

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

CRIMINAL APPEAL NO.659 OF 2004

The State of Maharashtra
Through Police Station Officer,
Police Station, Atpadi,
Taluka Atpadi, District Sangli ...Appellant

vs.

Adam Sayyad Mulani
Age 40 years, Occ. Tempo Driver
R/at Natepute,
Taluka Malshiras,
District Solapur ...Respondent

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Taluka Malshiras,
District Solapur ...Respondent

Ms. Rashmi Tendulkar APP for the Appellant in both Appeals.

Mr. Shailesh Chavan i/b Milind Deshmukh for the Respondent in both Appeals.

CORAM : SHYAM C. CHANDAK, J.

DATED : 12th MARCH 2025

JUDGMENT :

. Both the Appeals arose out of the same impugned Judgment and Order dated 9th January 2004, in Regular Criminal Case No.70 of 2003, passed by the learned Judicial Magistrate, First Class, *Atpadi*, District Sangli, thereby the Respondent (“**the accused**”) has been acquitted of the charge of the offences punishable under Sections 279 and 304-A of the I.P.C. and Section 181 read with Section 3 of the Motor Vehicles Act, 1988 (“**the Act**”) but convicted for the offence punishable under Section 187 read with 134 of the Act and sentenced to suffer imprisonment till rising of the Court and to pay a fine of Rs.500/-, in default, to suffer ten days simple imprisonment.

1.1) Criminal Appeal No.659 of 2004 has challenged the said acquittal, whereas, Criminal Appeal No.660 of 2004 seeks enhancement of the sentence imposed for the said offence punishable under Section 187 read with 134 of the Act.

2) Heard Ms.Tendulkar, learned APP for the Appellant-State and Mr.Chavan, learned Advocate for the accused. Perused record.

3) The prosecution story is that, on 27/02/1999, at about

11:30 am, three school girls, namely, Supriya Khulpe (“**the deceased**”), Swati Sagar and Ashwini Misal, all aged 12 to 14 years, came at village Salshing Mala, on *Dighanchi – Atpadi* road, by travelling in a goods tempo. There, the girls alighted from the said tempo near the field of Shankar Mohite, as they wanted go to the house of Ashwini Misal by crossing the road. Swati Sagar and Ashwini Misal crossed the road. However, when the deceased was crossing the road, the accused came there driving his tempo bearing MH-04/S-7777 (“**offending tempo**”) and gave dash to deceased. As a result, the deceased sustained serious injuries and died on the spot. As alleged, after the accident the accused fled from the spot leaving the tempo. PW5-Balkrushna Khulpe, father of the deceased, filed a *Vardi* Report of the accident with *Atpadi* Police Station therein he narrated the incident as above. Police registered the said *Vardi* as Motor Accident No.07 of 1999.

3.1) Mr. C. B.Mane, Police Head Constable conducted the investigation during which he recorded a spot panchnama, inquest panchnama and examined the witnesses. Based on the investigation material, an F.I.R. was filed alleging that the accident occurred due to rash and negligent driving of the offending tempo. Said F.I.R. came to be registered at Crime No.24 of 1999, under Sections 279 and 304-A

of I.P.C. and under Sections 130/179, 184 and 134/186 of the Act, against the accused. On completion of investigation, Mr. Mane, PHC filed charge sheet before the Court of the learned J.M.,F.C. at *Atpadi*.

4) Thereafter, the learned Magistrate framed the charge of the offences punishable under Sections 279 and 304-A of I.P.C. and under Section 3/181 and 134/186 of the Act, to which the accused pleaded not guilty and claimed to be tried.

5) To bring home the charge to the Respondent, the prosecution examined following witnesses and closed its evidence :-

Rahul Narayan Waghmare	(PW1/Exh.16)	Eye witness
Appasaheb Sadashiv Gonjari	(PW2/Exh.18)	Spot panch
Swati Dnyaneshwar Sagar	(PW3/Exh.20)	Eye witness
Bhagwan Nagu Gonjari	(PW4/Exh.21)	Eye witness
Balkrishna Nagnath Khulpe	(PW5/Exh.24)	<i>Vardi</i> Report
Kisan Nivrutti Singnapure	(PW6/Exh.25)	Eye witness

6) Thereafter statement of the accused under Section 313 of Cr.P.C. recorded. Defence of the accused was of total denial and false implication. It was his specific defence that the deceased crossed the road all of sudden and, she herself dashed to the door side of the driver's cabin of the tempo. And he was not at fault in the accident.

7) After considering the prosecution evidence, the trial Court

acquitted and convicted the accused for the offences charged, as stated above. Hence, Appeal.

