
(2014) 11 BOM CK 0122

Bombay High Court (Aurangabad Bench)

Case No: Criminal Revision Application No. 90 of 2013

Sheshrao

APPELLANT

Vs

The State of
Maharashtra

RESPONDENT

Date of Decision: Nov. 18, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 134(a), 134(b), 177, 184
- Penal Code, 1860 (IPC) - Section 279, 304-A

Citation: (2015) ALLMR(Cri) 30

Hon'ble Judges: T.V. Nalawade, J

Bench: Single Bench

Advocate: B.V. Thombre, Advocates for the Appellant; A.S. Shinde, Addl. P.P, Advocates for the Respondent

Judgement

T.V. Nalawade, J.

Admit. Notice after admission is waived by the learned Additional Public Prosecutor. The revision is filed against the judgment and order of Criminal Appeal No. 2/2008 which was pending before the Additional Sessions Judge, Sangamner. The appeal was filed by the petitioner against the judgment and order of S.T.C. No. 793/2005 and this case is decided by the Judicial Magistrate, First Class, Sangamner. The Judicial Magistrate has convicted the petitioner for offence punishable under sections 304-A and 279 of the Indian Penal Code and is sentenced to suffer simple imprisonment for one year and six months respectively with fine of Rs. 1000/- each on both counts. He is also convicted for offences punishable under sections 134(a) read with Section 177, 134(b) read with Section 177 and 184 of the Motor Vehicles Act. Both the sides are heard. This Court has perused the original record.

2. The accident took place on 19-9-2005 at about 10.30 a.m. in Sangamner city. The accused-petitioner was driving the bus of the M.S.R.T.C. and his bus was proceeding

towards Nashik side. The first informant, Balasaheb, was proceeding on the same direction on his motor cycle. The deceased, a girl aged about 18 years, was proceeding on a bicycle in the same direction. Motor cycle of Balasaheb was behind the bicycle of the deceased and the bus came from the back side. The bus over took the motor cycle and then gave dash to the bicycle of the deceased. The deceased came under the wheels of the bus on Conductor side and she died on the spot.

3. The accused stopped the bus after crossing some distance from the point of impact and he ran away. The number of the bus was MH-31-W-9910. The bus driver did not report about the accident to police and no help was offered by the driver and the Conductor and they did not take care to see as to whether the girl was alive.

4. Balasaheb, the eye witness, gave report at about 11.30 a.m. to Sangamner City Police Station and the crime came to be registered on the basis of his report. After completion of investigation, the charge sheet came to be filed for the aforesaid offences. The case was tried as regular summons case. The particulars of the offence were read over to the accused and his plea was recorded. The prosecution examined five witnesses including three eye witnesses and the Conductor of the bus. The accused did not give any defence evidence and he took defence of total denial. The trial Court has believed the prosecution witnesses and has held that both, the rashness and negligence, are proved by the prosecution and it is also proved that the death took place due to rash and negligent act of the bus driver the investigating officer was not examined by the prosecution. The trial Court has held that non examination of the investigating officer has not caused prejudice to the accused.

5. The accused has admitted the spot panchanama which is at Exhibit 20, the inquest which is at Exhibit 21, the post mortem note which is at Exhibit 22, the accident report form prepared by the Inspector, Motor Vehicles, which is at Exhibit 23 and the panchanama of the bus which is at Exhibit 24.

6. Balasaheb (P.W. 1), the first informant, who is also eye witness, has given evidence that after overtaking his motor cycle, the bus gave dash to the bicycle of the deceased. His deposition shows that after the dash, the deceased fell towards left side and then she came under the wheels of the bus. His evidence shows that at the time of the impact, the bus was at the distance of 50 feet from his motor cycle.

