

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 3 OF 2024

State of Goa, Through Officer In
Charge, Ponda Police Station. ... APPELLANT

Versus

Durgadas Gaude, s/o Bhiva Gaude,
46 years of age, Occupation:
Business, Resident of Manas Wada,
Kundai, Ponda, Goa. ... RESPONDENT

Mr. Gaurish Nagvenker, Additional Public Prosecutor for
the Appellant.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Respondent.

CORAM: AVINASH G. GHAROTE, J.

DATED: 19th MARCH 2024

ORAL JUDGMENT:

1. Prayer clause (b) of this Application seeks leave to appeal against the judgment dated 16.02.2019 passed by the learned JMFC, 'C' Court, Ponda, by which, the non-applicant has been acquitted of the offences under Section 279 and 338 of the IPC and Section 185 of the M.V. Act vide Section 255(1) of the Cr.P.C.

2. Learned Additional Public Prosecutor submits that the learned JMFC while passing the impugned judgment has not

considered the evidence on record in its proper perspective and therefore, leave to appeal ought to be granted. He submits that since the relevant evidence has already been placed on record, upon leave being granted, the Appeal can be decided forthwith.

3. Mr. Bhobe, learned Counsel appearing for the non-applicant is agreeable for the Appeal to be decided on merits if the same is argued forthwith, which is acceptable to the learned Additional Public Prosecutor, considering which, leave is granted.

4. Considering that both the learned Counsel are ready to address the Court on merits, the matter is being heard on merits.

5. Rule. Rule made returnable forthwith. Mr. Bhobe waives service on behalf of the Respondent. Heard finally with the consent of the learned Counsel for the parties.

6. The factuality of the position is as under:

The incident is alleged to have occurred on 07.09.2016 at 12:10 hours, in which it is claimed that while the victim was proceeding on a public way from Madkai towards Manaswada, Kundaim direction, the accused who was driving a maruti omni

van bearing registration no. GA-05-B-8853 in a rash and negligent manner and under the influence of alcohol at Gurvaswada, Kundaim, caused an accident to the oncoming aviator scooter bearing registration no. GA-05-E-6560, as a result of which, the rider of the scooter Urvesh Redkar (PW-2) and the pillion rider (Shravani Naik) sustained grievous injuries. The spot panchanama was prepared to which, Mithun Naik and Chaitanya Velingkar (PW-1) were the panchas. The statement of the injured was recorded and FIR No. 259/2016 was registered by the Ponda Police under Sections 279 and 338 of the IPC read with Section 185 of the M.V. Act on the same date. Reports of the RTO regarding the inspection of the vehicles were obtained. A medical certificate of the injured was also obtained and blood samples of the accused are also claimed to have been taken for alcoholic estimation. During the course of the trial, eight witnesses were examined by the prosecution and upon the statement of the accused being recorded under Section 313 of Cr.P.C., the learned Trial Court by the impugned judgment has acquitted the respondent of the offences under the aforesaid provisions.

7. Mr. Nagvenker, learned Additional Public Prosecutor for the State assails the impugned judgment on the following three grounds:

(i) That it has been incorrectly held that the identity of the person driving the offending vehicle has not been proved;

(ii) There was no necessity of a test identification parade for the reason that the accused/respondent was immediately apprehended on the spot and

(iii) That the respondent, was in an inebriated condition, which has been ignored, as the evidence of PW-2, Urvesh Redkar, which states that the respondent was smelling of liquor at the time of the accident, in fact, demonstrates driving under the influence of alcohol on account of which Section 185(a) of the M.V. Act became applicable.

8. Mr. Bhobe, learned Counsel for the Respondent invites my attention to para 34 of the impugned judgment, which holds, that the claim by the victim, of his leg being stuck in the wheel of the vehicle on account of which the wheel had to be cut to remove his leg, is found to be untrue, which according to him casts a doubt as to the very happening of the incident. It is submitted that so also, it has been held that the requirement of Section 185(1) of the M.V. Act was not satisfied on account of breath analyzer test having not been carried out.

9. A perusal of the impugned judgment, would indicate that a finding has been recorded in para 37 that no breath analyzer test was carried out. Learned Additional Public Prosecutor for the Applicant does not dispute that the breath analyzer test was not carried out. That being the basic requirement for attracting Section 185 (a) of the M.V. Act, having not been followed, the finding in that regard, is not open to challenge.

10. Insofar as the identity of the respondent is concerned, the learned Trial Court has noted that PW-2, Urvesh Redkar was not familiar with the accused or his vehicle prior to the accident. His evidence, therefore, has to be examined in the light of this position and the fact that PW-2 made a statement that upon the accident, the maruti omni van, had fallen on his body and his leg had got stuck in one of the wheels which was required to be cut to rescue his leg. A perusal of the evidence of PW-2, Urvesh Redkar indicates that insofar as the incident is concerned, he states that due to the impact, his cousin Shravani Naik who was riding pillion fell down and PW-2 was dragged for about 10 metres along with his scooter, by the maruti omni van and PW-2 was thereupon thrown out of the road and the said van fell on his body as a result of which, the leg of PW-2 got trapped in the wheel of the van which was then required to be cut out to remove his leg. The cross

examination of this witness (PW-2) indicates that there are several omissions, between his examination in chief, as well as statement under Section 161 of Cr.P.C. and his evidence. The omission in his statement is also in respect of the nature of the accident as, while in his evidence, PW-2 states as narrated above, however, the position that the vehicle had come on his side of the road and he was dragged for 10 metres, upon which, the vehicle fell on him and his leg got trapped in the wheel of the vehicle, which was required to be cut out to rescue his leg, are all noted to be omissions. This would clearly indicate that PW-2, is not only unaware of the exact nature of the incident, but is making improvements in the version, which is stated in the chief as against what is contained in the FIR. The evidence of PW-2 has to be read in conjunction with the evidence of PW-6 Mahendra Gaude who states, that when he reached the spot, PW-2/victim was unconscious and in that condition, had to be taken to the hospital. In light of what PW-6 has stated, it would clearly make the statement of PW-2, suspect, considering the improvements made by him and the omissions as indicated above. Even if it is presumed that PW-2 and PW-6 have identified that the respondent is the driver of the maruti omni van, that by itself, cannot indicate the happening of the incident, on account of the discrepancies in the evidence of PW-2 regarding the nature of the incident all together.

11. The panch witness, Chaitanya Velingkar (PW-1) is the neighbour of PW-2. In his evidence, he states that he had signed the panchanama twice, once, at the spot of the accident and the second time at the Police Station, where he had gone sometime later and had asked the panchanama to be shown to him and after reading it, had again signed it. This is highly unusual statement, on behalf of PW-1, and therefore, brings his entire evidence, in disrepute as the panchanama at Exhibit-9 colly, which is produced for the examination of this Court by the learned Additional Public Prosecutor indicates that the same bears the signature of the panch only once and not twice. This would, therefore, make the entire panchanama suspect and unreliable, specifically so when the other panch has not been examined. Though the hurt certificate, in fact, indicates injuries being caused to PW-2 and Shravani, however, they have to be related to the accident in question. The only person who speaks about the accident, is PW2 and as indicated above, his version on the same, on account of the omissions and improvements render itself unworthy of credence.

12. In view of the above discussion, I do not see any reason to interfere with the impugned judgment passed by the Trial Court. The Appeal is therefore dismissed. No costs.

13. Criminal Miscellaneous Application (Main) No. 3 of 2024 stands disposed of accordingly.

AVINASH G. GHAROTE, J.

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