

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.561 OF 2017
WITH
CRIMINAL APPLICATION NO.553 OF 2017
WITH
CRIMINAL APPLICATION NO.567 OF 2017

Anita Sopan Ravalekar
Age : 36 yrs. Occu: Service
R/at : Khanapur, Tal.: Bhore,
Dist.: Pune

...Applicant

vs.

The State of Maharashtra
(At the instance of Bhore Police Station,
Dist. Pune)

...Respondent

Mr. Rajiv Patil, Senior Advocate, for the Applicant a/w Mr. Rohin R.
Chauhan i/b. Mr. A.V. Konde Deshmukh, Advocate for the Applicant.
Mr. H.J. Dedhia, APP for Respondent - State.

CORAM : S. M. MODAK, J.
DATE : 5th FEBRUARY 2024

JUDGMENT:

1. Heard learned Senior Advocate Mr. Patil for the Applicant/
convicted accused at great length on various dates and learned APP
also.

2. It is true that the Applicant was initially acquitted by the Court
of J.M.F.C., Bhore for the offences punishable under Sections 279,
304(A), 337, 427 of IPC and under section 184 of the Motor Vehicles

Act.

3. The Applicant was prosecuted for causing the death of Chandrakant Tukaram Shivthare and causing hurt to PW4 – Arun Chintamani Yadav by driving a Jeep No. MH-12-P-9546 on 7th October 2008. Whereas, the Judgment of acquittal was converted into a judgment of conviction by the Court of Additional Sessions Judge, Pune as per the judgment dated 6th October 2017. Applicant was convicted for committing all the offences for which she was charged. Sentence is as follows :-

- (i) S.I. for one month.
- (ii) Fine of Rs.500/- and further S.I. for two weeks, if the fine is not paid.

Issues involved in this Revision

4. The legality of the judgment is challenged by her by way of this Revision. The issue involved in this Revision Application is whether the learned Additional Sessions Judge was justified in reversing the judgment of acquittal, particularly when there were following lacunae :-

- (a) Post-mortem report was not proved and even the nature of injuries caused to PW4 was not proved and

- (b) Except the evidence of PW4 – Arun Yadav, none of the other witnesses who were examined on the point of witnessing the incident have supported the prosecution case.
- (c) Even though it was proved that this Applicant drove that jeep explanation offered by her for causing death and causing hurt was not considered at all in the impugned judgment.

5. It is further contention of the Applicant that no doubt the scope of Revisional jurisdiction is limited but the Revisional Court is certainly having a scope to consider illegalities in the observations of the Courts below on the basis of lacuna in the prosecution evidence.

6. Learned Senior Advocate Shri Patil also filed written notes of arguments. I have perused it with his assistance. Whereas, learned APP made the following submissions:-

Submission of APP

- (a) It was amply clear from the evidence of PW1 – Shivaji Shankar Bhosale who was not only the owner of the jeep but he was the occupant of the jeep at the time of incident and

categorically, he has deposed that the Applicant drove that jeep at the relevant time.

- (b) He further submitted that the Applicant has not challenged his version of driving the vehicle and that was rightly considered as one of the factor by the Appellate Court while reversing the judgment of acquittal.
- (c) According to learned APP, if the accused was driving the vehicle, she has got two responsibilities:-
 - (i) As to drive the vehicle considering the situation at the spot and with moderate speed and also to take precaution in not causing any injury to the pedestrians.
 - (ii) There is added responsibility on such accused to explain exactly the manner in which the accident took place and her failure to explain this fact goes against her and the Appellate Court has rightly drawn adverse inference against her. That is why, he supported the impugned judgment.

Scope of Revision

7. It is true that the scope of revision is limited. It is true that if the facts are proved and if the Appellate Court has already done exercise of appreciation of evidence, the Revisional Court is not supposed to again re-appreciate the evidence. What is left open for the Revisional Court is to ascertain whether the inferences drawn on the basis of proved facts are proper inferences and they are drawn by applying correctly substantive law i.e. the law which lays down the offences and the law which deals with appreciation of evidence.

Death due to accidental injuries

8. With this view in mind, I have gone through the prosecution evidence. There is one more point which needs to be considered. It cannot be said that there is concurrent finding of facts against the Applicant. Before one Court she succeeded whereas before the Appellate Court she has failed. When I have perused the evidence what I find is death is proved fact. There is no documentary evidence (though available) which was proved which suggests what are major injuries and what is the cause of death. There are two aspects, one is the death of the deceased and second is what are the nature of injuries, that

is to say, which part of the body and whether they are minor or major. This is true for injuries caused to PW4 also. However, from the evidence, it is certain that deceased died due to the vehicular injuries caused due to the accident which took place on 7th October 2008. Why I say so, because it has come in the evidence of PW1 – Shivaji Shankar Bhosle that the deceased died at the spot. Whereas, PW4 who is eye-witness has deposed that the Doctors at Government Hospital declared him dead but this piece of evidence is sufficient to infer that the deceased Chandrakant died due to the injuries received by him from dash given by the jeep driven by the Applicant.