7. Balasaheb (P.W. 1) hails from the village of the deceased and the deceased was known to him. Nothing is brought on the record to create probability that Balasaheb did not witness the accident. The first information report was given immediately by him even when the close relatives of the deceased were not available and the contents of the F.I.R. are consistent on material points with the oral evidence. They give necessary corroboration to the version of Balasaheb. Suggestion was given by the defence to Balasaheb that rubble was spread on the road at the relevant time and due to that there was no sufficient space but this suggestion is denied. No such circumstance is mentioned

in the spot panchanama also.

8. Govind (P.W. 2) is another eye witness. He has given evidence that he owns and runs a pan stall and it is situated at a distance of 40 feet from the spot of the accident. He has given evidence that he heard noise and then rushed to the spot. In the cross-examination he has admitted that he was not looking towards the road and he did not personally see the accident when the bus run over the deceased. It appears that when he heard the noise he paid attention. In the spot panchanama, which is admitted document, there is no mention of the shop of this witness but it can be said that he must have rushed to the spot immediately after the accident.

9. Ashok (P.W. 3) is another eye witness and he also owns one pan stall in the vicinity. He has deposed that he was present in front of his shop at the relevant time. He has deposed that the girl was proceeding on bicycle and the bus gave dash from the front side of the bus and the dash was to the back side of the bicycle. He has given evidence that he witnessed the bus running over the deceased and she died on the spot. He has given evidence that the bus went ahead, upto some distance. He has given evidence that his pan stall is situated 30 to 35 feet from the spot of accident. Though his shop is also not mentioned in the spot panchanama, there is no reason to disbelieve this witness. There was no reason for P.W. 2 and P.W. 3 to give false evidence against the bus driver.

10. Sunil (P.W. 4) owns shop in the vicinity. But he admitted that he did not witness the accident.

11. Ramesh (P.W. 5), the Bus Conductor, has given evidence that the accused was driving the bus involved in the accident. The cross examination shows that the fact that the accused was driving the bus is not disputed by the defence.

12. The spot panchanama at Exhibit 20, the admitted document, shows that the accident took place in the city though Pune - Nashik highway runs through the city portion. The tar road had width of 40 feet. There is no mention of divider for two way traffic in the spot panchanama. Thus, it can be said that the entire width of 40 feet of the road was available to the bus. The spot of accident was situated at a distance of 3 feet from the western edge of the road which was the correct side for the deceased. The articles of the deceased like school bag, chappal were lying near the western edge of the road. The spot panchanama shows that on both the sides of this road there were shops and other constructions. There was marriage hall on the eastern side.

13. The panchanama of the bus (Exhibit 24), another admitted document, shows that it was prepared at the police station. Thus, the bus was taken to the police station from the spot of accident. It shows that there was blood and there were pieces of flesh on the front wheel of the bus from the Conductor side.

14. The post mortem report shows that portion of the girl above the abdomen region came under the wheel and the head was virtually crushed.

15. The accident took place at 10.30 a.m. in September in the city portion of Sangamner. Considering the width of the road, which was 40 feet, and the fact that the bicycle was on the correct side of the road and it was on extreme left side of the road, it was necessary for the accused to explain the things. Further, dash was given to the back side of the bicycle by front side of the bus on the Conductor side. Though no specific evidence is given by the aforesaid witnesses that the bus was being driven with excessive speed, there is evidence that the bus stopped at some distance from the point of impact and from there the accused ran away. The facts mentioned in the spot panchanama and the evidence of the eye witnesses leads to only one conclusion that the accused was negligent. He could have swerved the bus to the eastern side as the road was of the width of 40 feet and the bicycle was at a distance 3 feet from the left side edge of the road. Nothing is brought on record, to show that another vehicle was coming from the opposite side and due to that the accused was trying to take the bus to extreme left side of the road. From the evidence on record it is not possible to infer that there was any fault on the part of the deceased. No such probability is created that due to sheer error of judgment of the accused the accident took place. In view of these circumstances, this Court has no hesitation to hold that, even in absence of direct evidence, that, there was rashness on the part of the driver. The evidence is also sufficient to show that he was negligent.

