



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 430 OF 2006

The State of Maharashtra
Through Police Station,
Loha, Dist.Nanded.

....Appellant

Versus

Shivaji Venkatrao Ghorband
Age: 38 years, Occu.: Service,
R/o. : Pangra, Tq.Loha, Dist.Nanded.

.....Respondent
(Ori. Accused)

.....
APP for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr.Aniket V. Wadvale h/f.
Mr.A.M.Gaikwad

.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 13 AUGUST, 2025
PRONOUNCED ON : 10 SEPTEMBER, 2025**

JUDGMENT :-

1. Appellant State hereby takes exception to judgment and order dated 07-03-2006 passed by learned Judicial Magistrate First Class, Loha, in SCC No.626 of 1999, thereby acquitting present respondent from offence under Sections 279 and 238 of the Indian Penal Code.

CASE OF PROSECUTION IN BRIEF

2. In short, before trial Court, it is the case that, prosecution was

launched against the present respondent (original accused) on the premise, that, on 25-12-1997 at around 12:00 Noon, respondent accused drove Motorcycle over Latur - Nanded Road in a rash and negligent manner i.e. by endangering human life and personal safety of others and caused grievous hurt to victim PW3 Venkat Narhari Wattamwar.

PW6 Shridhar Abadji Mekewar, is the then PSO, who registered complaint and carried out initial investigation. Then, the investigation was handed over to PHC Potdar.

On gathering sufficient evidence, accused was chargesheeted for above offence. Particulars of charge were explained to the accused by the learned trial Judge and on denial of charge, he was tried vide SCC No.626 of 1999. In support of its case, prosecution has adduced evidence of in all seven witnesses.

On appreciation of oral and documentary evidence, learned trial Judge held that prosecution failed to bring home the charges and thereby acquitted present respondent. Hence, instant appeal.

SUBMISSIONS

On behalf of appellant State :

3. Learned APP would submit that there was clear, cogent and

convincing evidence about accused riding Motorcycle on a public road in excessively high speed, in rash and negligent manner. He had given dash to PW3 Venkat, who suffered grievous injury and ultimately was required to lose his lower limb as it was required to be amputated. According to learned APP, there was not only evidence of eye witness, but also evidence of medical expert. Thus, requirements and essential ingredients for attracting both the charges under Sections 279 and 338 of the IPC were very much available. Spot panchanama, which was proved, demonstrated that, there was utter negligence and rashness on the part of accused and therefore, he ought to have been held guilty. The same not having happened, and rather accused being acquitted, learned APP urges for interference by setting aside impugned judgment and order of acquittal by allowing the appeal.

On behalf of Respondent :

4. Per contra, learned counsel for respondent supported the findings of the learned trial Court and ultimately submitted that prosecution has miserably failed to bring home the charges beyond reasonable doubt. He relied on the ruling of the Hon'ble Supreme Court in the case of *Chandrappa and Others v. State of Karnataka*, (2007) 4 SCC 415.

EVIDENCE BEFORE TRIAL COURT

5. In support of its case, prosecution has adduced evidence of in all seven witnesses. The sum and substance of their evidence is as under:

PW1 Vasant Motiram Honrao is an independent witness. He deposed as under :

“1) I know to the accused. On 25/12/97 I was present in my shop at Baliraj Market Shivaji Chowk, Loha. On that day accused was coming on motor-cycle and one Wattamwar also proceeding on motor-cycle. At that time accused gave dash to the motorcycle of Wattanwar and thereafter he left the spot. Thereafter some persons gathered on spot and they referred to the Wattamwar towards Hospital. The accused present before court is same. The accused was driving his motorcycle in high speed.”

