

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 70 OF 2014

State

Through Panaji Police Station,

Rep. By PSI Mira D'Silva,

Panaji, Goa.

..... Appellant

V e r s u s

Shri Shahrukh Zattu,

S/o Shabbir Zattu,

19 years of age, Indian National,

r/o Plot No.43, 1st Floor,

Mulla Apartments, Durgawadai,

Taleigao-Goa.

..... Respondent

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Appellant-State.

Mr. Arun Bras De Sa and Mr. Sahil Sardesai, Advocates for the Respondent.

Coram :- NITIN W. SAMBRE, J.

Date : 18th March, 2021

JUDGMENT

This is an appeal against an acquittal preferred under Section 378 of the Code of Criminal Procedure questioning the Judgment and Order dated 23rd May, 2014, passed by the Court of the learned Judicial Magistrate First Class 'D' Court, Panaji, Goa.

2. The prosecution story in brief is as under :

On 29.02.2012, while the respondent-accused was riding his motorcycle in a rash and negligent manner, gave dash to a pedestrian lady namely Smt. Lume, as a result of which, she suffered serious head injuries. The said victim subsequently died of the aforesaid injuries resulting into the prosecution of the respondent-accused. Initially the investigation was carried out by Pw.5, Vijay and, on 01.03.2012, same was handed over to Pw.8, Mira. In support of the prosecution case, in all five witnesses were examined. The charge was framed against the accused for an offence punishable under Sections 279, 337 and 304 Part A, at exhibit C-5.

3. After the evidence of the witnesses was over, statement of the accused was recorded under Section 313 of the Cr. P. C. at exhibit C-35. The Trial Court accordingly, after analysing the evidence on record, ordered acquittal.

4. Heard respective learned Counsel.

5. Learned Additional Public Prosecutor appearing for the State-Appellant, would urge that the evidence of Pw.2 and Pw.3, who were eye witnesses, is incorrectly disbelieved by the Trial Court. According to him, Pw.2, being husband of deceased victim, since was accompanying her at the

time of accident, has rightly supported the story of the prosecution. He would further urge that Pw.3, a chance witness, was standing on the pavement from where she had witnessed the accident in question and, that being so, her testimony ought not have been disbelieved. The further contentions are the evidence of Pw.5 coupled with that of evidence of Pw.8, who are the Investigating Officers, the factum of accident and the involvement of the respondent-accused, is very much established. That being so, it is claimed that the judgment of acquittal needs to be reversed thereby ordering conviction.

6. While countering the aforesaid submissions, the learned Counsel for the respondent, would urge that there is major discrepancy in the evidence of Aw.2, the husband of the deceased victim and Pw.3, a chance witness. He would urge that the testimony of both these witnesses is rightly disbelieved as same is full of contradictions and omissions. He would further claim that in absence of the scientific investigation and the absence of corroborating evidence, the acquittal is very much justified.

7. Considered the rival submissions. From the evidence of Pw.2 and Pw.3, the prosecution has tried to establish that they are eye witnesses. It is

the case of the prosecution that Pw.2, Felix, was accompanying the deceased at the time of the accident, as such an eye witness to the accident. The accident has occurred at about 9.00 p.m. i.e. in the dark. The analysis of the evidence of this witness speaks of material contradiction as to whether the deceased was walking ahead of him or was following him. He has further deposed that he had stopped in the midst of the road while crossing. He could not judge the movement of the vehicle which he had witnessed from a far distance because of strong high beam of head light. Apart from above, material omission to the aforesaid effect was also brought on record.

8. As far as the evidence of Pw.3 is concerned, who claimed to be an eye witness, the same, in my opinion, is also rightly disbelieved by the Court below as (a) that her presence was not noticed at the spot of the accident either by Pw.5 or Pw.8, who are the Investigating Officers. This witness voluntarily visited the Police Station to give statement, styling herself to be an eye witness. About her presence on the spot, neither Pw.2 nor Pw.5 could speak about or confirm the same. As such, the very presence of this witness at the spot of the accident and having witnessing the accident, is under serious doubt.

9. As far as the speed of the motorcycle, the brake marks of the tyres on the road, the photographic evidence, was not brought on record through any scientific investigation. Apart from above, it is required to be noted from the prosecution story that the vehicle in question is claimed to have been driven by the respondent-accused and there was also a pillion rider. Neither the recorded owner of the vehicle namely Mr. Sadiq Shabbir Zattu, was examined so as to establish fact about custody and riding of vehicle by accused nor the pillion rider was traced. As such, it is difficult to infer that the prosecution has established that respondent at the relevant time was riding the motorcycle in question. Apart from above, this Court cannot be oblivious to the fact that it can be inferred from the evidence on record that the deceased and the Pw.2 stopped in the midst of the road having got confused, once having noticed the vehicle in question and, as such, a case of simplicitor accident cannot be ruled out. So as to establish the presence of Pw.3, Maria, at the spot of the accident, no corroborating evidence is brought on record such as her call details, her call made on 108 for getting an ambulance and the statement of Pw.5, Vijay, who had visited the spot in the matter of investigation.

10. Pw.1, a witness to the spot panchanama, is admittedly a resident of the same locality and family friend of the deceased. That being so, to what extent the evidence of the said witness can be relied on for proving the spot panchanama and the accident is also under cloud.

11. But for the statement of Pw.2 and Pw.3, there is no investigation on the issue of the speed at which the accused was riding the motorcycle.

12. In the aforesaid background, the acquittal ordered by the learned Trial Court is very much justified. The view expressed by the learned Trial Court is very much a possible view on the backdrop of the evidence brought on record.

13. No case for interference is made out. The appeal fails and dismissed accordingly.

NITIN W. SAMBRE, J.