

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

**CRIMINAL REVISION APPLICATION NO. 495 OF 2024
WITH
INTERIM APPLICATION NO. 3540 OF 2024**

Nitin Sarjerav Patil]
Age : 27 years, Occ. : Driver]
Residing at Abhay Nagar, Pratap Chowk,]
Sangli, District : Sangli]... Applicant

vs.

State of Maharashtra]... Respondent

Mr. Kuldeep Nikam a/w. Mr. Om N. Latpate :-	Advocates for Applicant.
Ms. S. E. Phad :-	APP for Respondent.
Aanand Mahadev Daingade :-	PHC – Police Station Miraj City

CORAM : S. M. MODAK, J.

DATE : 10th SEPTEMBER 2024

ORAL ORDER :-

1. Heard learned Advocate Mr. Nikam for Applicant and learned APP Ms. Phad for Respondent-State. The issue involved in this Revision is about legality of the conviction imposed by the Court of

Judicial Magistrate First Class, Miraj. Vide judgment dated 26th February 2016 the Applicant was prosecuted for the offences punishable under Sections 279, 304-A of Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988 [MV Act]. He was convicted only for two offences. For offence punishable under Section 304-A of IPC, the sentence is :-

- (i) One year Rigorous Imprisonment and
- (ii) Fine of Rs.5,000/- (Rupees Five Thousand only).

2. For offence punishable under Section 279 IPC, the sentence is :-

- (i) Two months Rigorous Imprisonment and
- (ii) Fine of Rs. 500/- (Rupees Five Hundred only).

3. He challenged this judgment by preferring an Appeal before the Court of Additional Sessions Judge, Sangli. The Appeal was dismissed on 13th August 2024. The conviction and sentence both are maintained. He was taken in custody on 13th August 2024.

4. The Applicant applied for suspension of sentence. At the outset Mr. Nikam submitted that there were five witnesses examined and only material witness is PW1. Considering limited issue involved, by consent, the Revision is taken up for final hearing.

5. ADMIT.

6. The issue is whether the evidence on record proves rash or negligent driving of the Applicant. The issue is whether both the Courts below have considered all the evidence or whether conviction is arrived at without considering the piece of evidence. According to Mr. Nikam, two pieces of evidence were not considered. One is certain admissions given by PW1 - Sachin Shivajirao Patil and Second the facts deposed by PW4 – Amrut Vijay_Patil. He was declared hostile. With the assistance of both of them I have perused oral and documentary evidence.

7. **The prosecution case in nutshell is as follows :-**

The accident took place on 11th February 2012 at about 11:30 a.m. on Sangli – Miraj road. The deceased Dnyanoba Bamane aged about 70 years had gone to the Gurukrupa Medical Shop owned by PW1 – Sachin Patil. One of the relatives of the deceased was admitted in Kripamai Hospital. The deceased was not carrying the prescription and he was asked to bring the prescription. The deceased was about to return the Medical Shop and when he was crossing the road, he was dashed by one Sumo vehicle. The vehicle was coming from Sangli road

and was proceeding towards Miraj.

8. After the accident, the deceased was taken to Mrunmai Hospital. He succumbed to the injuries and died on 20th December 2012. On the basis of inquiry done, PW5 – Police Head Constable – Najiroddin Mujawar registered the FIR. As stated above the Applicant was found to be the driver of offending vehicle and he was charge-sheeted.

9. During trial following are the prosecution witnesses :-

- (i) PW1 – Sachin Shivajirao Patil - eye witness – The owner of Medical Shop.
- (ii) PW2 – Sanjay Ramchandra Kamble - Panch to the seizure of Tata Sumo.
- (iii) PW3 – Sandeep Tanaji Sirsat - Panch to the spot panchnama.
- (iv) PW4 - Amrut Vijay Patil - Servant of Medical Shop
- (v) PW 5 – Head Constable – Najruddin Azij Mujawar

10. Defence of accused is that of denial. Learned APP is right in inviting my attention towards certain answers given in 313 statement. While answering question No. 2, “*the Applicant has admitted the accident took place on 11th December 2012 at 11:30 a.m. in front of Medical Shop.*” Answering question No. 4 he further admitted “*the*

vehicle number is ***MH-12 / EB-9121***. He also admitted “*he was the driver of that vehicle.*” (question No. 5). He also admitted “*the deceased Dnyanoba was dashed and he sustained injuries.*” (question No. 4).

11. Whereas according to Mr. Nikam both the Courts below have not given due weightage to certain answers given by PW1. According to him even if prosecution evidence is accepted as admitted, it nowhere proves rash or negligent act which is contemplated under Section 304-A of IPC. To buttress his submissions he relied upon following judgments :-

- (i) **State of Karnataka vs. Satish**¹
- (ii) **K. J. Francis vs. Commissioner of Income Tax** ²
- (iii) **Ravi Kapur vs. State of Rajasthan**³
- (iv) **George vs. State of Kerala**⁴

12. Whereas according to learned APP following facts are clear from evidence.

- (i) Accident took place on 11th December 2012 in front of Gurukrupa Medical Shop. He invited my attention to the spot Panchnama at Exhibit No. 20 and the evidence of spot panch

1 (1998) 8 SCC 493

2 (1998) 8 SCC 495

3 (2012) 9 SCC 284

4 Criminal Appeal No. 2024 : 3rd September 2024 : Supreme Court of India

witness – PW3. There were break marks noticed in the panchnama.