PW2 Ram Sakahari Wattamwar is nephew of injured. He deposed as under :

“1- Incident took place on 25/12/1997 near Shivaji Chowk at Loha at about 12 noon. I was at my shop. The grocery shopkeeper Vasant Motiran Honrao informed me by telephonic massage that my uncle met in the accident near Shivaji Chowk, of the Yezdi motorcycle. Name of my uncle Venkat Narhari Wattamwar. On receipt of information I went to the spot. My uncle Venkati was lying on the ground. His right leg was fractured. After 15 days, we told doctor to get examine the injured by other because injured had no relief. There-upon doctor told to us that we have too much money and asked to take away the injured. We got examined injured to Doctor Kurshale who advised us to take away injured by Doctor Kurshale who

advise us to take away Injured to Pune at Sancheti Hospital, as injured is suffering from Gangring. Dr. Khursale removed the Plaster & observed the injury which was rot. My uncle was in the hospital of Bhandari for one month. Then he was taken to Sancheti Hospital Pune. Where he was admitted and treated. Doctor told that injured suffering from Gangring and his leg should be cut. On the third day the leg was cut under the Knee. I myself lodged complaint in the police station Loha. Shivaji Gorbhand was driving the Yezdi motorcycle at the time of incident. He drove his motorcycle in zig zag manner. I do not know Shivaji Ghorband. I lodged complaint in the Police Station after one month.”

PW3 Venkat Narhari Wattamwar is injured. He deposed as under :

“1. I know the accused. Incident took place in the year 1997 at about 12.00 noon in Shivali Chowk in front of Hotal Jagadamba on Lature-Nanded road. At that time I was standing in front of shop of Vasant Honrao, I was standing on my Hero Honda motorcycle. Nanded Latur road is South-North road. I was on the western side of the road. I was alone. One Yezdi motorcycle came from Loha side. It came from front side and dashed me. I fell down. I sustained injuries to my right leg and hand. The accused before the court was the driver of Yezdi motorcycle, He was in high speed. The accident took place due to fault of accused, Vasant Honrao, Ramkishan, Dyanoba Shivnikar and ten to twelve other persons gathered there. I was put in the jeep and directly taken to Nanded hospital. I was taken to the hospital of Dr. Bhandari. Where I was admitted, I was in the hospital for 15 to 20 days there. I have no knowledge about further treatment. Then I was taken to Poona hospital for treatment as doctor told that injury is not recovered and I may be taken to Pune. Then I was taken to Sancheti hospital Pune.”

PW4 Dyanoba Madhavrao Shingare is spot pancha. Spot panchanama is at exh.24.

PW5 Kishan Maroti Jakapure is an independent witness. He deposed as under:

“1. I know the accused, and the complainant & injured Venkat Vatamar too. Accident took place on 25/12/97 at about 12.00 hours in front of Ranjeet Hotel on Nanded-Loha road. At the time of accident I was taking tea on Jagadamba Dhaba. The injured Venkat was talking to one Vasantryao in front of his shop on road. They were stopped on eastern side of road. I was present near about 100 ft. from the spot of accident. The injured Venkat was sitting on motor-cycle. At that time one motor-cycle came from Loha side and gave dash to injured Venkat. Therefore, injury sustained to the right leg of Venkat and he sustained fracture. The accused was driving the said motor-cycle. He is absent today. I can identify if shown to me. The accused was driving the motor cycle in high speed. The accident occurred due to negligence of Shivaji. Therefore Venkat was referred at Nanded in a private hospital. Doctor examined to the injured.”

PW6 Shridhar Abadji Makewar is Police Head Constable, who registered crime no.14 of 1998.

PW7 Dr.Prakash Mohanlal Bhandari is Medical Officer, who examined injured. He deposed as under :

“1) I know injured Venkat Wattamwar. I was practising in my hospital at Nanded on 25/12/97. I have examined injured on the same date at about 2:30 pm. On examination I found fracture Tibia Fibula upper 1/3rd involving joint on Right leg. I have done the plaster on injured. He was admitted in my hospital since 25/12/97 to 17/1/98. After removing plaster there was swelling, he was kept on posterior slab and thereafter skeleton

traction. Thereafter he was having neurovascular problem. Therefore, he was shifted at Puna. He was referred for the purpose of plastic surgery and further treatment. He was referred to Sancheti Hospital Puna. Today I have issued injury certificate. Now shown to me is same, bears my signature, its contents are true and correct. It is marked at exh. 32. The injury shown in injury certificate is possible if a person gave dash by another motor-cycle."