Not proving the documents

9. Now, this Court has to ascertain what will be the effect if the prosecution has failed in proving the documents relating to the injuries caused to PW4 and the deceased. Whether it has got the effect of setting aside conviction already recorded by the Appellate Court?

Documents

10. With the assistance of both of them, when I have perused the record sent by the trial Court, I do find that the following are the relevant documents :-

- (a) Inquest panchanama.
- (b) Form submitted to Doctor by the Police for carrying out post-mortem and
- (c) Post-mortem report of the deceased.

Rash/Negligent driving

11. According to the learned Senior Advocate Shri Patil, for proving the act of rashness or negligent driving, there are various parameters and one of them is the nature of injuries. According to him, the speed at which the offending vehicle is driven is one of the factor to determine the rash or negligent act and if the driver drives the vehicle at great speed then there is every likelihood that pedestrians will sustain serious injuries. Trial Court has in fact emphasized on this lacuna, whereas, the Appellate Court in a zeal to convert the judgment of acquittal in conviction has overlooked this lacuna. When I have read the trial Court judgment in paragraph No.13, the trial Court observed as under:-

“सदर खटल्यात अभियोग पक्षातर्फे मृत व्यक्तीचा शवविच्छेदनाचा अहवाल शाबीत केलेला दिसून येत नाही.” (page 89) (File - 2)

12. Whereas, when I have perused the Appellate Court judgment

unfortunately, the Appellate Court has totally overlooked this finding of the trial Court and has also independently not opined about the lacuna in the prosecution case.

Hurt as one of the ingredient

13. Learned Senior Advocate Shri Patil has read over the provisions of Sections 337, 304-A, 279 of IPC and Section 184 of the Motor Vehicles Act. **For every offence, there are different requirements.** They are as follows:--

- a. It is true that for offence under Section 279, the emphasis is on rash driving. Even though any injury is not caused, there can be prosecution under Section 279 of IPC.
- b. Whereas, for offence under Section 337 of the IPC causing of hurt is one of the ingredient.
- c. Whereas, for offence under Section 304-A of IPC, it is only when death is caused then only a person can be prosecuted.

But for all these offences the emphasis is on rash or negligent driving.

Ultimately, the prosecution has to prove the connection in between the

act of driving being rash or negligent and the outcome being causing hurt or death of a person. It is the settled law that merely because any hurt is caused or there is a death, you cannot draw inference that the act of driving alleged was rash or negligent. Because there are two aspects:--

- (a) What the man of ordinarily prudence feels when he witnesses the accident and
- (b) What the law contemplates.

Oral Evidence of PW4

14. The emphasis of learned Senior Advocate Shri Patil is that the prosecution has failed to prove that the Applicant drove the vehicle rashly or negligently. He read over the evidence of PW4 who is only witness who has supported. According to him, even he accepts his evidence as it is, still it falls short to bring the act of driving within the act of rash and negligent driving as contemplated by the legislature. Learned Senior Advocate Shri Patil also submitted that the evidence of PW4 suffers from improvement and they were proved through Investigating Officer – PW 10 and if those portions are excluded, there is hardly anything remains in the evidence of PW4 which will be useful

to the prosecution to prove the offence. According to him, improvements were not at all considered by the Appellate Court.

15. Whereas, according to the learned APP, if we read his evidence, we find that he and the deceased were walking on road on left hand side and the Applicant drove the vehicle without paying attention to the situation at the spot and caused death.

16. On this background, it will be material to consider the prosecution evidence.

Prosecution evidence

17. Witnesses examined on behalf of the prosecution are as follows:-

1.	PW1	Shivaji Shankar Bhosle	Owner of the jeep - eye witness.
2.	PW2	Ganpat Narayan Kanade	Eye witness but not supported the prosecution case.
3.	PW3	Satish Kisan Sheta	Spot Panch who has not supported.
4.	PW4	Arun Chintamani Yadav	Injured who has supported the prosecution case.
5.	PW5	Jaywant Dinkar Nikam	Eye witness who has not supported.
6.	PW6	Suresh Bhiku Shinde	Spot Panch who has not supported.
7.	PW7	Vilas Tukaram Shivthare	Brother of the deceased identified dead body – not

			aware of the manner of accident.
8.	PW8	Chandrakant Ranba Thorve	Police Patil who gave intimation of accident to Bhor Police Station. After initial inquiry, Police registered the offence.
9.	PW9	Vasant Kondiba Bodake	Panch – seizure panchanama about inspecting the jeep – not supported.
10.	PW10	Tukaram Bajirao Surve	PI - Investigating Officer.

18. Though learned Senior Advocate Shri Patil submitted that except PW No.4, there are no witnesses examined but he is not correct in his submission because prosecution made an attempt to examine the witnesses who had seen the accident but fortunately, they have not supported the prosecution case. Now, it will be material to consider how the Appellate Court has dealt with the evidence of the three material witnesses who are as follows :-

1.	PW1	Shivaji Shankar Bhosle	Owner of the jeep.
2.	PW4	Arun Chintamani Yadav	Injured.
3.	PW10	P.I. Tukaram Bajirao Surve	First Informant - Investigating Officer.

Findings of Appellate Court

19. On the basis of above evidence, the Appellate Court has drawn an inference that it is the Applicant only who was driving the vehicle. The relevant observations find place in paragraph No.11 and paragraph No.14. I agree to those findings. Because nowhere the Applicant has put up a case before the trial Court either by cross-examining PW1 and PW4 or in any other manner thereby denying the act of driving the vehicle. I also agree with the Appellate Court finding that the death was due to the vehicular accident that took place on 19th March 2005. There is ample evidence on the point of issuance of the notice as contemplated under the Motor Vehicles Act to the Applicant. So only the issue remains about legality of the findings given by the Appellate Court on the point of ‘the act of driving of the Applicant being rash and negligent’. According to learned Senior Advocate Shri Patil, there are two versions available before the Courts below, they are as follows:-

Versions about accident

- (a) Version given by PW1 – Shivaji Bhosle.
- (b) Version given by PW4 – Injured witness.

Version given by PW1

20. For that purpose, I have read their evidence. No doubt, PW1 - the owner of the jeep has stated all the facts including driving of the vehicle by the Applicant but when the question of explaining how the accident took place, he has resiled from the facts stated before the Police. Before the Police, he stated that it was rash and negligent driving of the Applicant which is responsible for the death and injury. For not deposing this fact, he was also declared hostile.

21. Learned APP put by way of cross-examination however he has not given any favourable answer. It is true that the portion which he has not deposed was also proved through the Investigating Officer – PW10 - P.I. Tukaram Bajirao Surve. It is settled law that evidence is what is deposed before the Court and not what is stated before the Police. Probably, for the reason that PW1 and the Applicant were knowing each other, PW1 has resiled from his police statement.

Additional facts

22. In addition to this, he has stated few more facts. What he has deposed before the Court is :-

“when the jeep came near Chowpaty Bhor two persons

walking on the road quarrelled with each other and they came in front of their jeep, due to which one person came beneath the jeep and sustained injuries.”

Findings by Appellate Court

23. Learned Additional Sessions Judge has dealt with his evidence in paragraph No.15. The Appellate Court has refused to accept this version. The reason quoted is :-

“Therefore, there is every possibility that he is deposing falsely in the Court to save his sister-in-law and whatever he has stated is not stated before police. Therefore, the said version of Shivaji Bhosale (PW1) cannot be believed upon.”

24. I partially agree with this finding. Small possibility expressed by the Appellate Court may be correct but the second finding “version of Shivaji Bhosale cannot be relied upon” cannot be accepted. It is not for the reason that I am of the different view but it is for the simple reason that when PW1 was cross-examined by learned APP, he ought to have asked the witness “have you stated these facts before the Police?”

25. Because a fact can be said to be an improvement if that is not stated before the Police but if the prosecution or accused wants to take

advantage of this improvement, his attention ought to have been brought “*have you stated this fact before the Police?*” Then the only rival party can take its benefit. Though learned APP cross-examined him, the lacuna remain in the cross-examination. For this reason, I am not agreeing to the reasons given by the Appellate Court. So, we have to deal with the prosecution evidence on the premise that there is one version given by PW1 about accident. On this background, other evidence need to be considered.

Evidence of PW4 /Injured

26. It is true that when “*he and the deceased were dashed*” they were dashed from backside. It is not clear from his evidence that they have seen the vehicle from the backside. It is but natural. He has never deposed whether the jeep driver was rash or negligent i.e. to say came in great speed or overlooking traffic situation. As said above, the speed is one of the criteria to determine the nature of driving. This ingredient is missing from his evidence. Secondly, there were two improvements pointed out from his evidence. They are as follows:-

“मी पडलेनंतर लागलीच उठून पाहिले असता सदर जिपच्या डाव्या बाजूचे चाक चंद्रकांत याचे डोक्यावरून गेल्याचे व त्यानंतर सदर जिप हि रस्त्याचे उजवे

बाजूस थांबल्याचे पाहिले.”

27. Further improvement is :-

“संबंधित अपघाताचे वेळी आरोपी हि पोलीस गणवेशात सदर जिप चालवित होती.”

28. His attention was brought to these improvements. He has not given any explanation. These facts are missing from police statement. PW10 has admitted that the witness has not stated both the facts when he gave police statement.

Findings by Appellate Court

29. Learned Additional Sessions Judge has considered both these contradictions in paragraph 13 of the judgment under challenge. However, when I have read over the entire findings, I do not find anywhere any observations made by the learned Additional Sessions Judge about “*what will be effect of this improvement*”. Learned Additional Sessions Judge could have observed that “*the improvements pertains to material particulars or to minor particulars, however, it is absent*”. Section 145 of Evidence Act and Section 162 of Cr.P.C. deals with this aspect. The law of appreciation says that the improvement needs to be excluded. As this exercise was not done by the Appellate Court and the Appellate Court believed this testimony

and convicted the Applicant and that is why, this Court is required to do this exercise in revisional jurisdiction. If this exercise is done, these facts are to be excluded from his evidence. So what next remains is:-

“he and the deceased were dashed from the backside and he fallen in the gutter and when he saw the left side wheel of the jeep it had gone over the head of the deceased”.

Re-appreciation by Appellate Court

30. When the Appellate Court has done re-appreciation of evidence, in nutshell, there were two circumstances available before him. **One** is the version given by PW1 on his own about the accident and **second** is version given by PW4 about the accident. As said above, mere act of dash does not fall within any of the Section of IPC. The act must be **rash** i.e. to say driving at great speed or it must be **negligent** i.e. to say the vehicle was driven in careless manner thereby not paying heed to the surrounding circumstances. When looked from this angle, what I find is that the Appellate Court was wrong in concluding that *“the act of driving jeep falls within the purview of rash or negligent driving”.*

Onus on Accused

31. When we say that it is proved that the “*Applicant drove the vehicle*”, no doubt, it was binding on the Applicant to give some explanation about the manner of the accident. One can say that through PW1 that explanation has come on record. In this eventuality, the prosecution could have succeeded in proving the offence only after they could have cross-examined PW1 on that new version or could have succeeded in proving the manner of accident through the witnesses who have turned hostile. Unfortunately, it has not happened in either way.

Conclusion

32. On this background, the prosecution lacks in proving the injuries to PW4 and injuries to deceased. It plays a vital role. These aspects were not considered by the Appellate Court. I am conscious that re-appreciation cannot be done while exercising revisional jurisdiction but when it comes to fault on the part of the Appellate Court, to overlook the lacuna in proving the injuries and when it comes to not considering the evidence of PW4 in totality (considering the answers given during the chief-examination and not considering improvements pointed out

during the cross-examination), certainly, the revisional Court is bound to exercise revisional jurisdiction. So I am inclined to allow the revision and set aside the conviction.

33. At this juncture, when it is asked to learned Senior Advocate Mr. Patil whether any compensation is to be paid to the legal heirs of the deceased, after taking instructions, he submitted that his client has not paid any amount. She is neither the owner of the vehicle nor claims to have received any notice of the compensation petition. But after taking instructions, he submitted that willingly his client will pay certain compensation to legal heirs of the deceased. In view of that, the following order is passed:-

ORDER

- (a) Revision is allowed;
- (b) The order of conviction dated 6th October 2017 passed by the Court of Additional Sessions Judge, Pune in Criminal Appeal No.293 of 2010 is set aside;
- (c) Applicant - Anita Sopan Ravalekar is acquitted for the offence punishable under Sections 279, 337 and 304(A) of IPC and under Section 184 of the Motor Vehicles Act.

- (d) Let Applicant to deposit Rs.2,00,000/- (Rupees Two Lakhs Only) before the Court of J.M.F.C., Bhore towards compensation to the legal representatives of deceased Chandrakant Tukaram Shivhare and Rs.5,000/- to the injured PW4 - Arun Chintamani Yadav within a period of 8 weeks from today.
- (e) On deposit of the amount, the Court of J.M.F.C., Bhore to disburse that amount preferably to wife/mother/father of deceased - Chandrakant Tukaram Shivhare and to PW4 - Arun Chintamani Yadav.
- (f) In preference to availability of relatives mentioned above, the amount be paid to first available relative. That is to say if wife is there, entire amount be paid to her and if wife is not available for any reason, to mother and in that chronology.
- (g) The amount is to be paid to single person available as mentioned above.
- (h) An undertaking be taken from him/her, that the amount be distributed amongst legal representatives available as

per personal law.

- (i) This direction is given on the basis of willingness shown by applicant through her counsel and this has nothing to do with rights of LR's and injured.
- (j) Revision Application is disposed of.
- (k) In view of that, all Interim Applications also stand disposed of.

[S. M. MODAK, J.]