

(2024) 11 BOM CK 0042

In the Bombay High Court

Case No : Criminal Revision Application No 422 Of 2002

Arunkumar Udayraj Singh

APPELLANT

Vs

State Of Maharashtra and Anr

RESPONDENT

Date of Decision : 25-11-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 53
Indian Penal Code, 1860 — Section 279, 304A, 337, 338
Motor Vehicles Act, 1988 — Section 118

Citation : (2024) 11 BOM CK 0042

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Rajesh L. Dharap, Manisha R. Tidke, Rahul Patil

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. Heard Mr. Dharap, learned Advocate for Applicant appointed through the Legal Aid Committee and Ms. Tidke, learned APP for Respondents – State.

2. Present Criminal Revision Application (for short "CRA") takes exception to concurrent judgments passed by the learned Trial Court and Appellate Court convicting Revision Applicant for offences punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code, 1860 (for short "IPC"). Applicant is convicted and sentenced to suffer rigorous imprisonment for one year and fine of Rs.10,000/-, in default to suffer simple imprisonment for six months for offence punishable under Section 304 IPC, suffer rigorous imprisonment for six months alongwith fine of Rs.1000/-, in default suffer simple imprisonment for two months for the offence punishable under Section 338 of IPC and to pay fine of Rs.1000/- for offence punishable under Section 279 IPC and suffer rigorous imprisonment for six months and fine of Rs.1000/-, in default suffer simple imprisonment for two months for offence punishable under Section 337 of IPC.

3. Applicant is presently on bail.

4. In the present case, due to the accident, 6 persons including 2 children lost their lives with scores of others left injured, some of them grievously.

5. By order dated 30.08.2019, Mr. Dharap, learned Advocate has been appointed to represent and espouse the cause of Applicant – accused. Ms. Tidke, learned APP appears for Respondent Nos.1 and 2 – State. Both learned Advocates have taken me through the record of the case.

6. Briefly stated, incident took place at or about 04:30 a.m. on the morning of 01.09.1997 while driving a goods-carriage tempo by Applicant, resulting in death of 6 persons and injuring 7 persons grievously. Injured victims were moved to hospital and offence was registered.

7. To bring home guilt of accused, prosecution examined in all 8 witnesses. The star witness is the sole eye witness to the accident namely Prosecution Witness (PW) – 1 Mr. Mahendra Balu Zimur, who is also complainant and an injured victim. PW-1 is into vegetable business and on the night of 01.09.1997 he kept vegetable boxes outside his house in Shantinagar Zopadpatti, Senapati Bapat Marg, Dadar and was sitting in front of his house minding the boxes and his children were sleeping on the road in front of his hutment.

7.1. At about 02:30 a.m. due to a light drizzle, he shifted his sleeping children inside his hutment and thereafter came out and was sitting in front of his hutment keeping an eye on his vegetable boxes which were due to be collected, early in the morning. Prosecution case is that at about 04:10 a.m. in the morning, one vehicle namely Tempo bearing No. MH-04-S-5248 attempted to overtake another tempo in front from the left hand side just before the hutment of PW-1. Both vehicles were proceeding from Mahim and going towards Dadar on Senapati Bapat Marg. The tempo driver overtook the vehicle in front from the left hand side by speeding his vehicle, but due to error of judgment, could not overtake the vehicle and pass on completely. While overtaking, he encountered several persons sleeping on the road in front of the footpath on which their hutments were built, resultantly leading into the said tempo initially dashing with PW-1 who was sitting and injuring him and thereafter running over several persons sleeping on the road leading to loss of life of 6 persons including 2 children and injuring 7 persons grievously. Enormity of the accident began with dashing PW-1 and injuring him and the tempo driven by Applicant landing at a spot on the other side of the road by jumping over a permanent divider at a distance of more than 80-100 meters and turning turtle. The distance which the tempo traversed causing casualties to several persons on the accident spot is about 80-100 meters which is revealed from the spot panchanama at Exhibit "2", placed on record by prosecution which was prepared immediately after the accident on the same morning. Injured were taken to hospital immediately by bystanders although at that time at 4:00 a.m. in the morning there was less traffic and availability of vehicles to assist in shifting of injured persons to

hospital who were grievously hurt in the accident.

7.2. It is an undisputed fact proved by prosecution as also admitted by defence that the victims of the incident, rather the innocent victims were sleeping in front of their hutments on the road, when the accident took place.

7.3. Exhibit "P-9" placed on record by the prosecution is the accident report of the tempo which confirms that it had no mechanical failure resulting in the accident. Injury certificates of injured are duly proved and produced by prosecution below Exhibit "P-8 collectively".

7.4. Post-mortem notes of deceased victims have been produced below Exhibit "P-7 collectively". Evidence proved on record leads to the conclusion that there was no contributory negligence on the part of the victims who were admittedly in deep slumber at the time of the accident who lost their lives. The severity of the accident and the distance at which the vehicle was found after knocking PW-1 is approximately 80-100 meters on the opposite side of the main road beyond the divider and prima facie indicates rash and negligent act of driving on the part of the driver of the tempo coupled with the fact that he negligently attempted to overtake the vehicle in front from left hand side, which is the wrong side by overspeeding.

8. Mr. Dharap, learned Advocate for Applicant would draw my attention to both the concurrent judgments and make a valiant attempt to point out the discrepancies in the case put forth by prosecution. He would submit that conduct of the victims who lost their lives and those who were injured of sleeping on the road in front of their respective hutments was itself a negligent act when they should have been sleeping inside their hutments, especially when it was monsoon season. He would therefore argue that no motive could be attributable to the accused driver for driving the tempo as the act of victims was an act of contributory negligence. This submission of Mr. Dharap is not sustainable on the face of record primarily because in the stretch of 80-100 meters from where PW-1 was knocked down at the incident spot resulting in the accident, the vehicle i.e. tempo in question driven by Applicant actually damaged several hutments also which were standing on the footpath including mowing down some of the dwellers sleeping in front, who perished.

9. This is the irony of life in the city of Mumbai, which Courts will have to consider and accept no matter any submission of contributory negligence is made before the Court. It has to be borne in mind that no Authority gives a blanket license to any individual to drive negligently, overspeed and overtake from the wrong side on the road and while doing so result into a situation leading to several casualties some of whom perish and leaving some grievously injured.

10. In the light of the above and the evidence on record, prosecution case is that it stands proved beyond all reasonable doubt on the strength of evidence of the sole eyewitness PW-1, who incidentally is also the first informant. Prosecution witnesses also include other injured witnesses in the accident caused by the

speeding tempo and the only difference in deposition and evidence between PW-1 and other witnesses is that PW-1 witnessed the accident with his own eyes, was the first victim to be knocked down and has deposed about the accident and how it unfolded. I have perused the deposition of PW-1 .

11. The testimony of PW-1 is such that it needs to be accepted. Both the Courts below have accepted it. The trajectory of the tempo when it attempted to overtake from the left hand side of the road having a width of 30 feet from the divider ought to have been done with enormous caution by any driver. If there is a vehicle in front of the tempo overtaking from the left hand side, the available space for passing over from the left hand side cannot be in excess of 15-20 feet and considering the speed of both vehicles, the driver of the tempo ought to have been extra cautious in doing so.

12. PW-1 has deposed that he was sitting at the spot near his vegetable crates when he saw the tempo in question swirling with speed from the left hand side of the vehicle in front and attempting to overtake it, but while doing so it lost its control, knocked him down and thereafter mowed down several persons sleeping on the road and also damaged some of the hutments on the footpath.

13. Though, Mr. Dharap argued that the accident spot lies between 2 light poles according to the spot panchanama, but still the accident was caused due to losing control of an overspeeding vehicle due to two specific negligent acts namely the act of overtaking the vehicle in front from the wrong side and the speed, resultantly leading to losing control and causing the enormous accident.

14. The gory accident has been captured in the testimony of PW-1 and duly corroborated by the spot panchanama and testimony of the prosecution witnesses. Nothing has emerged from the cross-examination of PW.1 to render his testimony unreliable. PW- 1 has rather miraculously survived to narrate the story. Evidence of PW-1 is convincing enough and duly corroborated by the evidence of the remaining 6 prosecution witnesses who are all injured victims of the accident and also the Investigating Officer's evidence. Spot panchanama below Exhibit "2" and site map below Exhibit "3" clearly portray the accident leading to the inevitable. The site map at Exhibit "P-3" clearly shows the positioning of the 2 light poles which also proves that there was enough light on the road and therefore the case of defence that it was dark at 04:30 a.m. in the morning has been rejected by the Courts below.

15. On reading deposition of PW-1, it clearly states that accused committed a grave error in maneuvering the tempo leading to the accident coupled with the fact that he attempted to speedily overtake the vehicle in front of him from the wrong side. Negligence of accused is clearly proven by the enormity of the resultant accident and the fact that the tempo was lying turtle at a distance of approximately 80-100 meters on the opposite side of the divider. Photographs of accident below Exhibit "5" clearly depict the severity of the incident which stands is clearly proved by the prosecution. Findings returned by the learned Trial Court

in paragraph No.13 of its judgment in the light of direct evidence of the sole eye witness namely PW-1 are correct and in consonance with the evidence placed on record.

16. It is seen that accident took place at about 04:30 a.m. in the morning. The statement of the owner of the tempo recorded by the IO states that he had knowledge about the accident as early at 5:00 a.m. in the morning when he received intimation from the cleaner of the tempo it further states that he informed the driver to approach the concerned police station immediately. However, it is seen that the driver of the tempo i.e. the Applicant approached the police station only at 04:30 p.m. in the evening after almost 12 hours of the accident.

