

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 199 OF 2012

Abdul Nadeem Abdul Majid,
Aged about 26 Years, R/o. Jamil Colony,
Amravati, Tq. & Distt. Amravati

.... APPELLANT

// VERSUS //

The State of Maharashtra,
through P.S.O. Nagpuri Gate,
Amravati, Tq. & Distt. Amravati

.... RESPONDENT

Shri D.M. Upadhye and Ms Preeti D. Rane, Advocate (Appointed) for appellant
Shri A.M. Kadukar, A.P.P. for respondent-State.

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE JUDGMENT : 27th SEPTEMBER, 2022.
DATE OF PRONOUNCING THE JUDGMENT : 03rd OCTOBER, 2022.

JUDGMENT:

Heard learned Advocate Ms Preeti Rane for the
appellant and learned Assistant Public Prosecutor Shri Kadukar for
the respondent-State.

2. The present appeal is filed by the appellant being aggrieved by the judgment and order of conviction dated 30/04/2012, passed by Additional Sessions Judge-2, Amravati in Sessions Trial No. 140/2010. By the said judgment the appellant came to be convicted for the offence punishable under Sections 307, 332 and 279 of the Indian Penal Code. The appellant sentenced to suffer rigorous imprisonment for five years for the offence punishable under Section 307 of the Indian Penal Code, he sentenced to suffer rigorous imprisonment for two years for the offence punishable under Section 332 of the Indian penal Code and also sentenced to suffer rigorous imprisonment for six months for the offence punishable under Section 279 of the Indian Penal Code. The Hon'ble Court also directed to run the substantive sentences concurrently.

3. The prosecution story in brief is as under:

On 26/07/2009 at around 9.30 p.m. information was received at police station Nagpurigate, Amravati that truck No. MH/31/W-2663 was coming from Chitra chouk towards Nagpurigate Chouk in high speed and even upon giving signals it did not stop, hence, asked for Nakabandi. Therefore, the ASI Suresh Sharma with

other officials went to the Nagpurigate chook by their motorcycles at around 9.40 p.m. One truck bearing No. MH-31-W-2663 came from Chandni Chook to Nagpurigate in high speed and driven it rashly. Although police persons gave signals to stop, but driver of the truck drove the truck on the police persons so as to kill them. Police persons ran away to save themselves but truck came over ASI Suresh Sharma and rolled over his leg, he received injury. Truck ran away towards Walgaon road in high speed. It was chased by ASI Pande and other police staff. ASI Sharma did not get up due to injuries sustained by him and he remained there. The truck went towards Jamil colony and stopped there. It was driven by Abdul Nadeem/accused. Police took him in custody. But mob of Muslim persons came over there and took away accused from the custody of police. Said truck was having drums filled with illegal kerosene, so as to conceal it, truck was driven rashly and negligently by accused and he tried to kill police persons.

4. ASI Suresh Sharma lodged report at Police Station about the incident on 26/07/2009 for the offences punishable under Section 307 and 333 of the Indian penal Code came to be registered against the accused vide Crime No.85/2009. The police officials

immediately conducted the spot panchanama. Injured Suresh Sharma was shifted to hospital where he was found having suspected fracture to left middle leg with contusion and lacerated wound to second toe of left feet. On the next day it was found that accused Abdul Nadeem had been admitted in the hospital at Nagpur. Two constables were appointed to keep watch on him. Details of the truck no. MH-31/W-663 were collected from R.T.O. Amravati. Truck was seized in the offence punishable under Essential Commodities Act in Crime No. 3032/2009. Truck was not found in the name of accused Abdul Nadeem. Accused sought anticipatory bail from the Sessions Court and therefore, he was arrested and released on bail.

5. Investigating officer recorded statements of concerned witnesses and after completion of investigation filed charge-sheet in the Court of J.M.F.C. Amravati for the offence punishable under Sections 307, 333, 332 and 279 of the Indian Penal Code and Sections 177, 184, 119 of the Motor Vehicle Act which was committed to Sessions Court

6. The charge framed against the accused for the offence punishable under Sections 307, 333 and 279 of the Indian Penal Code.

7. The prosecution has examined in all seven witnesses to prove the guilt of the accused. Accused did not examine any defence witness. His defence is of total denial. While recording statement before the Court under Section 313 of the Code of Criminal Procedure, the accused had stated that false case is registered against him by the police.

8. The learned Additional Sessions Judge- 2 passed an order and convicted the accused under Sections 307, 332 and 279. Being aggrieved by the said judgment and order, the appellant filed this present appeal.

9. Learned Counsel for appellant, Ms Preeti Rane appointed as Panel Advocates vehemently submitted that there is no case made out to attract either Section 307 or Section 332 of the Indian Penal Code. At the most it is a case of rash and negligent driving and nothing more. The panch witness turned hostile. If evidence of PW. 1 complainant is perused, it is highly improbable to see the face of driver of the truck while the truck was moving and incident occurred at night. She has pointed out from spot panchanama that police recorded that, "This day at about 21:40

hours, when the complainant was doing nakabandi operation along with the staff at the said spot, truck bearing No. MH-31/2663 in the said crime drove it rashly and negligently. While it was proceeding dangerously towards the Chandni Chouk, the complainant and staff gave him signal to stop. However, he did not pay heed to the signal given by the police and he rammed the said truck on the person of the complainant with an intention to kill, dashed the complainant and thereby injured him. He fled with his truck to other side.” It is her contention that only offence of rash and negligent driving attributed to the accused. There was no intention to kill any officer. Even in medical opinion as there was no crush injury, it is opined that it is not due to running over of tyre.

10. Learned Counsel for appellant relied on the judgment, *State of Maharashtra Vs. Balram Bama Patil and others, reported in AIR 1983 SCC 305.*

11. As against this learned Additional Public Prosecutor submits that the judgment of learned Additional Sessions Judge is perfectly justified. It is rightly appreciated that nature of injury is not material if the intention to kill is established. The judgment relied on by the appellant is in fact in favour of the prosecution.

12. I have heard both the parties at length and rival contentions now fall for my determination.

13. The complainant PW.1 ASI Suresh Sharma, who was attached to Police Station Nagpurigate, Amravati, at the time when incident took place i.e. on 26/07/2009, he was on night duty. He received message at Police Station that truck no. MH.31/W-2663 is coming with high speed from Itwara Bazar towards Nagpurigate. He also received direction to stop the said truck by doing nakabandi. Accordingly, he along with P.S.I. Pande and other staff members went to Nagpurigate Chouk. The complainant along with said P.S.I. Pande (PW.4) along with PW. No.5 were present in the square. They saw same truck coming in high speed. In spite the signals were given, driver of the truck did not stop the truck and drove the truck over them. The complainant fell down due to the hit by the tyre of the truck. It appears that he was then hospitalized where suspected fracture is opined and he was referred to Government Hospital. It is very unfortunate that prosecution has not taken care to collect the evidence in respect of fracture from the Government Hospital. There appears to be certificate of private hospital showing fracture, but it was neither exhibited nor brought on record nor any evidence was

led on it. Therefore, the learned Additional Sessions Judge has left no alternative but to convict the accused under Section 332 of Indian Penal Code instead under Section 333 of the Indian Penal Code.

14. Thus, from these facts, it is clear that the police had tried to stop vehicle at some earlier point and as the truck driver did not stop his vehicle, it was informed to the complainant to make nakabandi and to stop the truck. The accused was knowing well that he did not stop inspite of the orders of stopping truck by the police and proceeded further. When there was nakabandi, instead of stopping his vehicle, he ran over the vehicle on the officials. The complainant got injured in that attempt. When such a huge and heavy vehicle driven by the accused knowing well that police personnel wanted the truck to be stopped, he proceeded further, which clearly goes to show that he was having full knowledge that by proceeding ahead with his heavy vehicle, Police Officer may die.

15. Thus, there was a knowledge while committing that act that death can be caused, when there is either intention or knowledge that such act may cause death, Section 307 of the Indian

Penal Code clearly applies. It is not necessary that bodily injury capable of causing death to be inflicted. It is sufficient that there is knowledge or intent, coupled with some overt act in execution thereof.

16. So far as offence under Section 333 of the Indian Penal Code, though prosecution failed to establish any grievous hurt caused to the complainant, it is duly established that complainant sustained injury. There is no dispute that PW.1 was discharging his duty as a public servant at the time of incident. The accused by driving the truck in high speed tried to deter them from discharging their duties. Not only this the accused without giving any heed to the signal to stop the vehicle he proceeded further and ran over on the complainant and other persons. Somehow, the public servant succeeded in escaping from the dash of the truck, however, complainant sustained injury. The learned Additional Sessions Judge rightly appreciated that though prosecution failed to establish offence under Section 333 of the Indian Penal Code that offence under Section 332 is duly proved by the prosecution.

17. Learned Counsel for appellant relied on ***Balram Bama***

Patil and others (supra), wherein it is held as under:

“To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

However, it supports the prosecution.

18. Under the law as contained in section 332 or 333 of the Indian Penal Code, 1860 a person who voluntarily causes hurt (Section 332) or grievous hurt (Section 333) to public servant while the public servant is acting in the discharge of his duty is liable for

sentence. As such accused is guilty and in such case motive and object are irrelevant; when a public servant is prevented or deterred from discharging his duty to such public servant; in such case it is necessary that the object of the accused should be to deter the public servant from discharging his duty but it is not necessary to prove any motive.

19. So far as punishment under Section 279 of the Indian Penal Code, the act of the accused itself is sufficient to arrive at the conclusion that as he is indulged in some illegal activities, he wanted to get rid of the police and therefore drove the truck in high speed. He did not stop on giving signal and ran away in speed which itself shows that vehicle was driven in a rash and negligent manner to endanger to human life or to be likely to cause hurt. Even after, giving dash to the complainant he did not stop his vehicle and fled from the spot.

20. From record it also appears that the police on motorcycle who were following him, chased the vehicle till Jamil Colony where the Muslim mob taken him from the custody of police. Though, defence is raised of alibi however it has not substantiated

by the accused. As such, the judgment and order passed by learned Additional Sessions Judge-2, Amravati cannot be faulted with. There is no substance in the appeal, accordingly appeal is dismissed.

21. I appreciate the efforts taken by panel Advocate Ms. Preeti Rane. Secretary, High Court Legal Services Sub Committee, Nagpur for accused. Secretary, State Legal Services Authority to pay as per norms applicable to the panel Advocate.

[SMT. M.S. JAWALKAR, J.]

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