

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

CRIMINAL APPEAL NO.75 OF 2004

The State of Maharashtra ... Appellant.
(Orig.Complainant)

Versus

Gopal Ramesh Sonawane
Age: 28 yrs. Occ: Service
R/at R &D. Colony,
Room No.341, Pune Alandi Road,
Pune

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... Respondent.
(Orig. Accused)

Mr AA Palkar, APP for appellant/State.
Mr Pratik Deshmukh i/by S.P. Kadam for respondent.

Coram : R.N.Laddha,J.

Date : 15 September 2023.

Judgment :

This Appeal is directed against the Judgment and Order dated 21.05.2003 passed by the learned Judicial Magistrate, First Class, Khadki, Pune, in Criminal Case No.1318 of 2001, whereby the accused/respondent came to be acquitted of the offence punishable under Sections 279 and 304-A of the Indian Penal Code (IPC) read with Sections 119/177 and

132(1)(c) of the Motor Vehicles Act, 1988 (MV Act).

2. The prosecution alleges that on 15.8.2001, Sadhana Tanaji Mane was riding her Sunny Moped to attend a flag hoisting ceremony. Around 7.30 a.m., as she was passing the MI room gate on Pune Alandi road, a military vehicle collided with her Moped, causing her to fall. She was initially taken to a Military Hospital and then shifted to Sassoon Hospital due to the severity of her injuries, where she later passed away. The police were informed and found the Moped at the scene of the accident. An inquest panchanama was prepared following her death. During the investigation, witness statements were recorded by the investigating officer. On 23.8.2001, Ramchandra Krishnarao Suryavanshi provided the police with the number of the previously unidentified vehicle involved in the accident. The driver was subsequently arrested. After the investigation was completed and the driver's involvement was established, a charge sheet was filed.

3. Charge came to be framed against the accused for the offences punishable under Sections 279 and 304-A of IPC read with Sections 119/177 and 132(1)(c) of the MV Act. The accused abjured his guilt and claimed trial.

4. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of witnesses, namely Tanaji Tukaram Mane (PW 1), the husband of the deceased; Ramchandra Krishnarao Suryavanshi (PW 2), an eye witness to the incident; Shahaji Shankar Patil (PW 3), an alleged eye witness and conductor of the offending vehicle; Ashok Dashrath Gaikwad (PW 4), the investigating officer; Kalleshwar Mahadeo Kamble (PW 5), the PHC who prepared panchanama of the spot of incident and shifted the injured to Sassoon hospital and Harbhajan Singh Gopal Singh Tattar (PW 6), Security Officer. The prosecution has also placed reliance on certain documents viz. complaint (Exh.39); inquest panchanama (Exh.44); report forwarded along with dead body of post mortem (Exh.45); cause of death certificate (Exh.46); panchanama of spot of incident (Exh.28); post mortem report (Exh.29); RTO report of Military bus and Sunny Moped (Exh.32 and 33, respectively).

5. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be thereafter recorded, consisting of a denial and false implication. The accused had examined none in his defence.

6. Upon reviewing the evidence and documents presented and after hearing both sides, the trial Court was persuaded to acquit the accused. It held that there was insufficient proof to confirm the identity of the vehicle and the accused as the driver of the alleged vehicle involved in the incident. Consequently, due to the uncertainties in the prosecution's evidence, the accused was acquitted, benefiting from the principle of "benefit of doubt".

7. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

8. I have heard Mr.AA Palkar, the learned Additional Public Prosecutor for the State and Mr.Pratik Deshmukh, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material on record.

9. Mr.A.A.Palkar, the learned Additional Public Prosecutor, argued that the order of acquittal was not in accordance with the law. He asserted that the available evidence undeniably points to the rash and negligent driving by the accused, which

directly resulted in the death of the deceased. He submits that the circumstances at the scene, as borne out by the evidence, establish the guilt of the accused beyond any doubt.

10. On the other hand, Mr Pratik Deshmukh, the learned Counsel for the accused/respondent, questioned the very identification of the offending vehicle and the accused as its driver. He pointed out that there was an unexplained delay in recording the statement of an alleged eyewitness (PW 2). He argued that the conclusions drawn by the learned Magistrate were impeccable. He endorsed the Judgment and argued that after appreciating the entire evidence on record, the learned Magistrate rightly acquitted the accused-respondent.

11. The records indicate that the defence did not seriously dispute the alleged accident or the death of the deceased, Sadhana Mane, before the trial Court. The fact that Sadhana was injured in the accident and subsequently died in the hospital was not contested.

12. This takes me to the pivotal issue of identifying the offending vehicle and its driver on which the fate of this appeal hinges. Ramchandra Suryavanshi (PW 2) testified that

around 7.30 a.m. on 15.08.2001, while he was riding his motorcycle near the BEG MI room on Pune Alandi road, he witnessed a military school bus bearing registration No.92 D 92238 driven by the accused, hit the deceased. After the accident, she was rushed to the MI room hospital. Though the prosecution alleges that the deceased was riding a Moped at the time of the accident, however, PW 2's testimony does not shed light on this aspect.

13. Regarding the identification of the vehicle involved in the incident, it is claimed by the prosecution that Ramchandra (PW 2) provided the vehicle's number to the investigating officer, which led to the discovery of the accused. However, Ramchandra's (PW 2) testimony revealed a discrepancy in the registration number of the offending vehicle. Furthermore, he did not provide a description of the accused to the police. The initial complaint was filed against an unidentified individual. According to the prosecution, Ramchandra (PW 2) noted down the vehicle's registration number in his diary immediately after the incident, but this diary was not seized by the investigating officer.

14. Furthermore, Ramchandra (PW 2) did not report the incident to the police immediately after it occurred. Instead, he traveled to Satara and informed the police about eight days after the incident, at which point his statement was recorded. The delay in recording Ramchandra's (PW 2) statement has not been explained satisfactorily.

15. The investigating officer recorded a statement of Ramchandra (PW 2) on 23.8.2001 in which he disclosed the registration number of the vehicle involved in the incident and the accused. Interestingly, the investigating officer had already recorded a statement of the accused two days earlier, on 21.8.2001. It remains unclear how the investigating officer was able to determine the registration number of the vehicle involved and the identity of the accused that too prior to the recording the statement of Ramchandra (PW 2). Additionally, the investigating officer did not prepare a panchnama of the offending vehicle or seize its logbook.

16. Shahaji Patil (PW 3), another alleged eye witness, did not support the prosecution's case and turned hostile. It is worth noting that none of the other witnesses examined by the prosecution actually witnessed the incident.

17. The prosecution witnesses' cross-examination revealed that Pune-Alandi road, where the incident occurred, is a bustling thoroughfare. The location is surrounded by various military offices, and military vehicles frequently traverse this route. The Sapras police chowky is a mere two-minute distance from the incident site, yet PW 2 failed to inform the police about the accident promptly.

18. Moreover, there is no proof of rash or negligent driving. The mere occurrence of an accident does not automatically imply rash or negligent driving. The linchpin of the offence is not the factum of the accident but the culpable negligence or rashness which led to the accident. On the basis of the material on record, it is not possible to find out the circumstances under which the accident took place. Given that the vehicle involved and the accused have not been identified, there is no basis for alleging any traffic rule violations by the accused.

19. In such circumstances, the trial Court, in my considered opinion, rightly found the respondent/accused not guilty of the offence for which he was charged.

20. Resultantly, this appeal fails and is hereby dismissed.

[R.N.Laddha, J.]