- (ii) The Tata Sumo in question was seized and the panch witness is PW2.
- (iii) The PW1 is eye witness and his presence on the spot is natural.
- (iv) The evidence of Investigating Officer - PW5 who has registered an offence after conducting initial inquiry. Even there was no mechanical defect noticed in that vehicle.
- (v) The injury noticed in Postmortem report. It was admitted by the Applicant. Learned APP invited my attention to the injuries noticed in column No. 19. There were fracture patella right side and fracture temporal bone noted. According to her, head injury was the cause of death.
- (vi) As referred above she invited my attention to certain positive answers given by the Applicant as there is no explanation.

13. I have read the judgments given by both the Courts below. The trial Court in paragraph Nos. 11 to 14 had given reasons for considering guilt of the accused. Findings are as follows :-

Findings by the trial Court

- (i) The trial Court has applied the test of a prudent man while appreciating the evidence. The trial Court found evidence of PW1 reliable. The trial Court noticed there was no reason for PW1 to punish the Applicant and hence just because the deceased was his consumer, PW1 cannot be disbelieved.

(ii) The trial Court has discussed about rash and negligent act. On **one hand** trial Court considered the defence of the Applicant that the deceased slipped his leg from road divider and then fallen down and on the **other hand** noticing break marks for 10 feet. According to Mr. Nikam the vehicle was Tata Sumo and considering the length, these break marks may be possible. He also submitted that the road generally having heavy traffic.

14. The trial Court was fully conscious about version of witnesses.

Whereas the Appellate Court gave following reasons :-

Findings by the Appellate Court

(i) The witness PW1 has denied the suggestion given to him that the accident took place due to deceased fallen down as he was customer he was deposing falsely. (Paragraph No. 14).

(ii) The accused has not offered any explanation about incident nor he has relied any defence witness. (Paragraph No. 16)

(iii) There is no evidence to infer that the deceased fallen down due to imbalance and came in contact with the offending vehicle.

Consideration

15. It is true that every accident is not a punishable offence. It is punishable only when the act is either rash or negligent. If the vehicle is driven at highest speed, this is one of the factor for considering

rashness. When a person drives a vehicle without paying attention to the prevailing situation, that is to say he jumped the signal and then dashed another vehicle, it is said that he is negligent.

16. It is true that in case of **Satish** [supra] Hon'ble Supreme Court has considered in paragraph No. 4 that 'High Speed is a relative term'. It is true that the maxim *res ipsa loquitur* is also applicable criminal trial. But ultimately it is depends upon the available material. When this principle is invoked, the Accused is bound to explain how the accident took place and that he was not negligent. Whereas in case of **Ravi Kapur** [supra] Hon'ble Supreme Court in paragraph No. 20 again discussed about the doctrine of *res ipsa loquitur*. This doctrine comes to an aid at subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. Merely on the basis of this doctrine the prosecution cannot escape the responsibility of proving ingredients of offence. In case of **Kisan Pandurang vs. State of Maharashtra**⁵ the Accused was driving bus. He was under the influence of liquor so also the Conductor. The bus fallen from the bridge. In paragraph No. 13 it is observed –

5 2004 (1) Mh.L.J.

The rashness is of such a degree, so as to amount to taking hazard, knowing that the hazard, was of such a degree, that injury was most likely to be occasioned thereby.

17. Whereas in case of **George** [supra] the sentence was reduced.
18. According to learned APP facts of those cases are different and the conclusion drawn cannot be made applicable to this case. There cannot be doubt about proposition that the conclusion drawn in particular case depends upon those facts. Slightest difference of the fact may lead to different conclusion.
19. On the basis of above principles the evidence has to be considered. It is true that appreciation cannot be done in Revisional jurisdiction. Appreciation in the sense whether the evidence of particular witness is reliable or not. Appreciation in the sense whether particular piece of evidence corroborates with another piece of evidence. This cannot be done. However Mr. Nikam is on different point. According to him, both the Courts below have come to conclusion without considering the answers given in cross-examination by PW1. I have seen it.
20. It is true that PW1 – Sachin Patil is having Gurukrupa Medical

Shop near Krupamai Hospital. He has narrated whatever happened before the accident. That is to say the deceased came to his shop, he sent him back for bringing prescription and was about to come his shop and while crossing the road, accident took place. He has categorically stated registration number of that vehicle. He has identified the Accused before the Court. **The answers during cross-examination are as follows :-**

“He has not stated in his statement that the deceased has crossed the road and within 10 minutes he was about to come towards hospital.” This admission is given during cross-examination.

