



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 22 OF 2010

Vilas s/o. Hanmanthrao Kulkarni
Age : 49 years, Occ. Service,
Resident of Flat No. 401,
Prakash-Uday S. Amb, Ambegaon Road,
Katraj, Pune-46.

... Applicant
[Orig. Accused]

Versus

The State of Maharashtra

... Respondent

.....
Mrs. Rashmi S. Kulkarni and Ms. Namita P. Thole, Advocates for the
Applicant.
Mr. K. K. Naik, APP for Respondent/State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.12.2024

Pronounced on : 07.01.2025

JUDGMENT :

1. Revisionist herein takes exception to the judgment and order passed by learned Principal Sessions Judge, Dhule dated 20.01.2010 in Criminal Appeal No. 86 of 2007, arising out of the judgment and order passed by learned J.M.F.C., Sakri in S.T.C.C. No. 1331 of 2000 dated 16.08.2007 convicting revisionist for offence punishable under Sections 304-A, 279 of IPC and Section 184 of the Motor Vehicles Act.

FACTS IN BRIEF

2. In the afternoon of 20.09.2000, girl named Sunanda, who was walking towards village Devnagar, taluka Sakri, was hit by Gypsy vehicle driven by revisionist. According to prosecution, the vehicle was being driven in high speed and in rash and negligent manner, giving dash to the pedestrian girl, who died on the spot itself. On report of revisionist himself, crime was registered and investigated by PW4 API Gujar and revisionist was duly chargesheeted and tried by learned JMFC vide S.T.C.C. No. 1331 of 2000 and was held guilty for offences punishable under Sections 304-A and 279 of IPC as well as Section 184 of the Motor Vehicles Act.

3. Exception was taken to the said judgment before Sessions Court vide Criminal Appeal No. 86 of 2007, but the same came to be dismissed by the learned Sessions Judge vide judgment and order dated 20.01.2010. Hence, present revision.

SUBMISSIONS**On behalf of the Applicant :**

4. Pointing to the evidence, learned counsel for revisionist would submit that, admittedly accident took place on the National Highway

and moreover, on tarmac. Taking this Court through the evidence of PW2 Prakash, it is her submission that, though this witness claims to be an eye witness, deceased girl herself ran over the road. That, girl was said to be grazing horses. That, evidence of PW3 Zunkabai also suggests that on call given by her and PW2 to hurry up, the girl came across the vehicle driven by revisionist and the unfortunate accident took place. That, both, PW2 and PW3, who are star witnesses, admit a truck also passing on the road but in opposite direction. Therefore, it is submitted that, there is possibility that the girl, seeing the truck, hesitated and came towards the vehicle driven by revisionist.

5. Learned counsel pointed out that, revisionist himself had lodged report at police station. She emphasized that, in cases of road traffic accident, it is essential for prosecution to demonstrate and establish the exact spot of accident. But here, according to her, answers given by spot pancha (PW1) clearly show that spot was not drawn immediately and prosecution has not proved that accident took place merely because of rash or negligent driving by revisionist.

6. Taking this Court through the observations of both, trial court and first appellate court, it is her submission that there is incorrect appreciation of available evidence. Neither negligence nor rashness,

which are *sine qua non*, are proved beyond reasonable doubt. That, learned trial court failed to appreciate that, any information given by revisionist at police station was inadmissible as was hit by Section 25 of the Evidence Act. That, both courts below failed to appreciate such legal aspect and hence, learned counsel urges to interfere by allowing the appeal.

7. In the alternative, learned counsel would submit that, currently revisionist who is over 65 years of age, deserves to be given benefit of Probation of Offenders Act and moreover, he is ready to compensate the victim.

On behalf of the Respondent-State :

8. Supporting the judgment and orders passed by both, learned trial court as well as first appellate court, learned APP would submit that, there is no denial that revisionist was driving the offending vehicle in excessively high speed. The girl died on the spot on being hit by the said vehicle. There was disregard to the traffic on the road. Essential ingredients for attracting charges of Section 304-A and 279 of IPC being available, both courts below gave concurrent and reasoned findings. Hence, he prays to dismiss the revision.

PROSECUTION EVIDENCE

9. In support of its case, prosecution has relied on oral as well as documentary evidence. Role and status of the four witnesses examined by prosecution and sum and substance of their evidence is as under :

PW1 Tryambak acted as pancha to spot panchanama Exhibit 20.

PW2 Prakash is the cousin brother of deceased Sunanda. He claims to be the eye witness. In his evidence at Exhibit 33, he deposed as under :

“1. Sunanda @ Sonu is the daughter of my maternal aunt. The incident took place before 6 years at about 2.30 p.m. at Deonagar on the Surat Nagpur highway. I was proceeding to the school. At that time 3-4 girls were grazing the horses by the side of the road. One of them was Sunanda. Said girls were present on the left side of the road, if one facing towards the Surat side. One maroti Gipsy came from Dhule side. Gipsy approached in a high speed and gave dash to Sunanda. The Gypsy driver stopped the vehicle after some distance. We shouted and the villagers gathered. The gypsy driver drove the Gypsy. Sunanda sustained injury on the forehead and left ear. She died on the spot. After some time, police came to the spot. They prepared the panchanama and took the body to the Rural Hospital, Sakri. Accident took place due to the fault of the

Gypsy driver. I do not remember the number of the Gypsy maroti vehicle.”