17. The nature and aftermath of the accident stands clearly proven by the material evidence placed on record which has been scrutinised by both the Courts below in their respective judgments which cannot be faulted with. Rather this is a case which has been proved by the prosecution beyond all reasonable doubts which stands duly proved by and the testimony of the eye witness – PW-1 and corroborated by the evidence of PW-2 to PW-6 who are the injured victims of the accident in question. Both the impugned judgments have been correctly passed taking into cognizance the record and evidence of the case.

18. In the present case, Ms. Tidke, learned APP has drawn my attention to Section 53 of the Code of Criminal Procedure, 1973 which refers to examination of accused by a medical practitioner at the request of police officer which has not been complied with by Applicant despite the owner of the vehicle informing him to immediately approach the police station on the morning of the accident itself. The evidence of PW-1 being direct evidence of sole eye witness of the occurrence of the accident is duly supported and corroborated by the evidence of PW-2, PW-3 and PW-6, who are the injured victims of the accident.

19. Ms. Tidke, has referred to and relied upon the decision of the Supreme Court in the case of State of Punjab Vs. Dil Bahadur 2023 SCC ONLINE SC 348 in order to drive home the point that the aftermath of the accident clearly shows the manner in which the tempo was driven by Applicant in the given facts and the severity of the accident in the present case cannot be therefore ruled out and the fact that Applicant driving the tempo in high speed.

20. Next, she would draw my attention to the decision of the Supreme Court in the case of State of Himachal Pradesh Vs. Ramchandra Rabidas (2019) 10 SCC 75 to contend that the principal aim and object of the provisions of Sections 279 and 304A of IPC are to punish offenders for offences committed in the said provisions and can be invoked only if the act of the accused is negligent and rash. She would also submit that financial loss, emotional and social trauma caused to the family of the deceased or the fact of losing a bread winner of the family or incapacitation of the victim cannot be quantified and in that view of the matter, the principle of proportionality between crime and punishment has to be

borne in mind by the Court. She would therefore urge the Court that the principle of just punishment being the bedrock of sentencing has been appropriately followed by the learned Trial Court in the given facts of the present case and the judgment of the Trial Court has been correctly upheld by the learned Sessions Court by the impugned judgment dated 30.08.2002 which deserves the imprimatur of this Court and warrants no interference.

21. Mr. Dharap, learned Advocate for Applicant has also drawn my attention to the Rules of the Road Regulation, 1989 alongwith the Motor Vehicles (Driving) Regulation, 2017 in support of Applicant's case alongwith a Notification dated 23.06.2017 issued by the Ministry of Road Transport and Highways in exercise of the powers conferred by Section 118 of the Motor Vehicles Act, 1988, and in supersession of the Rules of the Road Regulations, 1989.

22. In the present case, the incident has occurred on 01.09.1997 and therefore the prevalent Rules of the Road Regulation, 1989 would be applicable. Regulation No. 6 of the said Regulation, 1989 pertains to overtaking which is prohibited in certain cases and most importantly which is not to be obstructed. Regulation No. 6 clearly states that the driver of a motor vehicle shall not (emphasis supplied) pass a vehicle driven by himself if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction; if he is near a point (emphasis supplied), a bend or corner or a hill or other obstruction of any kind that renders the road ahead not clearly visible; if he knows that the driver who is following him has begun to overtake him; or if the driver ahead of him has not signaled that he may be overtaken.

23. The case in question clearly proves a critical point that overtaking has admittedly taken place from the left hand side of the vehicle in front resulting to PW-1 being grievously injured and mowing down innocent, helpless, sleeping casualties, out of whom 6 have paid the price of their life and leaving scores injured in the bargain. These Rules of the Road Regulation infact support the case of the prosecution, though they have been cited by Mr. Dharap.

24. On the basis of my above observations and findings, I am inclined to accept the submissions made by Ms. Tidke, learned APP and reject the submissions made on behalf of Applicant.

25. On perusal of the record in the present case, both judgments passed by the learned Trial Court and the learned Sessions Court are cogent and reasoned judgments and call for no interference whatsoever and resultantly the decision / judgment dated 30.08.2002 passed by the learned Sessions Court, Greater Mumbai in Criminal Appeal No.217 of 2001 stands upheld and confirmed. Equally the decision / judgment dated 13.07.2001 passed by the learned Trial Court is also upheld.

26. Applicant's Bail bond stands cancelled. He shall immediately surrender himself before the In-charge of Shivaji Park Police Station, within one week for undergoing the remainder of the sentence.

27. In the present Criminal Revision Application, Mr. Dharap, learned Advocate is appointed through the Legal Aid Services Committee, High Court, Mumbai. He has ably assisted the Court. His professional fee quantified as per the Rules be paid to him by the High Court Legal Aid Services Committee, Mumbai, within a period of two weeks positively upon a server copy of this order / judgment presented by him to the Committee alongwith his Application in accordance with law.

28. In view of the above, Criminal Revision Application is dismissed.