16. In view of the facts and circumstances of the case, it was imperative duty of the accused to exercise reasonable and proper care. In the present case, in view of the facts, this Court holds that the petitioner failed to exercise the same.

17. The condition of the road, the amount of traffic expected on the road needs to be kept in mind by the driver. These circumstances need to be considered by the Court also to ascertain rashness or negligence. In the present case the relevant circumstances which are discussed above show that no attempt was made by the accused to save the deceased by swerving bus to other side when there was sufficient space. In such case the accused needs to be convicted for offence of causing death by rash and negligent driving. [reliance can be placed on [Baldevji Bhathiji Thakore Vs. State of Gujarat](#), .

18. The learned counsel for the petitioner has placed reliance on the following cases:-

(1) [Union of India \(UOI\) and Another Vs. Manu Dev Arya](#), ;

(2) 2005 B.C.I. 60 (State of Maharashtra v. Jahiroddin) (Aurangabad Bench);

(3) [Ahilyadevi Vyayam Krida Va Shikshan Prasarak Mandal Vs. State of Maharashtra and Others](#), ;

(4) [Shri Madhukar Gaurishankar Swami Vs. State of Maharashtra](#) ;

(5) [Nageshwar Shri Krishna Ghobe Vs. State of Maharashtra](#), ;

- (6) [Ambalal D. Bhatt Vs. The State of Gujarat, ;](#)
- (7) [Mahadeo Hari Lokre Vs. The State of Maharashtra, ;](#)
- (8) [State Vs. Hari Singh, ;](#)
- (9) [Pawan Kumar Sharma Vs. State of U.P., ;](#)
- (10) [Thana Ram Vs. State of Haryana, ;](#)
- (11) [Badri Prasad Tiwari Vs. The State, ;](#)
- (12) [P. Rajappan Vs. State of Kerala, ;](#)
- (13) [Bijuli Swain Vs. State of Orissa, .](#)

On the other hand the learned Additional Public Prosecutor has placed reliance on a case reported as [Usman Gani Mohammed Vs. State of Maharashtra, .](#)

19. Facts and circumstances of every criminal case like present one are always different. Relevant facts pertaining to the present case are discussed by this Court. In view of the facts and circumstances of present case this Court has come to the conclusion that the petitioner is guilty of offence punishable under section 304-A of the Indian Penal Code. The aforesaid discussion also shows that he did not take care to ascertain as to whether the victim girl was alive and she needed any help. He did not give report to the police about the accident. He drove the vehicle in the heart of the city, in dangerous way. Thus, there is no possibility of interference in the conviction given in respect of other offences also.

20. The learned counsel for the petitioner argued that lenient view needs to be taken and he submitted that benefit of the Probation of Offenders Act can be given to the accused. He further submitted that the case is very old of the year 2004 and so lenient view needs to be taken. This Court holds that no such benefit can be given. There is increase in number of such accidents and the drivers of heavy vehicles like the present petitioner are not taking reasonable and proper care even when the vehicle is passing through the heart of the city. They do not stop to ascertain as to whether some help can be given to the injured.

21. Though there are aforesaid circumstances the petitioner may lose his service due to the judgment of conviction and he will have to remain in jail for some time. In view of these circumstances, this Court holds that the substantive sentence of one year needs to be reduced to simple imprisonment of one month. For that, the proceeding can be allowed to that extent. In the result, the Criminal Revision Application is partly allowed. The substantive sentence given to the petitioner for offence under section 304-A, Indian Penal Code is reduced to make it to simple imprisonment for one month. Similarly the

substantive sentence for offence under section 279 IPC is also reduced to make it to simple imprisonment for one month. The other part of the judgment and order of the trial Court will remain in tact and no interference is caused in that order. The petitioner is to surrender to the bail bonds to serve the sentence.