PW3 Zunkabai also claims to have witnessed the accident. Her evidence at Exhibit 35 is as under :

“1. The incident took place at about 2.30 p.m. on Dhule Surat road at Deonagar road. At that time, I, Dhanabai, Sunandabai and one man namely Khatal were present. I, Dhanabai and Sunandabai were proceeding towards the village by the side of the road. At that time one truck proceeding from Dhule to Sakri on the road. Truck gave dash to Sunandabai. So Sunandabai died on the spot. She sustained injury on forehead and head on the back side. Her skull was damaged. The truck driver went away with the truck. The accident took place due to the fault of the truck driver.”

As she was not supporting prosecution, she was cross-examined by APP himself with permission of the court.

PW4 A.P.I. Anil Gujar is the Investigating Officer.

10. Here, conviction is under Sections 304-A and 279 of IPC and Section 184 of the Motor Vehicles Act. Before adverting to the evidence and re-appreciating and analyzing it, it would be fruitful to reproduce the required essential ingredients.

The nature and scope of Section 304-A was discussed in the case of ***Naresh Giri v. State of M.P.*** (2008) 1 SCC 791. Section 304-A says :

“Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

The requirements of this section are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that rash or negligent act of accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. The prosecution must prove that it was that rash or negligent act of his that caused the death of the deceased.

Section 279 IPC reads as under :

“279. Rash driving or riding on a public way - Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

In order to constitute an offence punishable under Section 279 IPC, the following ingredients must be made out :

- i) There must be rash or negligent driving or riding;
- ii) It must be on a public way; and
- iii) The driving or riding must be in a manner so rash or negligent so as to endanger human life or to be likely to cause hurt or injury to any person other than the driver.

Section 184 of the Motor Vehicles Act provides for punishment for driving vehicle in speed or in a manner which is dangerous to public life.

ANALYSIS

11. Here, there is no controversy that deceased Sunanda, a minor, met with road traffic accident on 20.09.2000. There is further no dispute that revisionist was behind the wheels of the offending vehicle. Crucial evidence is of PW2 and PW3 as, according to prosecution, they both were in the company of the deceased. It is also not disputed that, accident took place on a National Highway and that too, on a tar road. It is settled position of law that it is incumbent upon prosecution to establish both, negligence as well as rashness. Negligence cannot be presumed or assumed. Here, as pointed out, PW1 who acted as pancha to spot of occurrence, in cross has

categorically admitted that he is unable to state the exact spot where blood stains were found.

12. PW2 Prakash, who was in the very company of deceased girl, in his above discussed evidence has testified that, 3-4 girls were grazing horses **by the side of the road** and one of them was deceased Sunanda. Admittedly, accident had taken place **on the tar part of the National Highway**. Considering such circumstances, inference can be drawn that the girl has come over the National Highway. Specific defence taken by revisionist in trial court is that, the girl, while crossing the Highway, saw a truck passing in opposite direction in which vehicle in question driven by applicant was proceeding, and deceased came towards vehicle driven by revisionist. On line of such defence, PW2 was cross-examined and it is emerging that, in para 4 of his cross, this witness has admitted that one truck indeed was proceeding towards Dhule side, i.e. in the opposite direction to which vehicle driven by revisionist was moving. Though PW2 denied suggestion that, victim tried to cross the road and seeing a truck, she suddenly came beneath the Gypsy, PW3, another witness accompanying deceased, in para 2 of her cross, has admitted that she and PW2 gave call to deceased to move fast. With such answers coming in cross, case of defence does get probabalized to some extent,

that the girl herself came over the National Highway and there is every likelihood that the girl, seeing the truck moving in the opposite direction, came towards the vehicle of revisionist.

Though PW2 deposed that victim and other girls were grazing horses by the side of the road, question arises is, why and how the girl came on the tarmac part of the National Highway. Prosecution does not dispute that the mishap took place on the tar of the National Highway. There is no evidence to show that vehicle driven by revisionist had left the tar part of the road and gone towards the girl. There is no evidence to show that the girl was standing still. Apparently, prosecution itself has come with the case that accident took place on National Highway and that too on the tar. Equally, there is no evidence regarding excess or high speed of the vehicle driven by revisionist. Prosecution is expected to prove negligent driving also. Evidence to this extent has also not come on record. Unfortunately, scene of occurrence panchanama is not drawn on the same day and PW1 pancha admitted that it was drawn on the next day, and he is also unable to state exact date of drawing panchanama. In cases relating to road traffic accidents, spot panchanama is significant and decisive to fix responsibility. Here, there is fragile or no evidence about actual spot of mishap.

13. Therefore, in the light of above discussed evidence, more particularly, there being no concrete evidence about excessive high speed or vehicle being driven in negligent and dangerous manner, finding recorded by both courts below cannot be allowed to be sustained and hence same needs interference. Resultantly, following order is passed :

ORDER

- I. The Criminal Revision Application is allowed.
- II. Conviction awarded to the revisionist Vilas s/o. Hanumantrao Kulkarni by learned J.M.F.C., Sakri in S.T.C.C. No. 1331 of 2000 for offence punishable under Sections 304-A, 279 of IPC and Section 184 of the Motor Vehicles Act on 16.08.2007 and confirmed by learned Principal Sessions Judge, Dhule by order dated 20.01.2010 in Criminal Appeal No. 86 of 2007, stands quashed and set aside.
- III. The revisionist stands acquitted of the offence punishable under Sections 304-A, 279 of IPC and Section 184 of the Motor Vehicles Act.
- IV. The bail bonds of the revisionist stand cancelled.
- V. The fine amount deposited, if any, be refunded to the revisionist after the statutory period.

[ABHAY S. WAGHWASE, J.]