8) Mrs. Tendulkar, the learned APP vehemently submitted that PW3 and PW4 witnessed the accident. They have categorically deposed that when the deceased was crossing the road, the offending tempo driven by the accused came there and, dashed to deceased. She submitted that the accident occurred in day time. The deceased was within the vision of the accused. The road was sufficient broad and free from obstructions. Yet, the accused could not avoid the accident. These facts and circumstances clearly established that the accused was not careful while driving his tempo. As such, this is a clear case of rash and negligent driving. However, the trial Court acquitted the accused as above, which is incorrect. She submitted that a young girl died in the accident. However, the accused fled from the spot without informing the accident to police. This shows that the accused did not show any responsibility towards the deceased. The offence under Section 187 was then punishable with imprisonment of three months or with fine of Rs.500/- or with both. Yet, very minimum sentence has been imposed for the said offence. Hence, the accused be convicted and appropriate sentenced be passed.

9) In contrast, Mr.Chavan, the learned Advocate for the accused submitted that the evidence presented by the prosecution clearly indicates that the deceased crossed the road all of a sudden. At the same time, she was not watchful and nor she ensured as to whether any vehicle was passing from the road or not. Consequently, the deceased dashed to the door side of the driver's cabin of the offending tempo and sustained injuries. He submitted that it was not the case that the accused was driving his tempo dangerously. Therefore, the trial Court acquitted the accused of the charge under Sections 279 and 304-A of the I.P.C., which is not erroneous. Mr. Chavan submitted that considering the facts of the case, that the accused was poor and he has four children, minimum sentence was imposed on the accused for the offence of Section 187 of the Act. Therefore, the said sentence may not be enhanced. Additionally, Mr. Chavan urged that the accident occurred in the year 1999. Presently, the accused is aged 65 years. Therefore, this is not a fit case to enhance the sentence.

10) Two questions arise for determination. First; whether the accused is guilty of the offences punishable under Sections 279 and 304-A of the I.P.C. or not. And second; whether the sentence imposed

for the offence under Section 187 of the Act should be enhanced or not.

11) Considering the tenor of the cross-examination, it is clear that the accused has not disputed the date, time and place of the accident; that, he was driving the offending tempo; that, there was a dash between his tempo and the deceased; that, the deceased suffered the injuries; and that she died on the spot.

12) PW3-Swati deposed that on the day of the accident it was Saturday and, their morning school was over at 11:00 a.m. Then, they left village *Dighanchi* by a motor tempo and, arrived at *Salshing Mala*, on *Diganchi – Atpadi* road. There, she, Ashwini and the deceased alighted from the tempo. PW3 deposed that then she and Ashwini crossed the road. However, when the deceased was crossing the road, the offending tempo came from *Atpadi* side and dashed the deceased.

12.1) In the cross-examination, PW3 admitted that one was required to catch the rope of the tempo to get down of it. That, she and Ashwini caught the said rope and jumped down. She admitted that, the road at the spot is South-North; that, the house of Ashwini was to the West of the road; that, their tempo was going towards South; and that, the offending tempo was proceeding towards North.

PW3 admitted that they three paid the fare separately; that, then she and Ashwini crossed the road; that, they were facing to the West; that, the deceased had not crossed the entire road; that, the deceased was one foot behind her and Ashwini. PW3 admitted that she cannot state the cause of the accident as she and Ashwini were facing to the West; that, the deceased was not thrown; and that, after the incident when they saw the scene there, the deceased was lying in the middle of the road. PW3 admitted that one who was standing behind their tempo, was not able to see vehicles coming from *Atpati* side.

13) PW4-Bhagwan Gonjari deposed that at the time of the accident he was proceeding towards *Salsihng Mala* riding a bicycle on *Dighanchi – Atpadi* road. He was proceeding from North to South direction. One tempo came from his behind and stopped on the road to its left, before *Salshing Mala*. PW3-Swati, the deceased and one more girl alighted from that tempo. PW3 and one girl with her started to proceed towards the West side. Thereupon, the deceased also started proceeding towards the West direction. He deposed that, at this juncture the accused came there driving the offending tempo in a high speed and gave dash to the deceased. Then the said tempo went ahead and stopped. The deceased had sustained bleeding injury to

head and consequently, she died on the spot.

13.1) In the cross-examination PW4 admitted that, the two girls had already crossed the road; that, at that time, the offending tempo was coming from the front; that, the deceased wanted to go to the West; and that, after the deceased alighting from the tempo, she ran behind the said two girls. He admitted that the deceased was not thrown. He admitted that, the deceased was lying in the middle of the road. He has denied that, the deceased was struck by the driver side of the offending tempo. He has denied that the accused was not at fault in the accident.

14) PW5 – Balakrishna Khulpe deposed that after receiving the information of the accident from Milind Dokh, he and his wife went to the spot; that, there they saw that the deceased was lying on the road; that the offending tempo was standing at a distance of about 80 feet; that, the driver of that tempo was not present there; that, then he filed the *Vardi* (Exh.24). Nothing significant has emerged in the cross-examination of PW5 to disbelieve his evidence.

