Judgment and Order dated 7th February, 2011.

4 Mr. Rajendra Jadhav (PW. No.2) a panch witness to the scene of offence panchanama (Spot Panchanama), in his deposition has admitted that, at the time of effecting the said panchanama, he noticed that, the front wheel tyre of the Motor-Cycle of Respondent had burst and the inner tube of it had come out. As noted earlier, it is the specific defence of the Respondent that, due to the bursting of front wheel tyre of his Motor-Cycle, the said accident took place.

5 The evidence on record also indicates that, on the date, place and time of the alleged incident, there was insufficient street light at the spot. There is no evidence on record to even remotely indicate that, the Respondent was driving his Motor-Cycle rashly and negligently thereby, causing the alleged act against him under Section 279 of the Indian Penal Code.

As noted earlier and at the cost of repetition, it is to be noted that, the evidence on record clearly reveals that, the said accident had occurred due to bursting of the front wheel tyre of the Motor-Cycle of the

Respondent and not otherwise.

6 Perusal of entire evidence available on record and the impugned Judgment and Order, clearly indicates that, the Trial Court has not committed any error either in law or on facts while acquitting the Respondent from the charges framed against him.

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

7 This Judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this Judgment.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

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by Sanjiv S.
Mashalkar
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