

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 625 OF 2004

The State of Maharashtra
V/s.

.. Appellant

**SNEHA
NITIN
CHAVAN**

Vijay Haribhau Falke

..Respondent

Mr. S.R. Agarkar, APP for the Appellant/State.

Mr. Ashok Tajane a/w Kavita Tajane and Rekha Musale for the
Respondent

CORAM : C.V. BHADANG, J.

DATE : 6 DECEMBER, 2021

JUDGMENT

1. By this Appeal, the Appellant/State is challenging the acquittal of the Respondent/accused from an offence punishable under Section 279 and 304-A of IPC and Section 184, 3 read with Section 181 of the Motor Vehicles Act, 1988.

2. The prosecution case is that on 30.04.2002 at about 6.00 pm. at village Rule, on Panshet-Pune road, the Respondent drove a Jeep bearing No. MH-22-A-9861 in a rash and negligent manner, resulting into the death of Heerabai Damu Kamble.

3. At the trial, the prosecution examined in all eight witnesses including PW-5 Shankar Jagde, who is the owner of the said vehicle. PW-1 Anubai Kamble, PW-2 Shantaram Kamble and PW-3 Gautam Sakhale were examined as eyewitnesses to the accident. The learned Magistrate by the impugned Judgment and Order dated 29.11.2003 in STC No.689 of 2002 has acquitted the Respondent *inter alia* on the ground that the prosecution has failed to establish, as to whether it was the Respondent who was driving the jeep or it was driven by the owner PW-5 Shankar Jagde. The learned Magistrate has also noticed that in the statement of the victim recorded prior to her death, she had sated that the Jeep was being driven by one Shankar Jadhav. The learned Magistrate after appreciating the evidence has also found that the Investigating Officer had admitted that during his investigation it transpired that the victim was crossing the road when the accident occurred. The learned Magistrate has found that the accidents which occur while a person is crossing the road, are generally due to the mistake of judgment and not due to rash and negligent driving.

4. I have heard Mr. Agarkar, learned APP and Mr. Tajane the learned counsel for the Respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by the learned APP that the prosecution evidence has established that it was the Respondent, who was driving the offending vehicle at the time of the accident. It is submitted that the evidence in such cases has to be appreciated on broad human probabilities, as accidents occur at the spur of the moment leaving little time for the witnesses to precisely noted as to the manner in which and the cause leading to the accident.

6. Mr. Tajane, the learned counsel for the Respondent has submitted that there are several discrepancies in the prosecution evidence including on the point whether it was the Respondent, who was driving the vehicle and therefore, the learned Magistrate was justified in recording the finding of acquittal.

7. I have carefully considered the rival circumstances and the submissions made. There is a clear discrepancy in the prosecution evidence as to whether it was the Respondent, who was driving the offending vehicle at the time of the accident. PW-5 Shankar Jagde, who is the owner of the vehicle, who was sought to be examined as an eyewitness, has turned hostile and did not support the prosecution. Even the registration number of the said vehicle was not mentioned by PW-7 Dnyandeo Mandve, Police Havaladar, who is

the complainant. The learned Magistrate has noted that the victim in her statement, which is recorded prior to her death, has stated that the Jeep was being driven by Mr. Shankar Jadhav. There was also a clear discrepancy as to the manner in which the accident occurred. The learned Magistrate in this regard has noted that as per the prosecution evidence of the eyewitnesses PW-1 Anubai, PW-2 Shantaram, PW-3 Gautam, the victim Hirabai was standing on the road along with PW-1 Anubai and her son when the victim was allegedly dashed by the said vehicle. If we visualize the said picture, the learned Magistrate has found that none of the witnesses i.e. PW-1 Anubai or her son have sustained any injuries which is improbable, if they were standing along with the victim on the road when the accident occurred. Then there is certain discrepancy as to whether the accident occurred, when the victim was crossing the road which is quite contrary to the initial prosecution version that victim along with Anubai and her son standing by the side of the road when the accident occurred.

8. All these circumstances have prompted the learned Magistrate to record the finding of acquittal. In my considered opinion, the view taken by the learned Magistrate is a plausible view and does not suffer from any infirmity, so as to require interference in an

appeal for acquittal. It is now well settled that it is only where the acquittal is based on the finding which is found to be perverse or the learned Trial Court has taken an impossible view, that the Appellate Court can interfere in an order of acquittal (See the decision of the Supreme Court in *Chandrappa and Ors. Vs. State of Karnataka*¹). Applying these principles, no case for interference is made out. The Appeal is without any merit and is accordingly dismissed.

(C.V. BHADANG, J.)

1 (2007) 4 SCC 415