
(1986) 06 BOM CK 0013

In the Bombay High Court

Case No : Criminal Revision Application No. 199 with Criminal Writ Petition No. 163 of 1985

Anwar Altaf Husan Kazi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-06-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 89
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1986) 3 BomCR 587

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : A.H. Jadhav, for the Appellant; C.M. Kothari, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.W. Puranik, J.—Conviction has been recorded against the appellant for the offences under sections 279 and 304-A of the India Penal Code and he is sentenced to suffer rigorous imprisonment for four months on each count and to pay a fine of Rs. 1000/- for each offence. Conviction is also recorded against him u/s 89 (a) and (b) of the Motor Vehicles Act and for each offence he is sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 300/- on each count. All the substantive sentences are to run concurrently. This order passed by the Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Bombay was passed on 29-11-1982. Criminal Appeal No. 321 of 1982 against the said conviction filed in the Sessions Court was dismissed by the judgment dated 18-9-1984 and hence this revision.

2. Shri A.R. Jadhav, Advocate appears for the appellant accused while the State is represented by Shri Kothari, learned Public Prosecutor. After hearing the learned Counsel for both the parties, I have gone through the entire evidence on record and the two orders of both the Courts below.

3. According to the prosecution, the appellant was driving taxi bearing No. MRK 7204 on 23-6-1980 in the morning at about 7.20 a.m. on S.V.P. Road, Bombay. It is further the allegation that the appellant was driving the taxi at a fast speed and knocked down a pedestrian by name Ashok Rokade and without helping he sped away from the spot. It is further the case of the prosecution that one Nathubhai Gandhi was passing along that road and he is the sole eye-witness to the incident. He also noted the number of the taxi which was speeding away. He rushed to the help of injured person Ashok Rokade and carried him to the J.J. Hospital for treatment. The said Gandhi also narrated the incident to Police Constable Dattaram who was attending emergency duty at J.J. Hospital.

4. Before the trial Court the prosecution relied mainly on the testimony of eye-witness Nathubhai (P.W. 1), Kishorilal (P.W. 2), who appeared as a panch witness, Nabab Kalam (P.W. 3), owner of the taxi and the Investigating Officer. The prosecution also tendered the medical evidence in respect of the victim through Dr. Kamaluddin (P.W. 5). As already stated on going through all the evidence tendered the trial Court as well as the Sessions Court has found the appellant guilty of the offence for rash and negligent driving and has sentenced him.

5. Shri Jadhav for the appellant submitted that the evidence of the sole eye-witness itself is unreliable inasmuch as there is nothing to suggest that he has actually witnessed the incident, identified the accused as the driver of the taxi in question or that he ever noted the number of the taxi. He also urged that there are material discrepancies in his testimony which would expose the falsehood of his deposition. The only clue which the Investigating Officer had, was the number of the taxi allegedly given by sole eye-witness Nathubhai Gandhi. There is no evidence to show that taxi MRK 7204 was involved in the accident. The Motor Vehicle Inspector's report is not secured by the Investigating Officer. Further because of the discrepancy in the direction of the vehicle at the time of the incident as stated in the first information report and as stated in the substantive evidence the evidence is contrary to each other, thus changing the entire location of the scene of offence. In these circumstances Shri Jadhav urged that the appellant is entitled to acquittal or at any rate benefit of doubt.

6. Shri Kothari supports the impugned judgment. The sole eye-witness is independent, who not only helped the victim but also noted the number and informed the police authority. There is no ill-will between the eye-witness and the accused. There is, therefore, no reason for the said witness to falsely implicate the accused. If his evidence is accepted, the conviction is sure to follow.

7. No doubt, the sole eye-witness has come to the help of the victim. But the question is whether his deposition and the description regarding the incident could be the basis for convicting the present appellant as the person responsible for causing the death of Ashok Rokade.

8. The deposition of Nathubhai Gandhi shows that while watching the incident

and attending to the victim he noted the number of the taxi. This is also understandable, but his deposition shows that he noted the taxi number first and then he saw the incident. This is rather improbable as nobody would look for taxi number while going to the office in the morning. Moreover this witness does not state that he took down the number on any piece of paper or diary. It is long thereafter that he takes the injured to the J.J. Hospital at about 9-15 a.m. and after getting the victim admitted he telephoned the police, informed them the taxi number which had knocked down the victim. Surprisingly there is also no entry in the station diary of the Police Station noting down the alleged taxi number. The Investigating Officer has stated that he only got information that a person has been knocked down by a taxi and was admitted in the hospital. At the J.J. Hospital he learnt from the constable not the number of the taxi but the telephone number of the eye-witness and his address. It is thereafter that he contacted eye-witness Gandhi and recorded his statement and it is here for the first time that taxi No. MRK 7204 appears. One does not know wherefrom immediately the said witness has given this number after a long time, that is at the time his statement was recorded. If that be so, there is every possibility of an error being committed in reciting the number.

9. This theory of error also appears more probable inasmuch as on seizure of the taxi MRK 7204 within three hours after the incident there are no telltale marks on the said taxi to show that it had sustained grievous accident such as a dent or, scratching of the outer paint or any bloodstain or human hair stuck to the body of the taxi.

10. The other infirmity which also goes to the root of the case is the scene of offence. If the taxi is going from Prarthana Samaj to Gol Mandir, as alleged by the prosecution, the taxi would be on the left hand side of the road just near Alankar Cinema. However the panchnama of the scene of offence shows that the place as pointed out by eye witness Gandhi is on the other side of the road. That is to say that the taxi involved in the accident must have been going from Gol Mandir towards Prathana Samaj.

11. Looking to the above infirmity and the categorical statement of the owner of the taxi that no accident had taken place to his vehicle, I find that the evidence tendered by the prosecution is not sufficient to sustain the conviction against the accused. At any rate he is entitled to benefit of doubt for non-identification. The eye-witness has also admitted that he could not see the driver, nor was he ever shown to him during the investigation for the purpose of the investigation. He had earlier given the description of the driver as aged about 36 years, whereas in the additional statement he has stated the approximate age of the driver to be 22 years. This is, therefore, a fit case where benefit of doubt should be given to the accused.

12. In the result, therefore, the revision application is allowed. The conviction and sentence imposed upon the appellant are quashed and set aside. The applicant be released if not required otherwise. His bail bond shall stand

discharged.