15) Evidence of PW2-Appasaheb Gonjri is that at the relevant time police had called him at the spot of the accident on *Dighanchi – Atpati* road, to record the spot Punchnama; that, said road runs south

– north; that, it is 17½ feet wide; that, the spot of the accident was in the middle of the road; the offending tempo was standing there facing towards *Dighanchi*; that, police recorded the spot panchanama (Exh.19) in his presence. The cross examination of this witness did not yield anything fruitful for the defence.

16) In so far as PW1 is concerned, initially, he supported the prosecution case but in the cross-examination for the accused he admitted such facts, considering which, the trial Court accepted that PW1 has turned hostile to the prosecution on the point of rash and negligent driving of the offending tempo, and therefore, permitted his cross-examination under Section 154 of the The Evidence Act by the APP. PW6 has also turned hostile to the prosecution.

17) As the prosecution seeks setting aside of the impugned acquittal under Section 279 and 304-A of I.P.C. and to convict the accused for the said offences, first it is necessary to have a look at the said Sections, which read :

“Section 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.

Section 304-A. Causing death by negligence. – 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.”

18) On a plain reading of aforesaid Sections 279 and 304-A of I.P.C., it is clear that proof of rash or negligent driving is must in order to convict an accused charged for the said offences. In this regard, on a careful reading of the evidence of the witnesses, what transpired is that PW3, Ashwini and the deceased had travelled up-to *Salshing Mala* together in the same tempo. Evidence of PW1-Rahul Waghmare indicates that he was also travelling along with the said three girls and that, they were seated in the backside of the tempo. The manner in which PW3 and Ashwini got down from the tempo, it can be inferred that, they and the deceased were also seated in the backside of the tempo and when their tempo stopped, they alighted from its backside. Thereafter the three girls paid the fare. However, the evidence of PW3 and PW4 indicates that first, PW3 and Ashiwini paid the fare and therefore only they crossed the road before the

deceased. Further the evidence in the cross-examination of PW3 and PW4 clearly shows that after paying the fare and alighting from the tempo, immediately, the deceased started to run from East side to West side, to join her friends. However, at that juncture her vision was obstructed by the tempo and therefore, she could not see that the offending tempo was coming from opposite/South side. The deceased also did not wait for a moment and ensured whether any vehicle was coming from the South or North directions. Meanwhile, the offending tempo had come parallel to the place from where the deceased started to run. Therefore only, the deceased struck to the offending tempo.

19) As admitted by PW3, one who was standing behind their tempo, was not able to see vehicles coming from *Atpati* side. This fact is sufficient to presume that, drivers of said vehicles were also not able to see the movements behind the tempo of PW3. Secondly, the said tempo was a goods vehicle and it did not stop at the bust stop there. Therefore, it is probable that the accused did not anticipate that the deceased was behind her tempo and that suddenly she would run to cross the road.

20) No doubt, the road in front of the accused was clear. However, the prosecution evidence suggests that when the accused

saw the deceased, he had hardly a chance to swerve his tempo to either side, because the two girls were on its one side (left) and the deceased was on the other (right). Similarly, when the deceased reached to the exact spot of the accident, it was too late for her to turn and go back.

21) The evidence of PW2, PW3 and PW4 coupled with the spot panchnama clearly show that the dash between the offending tempo and the deceased occurred in the middle of the road. Said road was 17½ feet wide. Therefore, it is safe to presume that the offending truck was being driven on its left side.

22) In view of the above discussion, it is difficult to hold that the accused drove his tempo in a rash or negligent manner as stated in Sections 279 and 304-A of the I.P.C., caused the accident and death of the deceased by negligence.

23) The trial Court held the accused guilty of the charge under Section 187 of the Act because the accused failed in his duty to report the accident to the nearest police station and, in any case within a period of 24 hours of the accident, which was clear violation of Section 134 of the Act. This finding is in conformity with the evidence on record. However, while imposing the sentence for the said offence,

the trial Court considered that the accused was a poor person, his parents were aged and he had four children. In the facts, said reasons appear reasonable. Moreover, at present the accused is aged 65 years, as submitted by Mr. Chavan, the learned Advocate. In view thereof and in the facts, I am of the view that no case is made out to enhance the impugned sentence under Section 187 of the Act.

24) Conspectus of the above discussion is that the acquittal of the accused for the charge of the offences punishable under Sections 279 and 304-A of I.P.C. by the trial Court is based on appreciating the prosecution evidence in its correct perspective. The impugned sentence for the charge of the offence punishable under Section 187 of the Act is adequate. Hence, the impugned Judgment and Order need not be interfered with. As a result, both the Appeals are liable to be dismissed and Appeals are dismissed, accordingly.

(SHYAM C. CHANDAK, J.)