21. If such admission is there, there is no need to peruse the statement under Section 161 of the Code. Such statement can be used only for contradiction. If such answer is given, the trial Court ought to have considered this answer. Ultimately, what is appreciation? It is not only to consider the facts stated during chief examination. The Court has to consider evidence in its entirety and then come to conclusion. **Admittedly, this admission was not referred by both the Courts below.**

- (ii) PW1 went to spot because he saw several people assembled there.
- (iii) About witnessing the accident, “**he has not stated in his police statement. At the same time suggestion was given to him that he**

has not seen the accident. It was denied”.

22. It is true that PW1 is the only eye witness. It is not clear whether other eye witnesses were available or not but the facts remains except him, there is no witness to the accident.

Brake-marks

23. Another circumstance is noticing the break marks on the road. It is true if the break marks are there, it indicates that breaks were applied. It is very well true that in 313 statement the Applicant has admitted that the deceased sustained injuries due to dash and he was shifted to the hospital from the same vehicle. He has further admitted that he was driving that vehicle.

24. Now Court is having two circumstances **One** is evidence of PW1 and about break marks and **another** is positive answers given by the Applicant as stated above. From the answers given by the Applicant one can very well say that the Applicant was driving that vehicle and dash given by him to the deceased. Few suggestions were given to PW1 about denial of the driving. It has no force. **Whether these admissions relieves the prosecution from discharging burden?** It is very well true that PW1 has not stated anything about the speed of the vehicle. It is

settled law there has to be connection in between alleged act and their consequences. That is to say earlier act of rashness and negligent driving on one hand and the death on the other hand. Merely because there is a death as consequence, we cannot presume that the driver was rash or negligent. The rashness and negligence has to be proved independently.

25. Unfortunately, trial Court has not considered the answers given by PW1 during the cross-examination. PW1 has not stated about the crossing of the road by the deceased after 10 minutes. It means this fact was stated before the Court for the first time. Both the Courts below have overlooked it. **Both the Courts below have failed in their duty of considering this material.**

26. This Court has noticed that there is trend amongst judicial officers to give judgments only after considering the particular materials. They are failing in their duties in considering entire evidence that is to say facts stated during chief-examination and cross-examination. Both the Courts below ought to have considered admission during cross-examination and then they ought to have come to an appropriate conclusion. Due to this approach, Revisional Court

certainly have jurisdiction. It not fall within the realm of appreciation of evidence. This is a job involving considering particular piece of evidence. Revisional Court can certainly do this.

27. The second answer during cross-examination is PW1 went to the spot after hearing the noise. When he says so, the facts stated during chief-examination has to be tested on the basis of this answer. When considered together, one can say that there is every doubt whether the PW1 has actually seen the deceased was dashed by the Applicant while driving rashly / negligently.

28. There is human tendency to infer facts. PW1 might have went to the spot after the Applicant gave dash to the deceased. On that basis he might have drawn an inference that the Applicant gave a dash. Even though there was a dash one cannot say that the Applicant was rash or negligent. Similarly, on the basis of break marks one cannot infer about this fact. Even though it is true that it is by way of improvement but PW4 has stated that due to imbalance the deceased fell down from divider at that time and then he came to contact with the vehicle. This was the observation by both the Courts below.

29. On the basis of above facts, prosecution ought have made an

attempt to examine more witnesses, which may available or may not be available. If they are not available, we cannot convict the Accused on the basis of inadequate evidence. On the basis of above, wrong appreciation of evidence is erroneous. It cannot be sustained in the eyes of law. It needs to be set aside. Applicant succeeds in the Revision.

30. On 9th September 2024 a query was made with Mr. Nikam about payment of compensation under the Motor Vehicles Act. He produced one settlement recorded by the learned Chariman, Tribunal, Sangli. Compensation was paid to the tune of Rs.2,20,000/- (Rupees Two Lakh Twenty Thousand only). In spite of that Mr. Nikam on the basis of instructions received from his client is willing and ready to deposit Rs.50,000/- (Rupees Fifty Thousand only) before the trial Court. Hence the order :-

ORDER

- (i) Order of conviction passed by the Judicial Magistrate First Class, Miraj on 26th February 2016 for the offences punishable under Section 304-A and Section 279 of the Indian Penal Code and confirmed by the Court of Additional Sessions Judge, Sangli in Criminal Appeal No. 79 of 2016 on 13th August 2024 are set aside.

- (ii) The Applicant – Nitin Sarjerav Patil is acquitted for the offences punishable under Section 304-A and 279 of the Indian Penal Code.
- (iii) He be released from jail, if not required in any other offence.
- (iv) Bail bonds of the Applicant stands cancelled.
- (v) Submission made on behalf of Applicant to deposit Rs.50,000/- (Rupees Fifty Thousand only) is accepted. He can deposit it before the trial Court within a period of two weeks from today.
- (vi) The trial Court is at liberty to call the legal representatives of the deceased – Dnyanoba Bamane and disburse the amount on verifying their identity.
- (vii) Parties to act upon authenticated copy of this order.

31. Interim Application is also disposed of.

[S. M. MODAK, J.]

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2024.10.01
15:47:39 +0530