6. In view of charge, it is incumbent upon prosecution to first and foremost establish that accused was riding on a public way and he was driving vehicle under his control in rash and negligent manner and thereby he had endangered human life or was likely to cause hurt or injury. Thus, the core of the offence is rash and negligent manner of riding.

For attracting charge under Section 279 of the IPC, following ingredients should be demonstrated :

Firstly, rash driving or riding on a public way

Secondly, such driving or riding must be negligent to the point of endangering human life or causing harm or injury.

Thus, to convict a person to above charge, it must be shown that above two ingredients are not only demonstrated but are to be established.

Essential ingredients of Section 338 of the IPC are as under :

- . *Accused did some act;*
- . *He did it rashly or negligently;*
- . *The act was such as to endanger human life or personal safety of others;*
- . *Grievous hurt was caused in consequence of such act.*

ANALYSIS

7. Here evidence of **PW1** Vasant, **PW2** Ram, **PW3** Venkat and **PW5** Ramkishan is of importance. Except PW3 (who is a victim), all others claim to be eye witnesses.

On re-appreciation of evidence of **PW1** Vasant, it is emerging that, on 25-12-1997, accused came on Motorcycle at Baliraj Market Shivaji Chowk, while Wattamwar was also proceeding on Motorcycle and accused gave dash to Wattamwar and left the spot and Wattamwar was taken to hospital. According to him, accused was driving Motorcycle in high speed.

PW2 Ram claims that on relevant day and time, he was in his shop and he claimed that grocery shop owner Vasant Motiram Honrao informed him on telephone that his uncle met with an accident and so accordingly he went to spot and that his uncle had suffered fracture and thereafter, required to be taken initially to local Doctor and thereafter, to Sancheti Hospital. His evidence shows that

he has hearsay information.

PW3 Venkat is the victim and according to him, while he was standing in front of shop of Vasant i.e. PW1, one Yezdi Motorcycle came from Loha side i.e. front side and dashed him and so he fell down and suffered injuries to right leg and hand. According to him, accident took place due to fault of accused.

8. It is to be noted that, according to PW1 Vasant, while PW3 Venkat was proceeding on Motorcycle, he suffered dash at the hands of accused, but contrary to it, PW3 Venkat i.e. victim has stated that he was standing and thus stationary and therefore, evidence of PW1 Vasant and PW3 Venkat are inconsistent.

9. **PW5** Ramkishan is alleged eye witness and according to him, while he was taking tea at Jagadamba Dhaba, injured Venkat was talking to Vasantrao. At that time, this witness was 100 feet away from the spot. That, while injured was sitted on Motorcycle, one Motorcycle came from Loha side and gave dash to injured causing injury to leg of Venkatrao.

10. Therefore, on complete re-appreciation of above evidence, what is conspicuous is that none including PW3 Venkat, deposed about vehicle being driven by accused in rash and negligent manner, which is the very essence for attracting the charge. Therefore, very required ingredients of Sections 279 and Section 338 of the IPC are not available in the prosecution evidence. No doubt, the victim has suffered fracture injury, but as regards to amputation of his leg is concerned, which is emphasized by learned APP, it is not attributable to the accident and is rather attributable to further treating Doctor. Injured had suffered only fracture injury, but after a month or so, as the said fracture injury did not heal, further amputation was required to be undertaken, but it is not attributable to only alleged dash.

11. For above reasons, when the very essence of requirements of charge being missing, no fault can be found in the order of acquittal passed by the learned trial Court. Hence, the following order :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE