

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

CRIMINAL APPEAL NO. 134 OF 2012

The State of Maharashtra

...Appellant

vs.

Vikas Kakaso Shinde

Age – 28 years, Occu :- Agri.,

R/o :- Ramnagar, Tal. Kadegaon,

District Sangli.

...Respondent

Mr. Y. Y. Dabke – APP for the Appellant-State

Mr. Dilip Shinde - Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 28th FEBRUARY, 2023

JUDGMENT :-

1. Heard learned APP Shri Dabke and learned Advocate Shri Shinde for the Respondent-accused.

2. Respondent is acquitted by the Court of the JMFC, Palus on 04/07/2011. The Respondent-accused is a driver of Hero Honda Splendor Motor Cycle bearing No. MH-12/CB 7351. He was prosecuted for committing an offence under Sections 279, 304-A, 338, 427 of the Indian Penal Code and under Sections 184, 146 read with 196 of the Motor Vehicles Act. He caused the death of one

Babasaheb Krishnarao Patil. He was pillion rider of Hero Honda Motor Cycle bearing No. MH 11/AD 729.

3. It was driven by P.W. No. 1 – Subhash Yadav. There were three motor cycles. The two motor cycles were proceeding from Yelavi village to Tondoli village on 24/01/2006 at about 5.00 p.m.. Whereas one motor cycle is coming from opposite direction. Their details are as follows :-

MH 11/AD 927	Driven by P.W. No. 1 - Subhash Yadav and deceased Babasaheb Krishnarao Patil was pillion rider
MH 10-6477	Driven by P.W. No. 2 – Bhimrao Shankar Salunkhe and P.W. No. 3 – Sarjerao Amrutrao Patil was pillion rider.
MH – 12/CB 7351	Driven by the Respondent Accused. Coming from opposite direction.

4. The Accident took place near Jadhavnagar Phata on Bambvade-Kadegaon road. The two motor cycles driven by the P.W. No. 1 – Shri Subhash Yadav and P. W. No. 2 – Bhimrao Salunkhe were going towards Tondoli. The purpose of their travel is to discuss the marriage proposal for daughter of deceased Babasaheb Krishnarao Patil. Prior to reaching there, the said Babasaheb Krishnarao Patil succumbed to injuries received in the accident.

There were three witnesses examined on the point of accident. They are as follows:-

P.W. No. 1	Subhash Yadav
P.W. No. 2	Bhimrao Salunkhe
P.W. No. 3	Sarejrao Patil

5. The information about the accident was given to Kundal Police Station by one Rajaram Garud. He witnessed the accident. Intimation was given on telephone. It was recorded in the station diary on 24/01/2006. As a result, the P.W. No. 9 – Head Constable Mohan Patil visited the spot. He noticed two motor cycles lying on the ground in a damaged condition. He also noticed that the deceased was lying there. He prepared inquest panchnama and also spot panchnama. P. W. No. 5 – Shivaji Sutar and P. W. No. 6 – Balaso Savant were the panch witnesses. After doing an initial investigation, he came to conclusion that the Respondent – accused was rash and negligent and accordingly, he lodged the F.I.R.. Further investigation was done by P.W. No. 7- Mohan Jadhav.

6. Apart from these witnesses, the prosecution has also examined Abasaheb Patil the brother of the deceased. Whereas P.W. No. 10 - Chandrakant Yadav is owner of the motor cycle no. MH 11/

AD 927. It is driven by P.W. No. 1 - Subhash Yadav. There was some confusion whether number is 927 or 729. Whereas P.W. No. 11- Sunil Patil is a Doctor who has treated P.W. No. 1 - Subhash Yadav. P.W. No. 8 – Subhash Arbune, he was Deputy RTO. He has examined the motor cycle bearing No. MH 11/AD 729 and also MH – 12/CB 7351. Both were not having any mechanical defect.

7. On the basis of the above evidence, the trial Court acquitted the accused for the reason that rashness and negligence driving of the Respondent is not proved. With the assistance of the learned APP and learned Advocate for the Respondent, I have gone through the evidence and documents. It is true that all witnesses have said that the motor cycle driven by the Respondent came in high speed from the opposite direction. It is also true that the pillion rider of the motor cycle driven by the P.W. No. 1 -Subhash Yadav succumbed to the injuries. So also the P.W. No. 1 also received injuries. There is also injury certificate of the Respondent-accused on record. He has admitted it. So he also received injuries in that accident.

8. The Police Officer who recorded the F.I.R. and the investigating officer both were examined. Even the spot panchnama

is proved during the evidence.

9. It is true that the act of rash or negligence driving becomes an offence, when the rashness indicates the driving with an excessive speed which is not wanted by the circumstance. Whereas negligent act indicates that proper care and caution is not taken while driving the vehicle. The act of the rashness indicates a positive act whereas act of negligence indicates not taking proper care and caution. It has also come in the evidence that when the P.W. No. 1 and P.W. No. 2 were moving towards Tondoli village, one jeep was coming from the opposite direction. It seems that the motor cycle driven by the Respondent-accused intends to overtake that jeep.

10. Head on collision took place in between the motor cycle driven by the P.W. No. 1 and driven by the Respondent-accused. It is true that both these motor cycles were damaged. No doubt speed is one of the criteria which decides rashness or negligence. But one cannot estimate what would be the speed of the offending vehicle. So rashness or negligent act can be inferred on the basis of oral testimonies verified with the circumstances brought on record. The prosecution was expected to adduce evidence that the Respondent was overtaking the jeep without verifying that there is no vehicle

coming from the opposite direction. Because overtaking a particular vehicle is not objectionable act. If the circumstances on record are considered, except the circumstance of high speed, no other circumstances infers that the Respondent was rash and negligent. No doubt the person who has given the intimation on telephone is Rajaram Garud, he is not examined. So also driver of the jeep cannot be ascertained. The said Rajaram Garud is an independent witness. He is not involved in the accident. He is not interested person. He could have told the right manner of the accident and who was at fault. The evidence of the material witness is lacking.

11. The trial Court has acquitted the Respondent-accused. I agree with those findings. Even learned APP argued with force that in view of the death of Babasaheb Krishnarao Patil the rashness can be inferred. Unfortunately, this is not the sole criteria. For the reasons stated above, I am unable to agree with him.

12. No reason to interfere in the findings of the trial Court. There is no perversity. Hence appeal is dismissed.

[S. M. MODAK, J.]