

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1054 OF 2007

The State of Maharashtra
(Through Police Station Officer,
Police Station, Vita,
Tal. Khanapur, Dist. Sangli).

....Appellant
(Orig. Complainant)

V/s.

Uttam Akaram Madane,
Age – 36,
R/o. Khanapur, Chikhalhol,
Tal – Khanapur, Dist. - Sangli.

....Respondent
(Orig. Accused)

Ms. P.N. Dabholkar, APP for State.
None for Respondent/Accused.

CORAM : K.R.SHRIRAM, J.
DATED : 12th MARCH, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 27th December, 2005 passed by the Judicial Magistrate, First Class, Vita, Dist. Sangli acquitting the respondent (hereinafter referred as accused) of offence punishable under Sections 279 (*Rash driving or riding on a public way.*), 338 (*Causing grievous hurt by act endangering life or personal safety of others*) and 304 A (*Causing death by negligence*) of the Indian Penal Code r/w Section 184 (*Driving dangerously*) of the Motor Vehicles Act.

2. Admittedly, accused was plying a truck on 15/03/1997 at about 6.10 p.m., bearing registration no.MXL 6878 on Vita Lengare Road, Near Shivaji Chowk, Vita Town, Taluka Khanapur, Dist. Sangli. The truck was coming from Shivaji Chowk. There is Ganesh temple on the road and accused near that temple ran over Rekha Balu Mohite, 8 years old child who died on the spot. It is prosecution's case that accused was driving his vehicle in a rash and negligent manner because of which Rekha came under the rear right wheel of the truck resulting in her death. Accused himself reported the incident to Vita Police Station. The case was registered, investigation was commenced, panchanama was drawn, body was sent for postmortem, statements were recorded and charge-sheet was filed. Charges were framed. Accused pleaded not guilty and claimed to be tried. Defence of accused was that he was plying his truck on the left lane of the road at which time Rekha suddenly started running and slipped due to which she came under the rear wheel of the truck and there was no fault on the part of accused.

3. To drive home the charge, prosecution led evidence of 8 witnesses namely Pandurang Jagannath Chothe, Panch of Inquest Panchanama as P.W. 1 ; Kishor Yesu Desai, Eye witness as P.W. 2 ; Pandurang Shamrao Bhingardev, Panch of Spot Panchanama as P.W. 3 ; Ashok Musa Waidande, Eye witness as P.W. 4, Kuber Laxman Bhosale, Investigating Officer as P.W. 5, Subrao Akaram Bhingardev, Eye witness as P.W. 6,

Dr.Sunil Narayan Kulkarni, Medical Officer as P.W. 7 and Vasant Parshuram Patil, RTO Inspector as P.W. 8.

4. P.W. 2, 4 and 6 are eye witnesses. P.W. 2 turned hostile. P.W. 6 has stated at the time of incident he was walking near place of incident and at that time he saw a truck which came from behind and hit and ran over a small girl and proceeded further. He has further deposed that the child died on the spot due to injuries.

P.W. 6 states that he was walking along the road at which time he saw truck driven by accused coming from Langare side and the truck was at high speed and the rear wheel of the truck ran over the child and she died. He claims that after the incident the truck proceeded further and at Shivaji Chowk it was stopped by the public.

5. The Trial Court has rightly concluded that there is absolutely no evidence on the speed of the truck. Speeding vehicle is not enough to prove the offence in question and there is no evidence to prove that accused had acted rashly or negligently.

6. It is settled law as held by the Apex Court in ***State of Karnataka V/s. Satish***¹ that merely because the vehicle was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. "High speed" is a relative term. It is for prosecution to bring on record material to

¹ (1998) 8 SCC 493

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. In the absence of any material on record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur".

7. PW. 4 in his cross-examination has stated that when he reached at the spot he found some 15 to 20 persons gathered and he also admitted in his cross-examination "I do not know how the accident to deceased Rekha took place". This means that he is not eye witness to the actual incident.

8. PW. 6 in his cross-examination has stated that deceased Rekha was hit by front right side wheel mudguard and then she came under the rear wheel. If this was true and if the truck was coming at high speed certainly Rekha would have been thrown away by the truck and could not have come under rear wheel of the truck. Therefore, testimony of P.W. 6 that the front right side mudguard of the truck hit Rekha cannot be believed.

Moreover, P.W. 6 has admitted that the truck was coming from Shivaji Chowk and was on the left lane. Therefore, unless Rekha had suddenly started towards middle of the road, right side mudguard of the

truck could not have dashed against Rekha. It should also be noted that width of the road is 15 feet as stated by PW. 4 and there are shops on either side and also Ganesh temple near the incident spot. As noted earlier, there is no evidence regarding speed of the truck. Admittedly, Shivaji Chowk in Vita is a crowded area.

9. Considering all these points, the Trial Court came to a conclusion that prosecution has failed to prove beyond reasonable doubt guilt of accused.

10. The Apex Court in ***Ghurey Lal V/s. State of U.P.***² has formulated the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts

² (2008) 10 SCC 450

should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

11. The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***³ has held that unless the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand they are likely to result in grave injustice Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the

3 (2014) 5 SCC 730

appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

12. The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*⁴ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

13. I have perused the impugned judgment, considered the evidence and also heard Ms. P.N. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

⁴ 1996 SCC (Cri) 972

14. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

15. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

16. Appeal dismissed.

(K.R. SHRIRAM, J.)