
(2009) 11 GUJ CK 0024

In the Gujarat High Court

Case No : Criminal Revision Application No. 35 of 2001

Bhamarsingh Bhairavsingh Rathod

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 177, 184

Penal Code, 1860 (IPC) — Section 279, 304, 304A, 324, 337

Citation : (2009) 11 GUJ CK 0024

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Virat G. Popat, for the Appellant; M.G. Nanavati, APP, for the Respondent

Judgement

A.L. Dave, J.—An accident occurred on 03.03.1992 at about 8.30 A.M. Involving Jeep Car No. GRN 817 and Bus No. GRU 7093, resulting into death of three persons and injuries to a number of persons besides damage to both the vehicles. An F.I.R. was lodged by driver of the bus, Deepsinh with police, on the basis of which an offence was registered and investigated by Idar Police. Charge sheet was laid before J.M.F.C., Idar and Criminal Case No. 1062 of 1993 was registered for offences punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code (IPC) and Section 177 and 184 of the Motor Vehicles Act against the driver of the Jeep Car. The driver of the Jeep Car pleaded not guilty to the charge levelled against him and claimed to be tried. The Magisterial Court found him guilty for offences punishable under Sections 279, 337, 338 and 304A of the IPC and Sections 177 and 184 of the Motor Vehicles Act. For the offence punishable u/s 279, he was sentenced to under simple imprisonment for six months with a fine of Rs. 500/-, in default, to undergo simple imprisonment for one month; for the offence punishable u/s 304, he was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 700/-, in default, to undergo further simple imprisonment for a period of two months; for the offence punishable u/s 338, IPC, he was sentenced to undergo simple imprisonment for

six months and to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for a period of one month; and for the offence punishable u/s 337, IPC, simple imprisonment for one month was awarded with a fine of Rs. 100/- and, in default, to undergo further simple imprisonment for ten days, whereas no separate sentence was awarded for the offences punishable under the Motor Vehicles Act. The judgment was delivered on 26th July, 1994 by J.M.F.C., Idar. The said judgment was challenged by preferring Criminal Appeal No. 20 of 1994 in the Sessions Court, Sabarkantha, at Himatnagar. The Sessions Court, after re-appreciating the evidence, dismissed the appeal by judgment and order dated 22nd January, 2001. The Jeep driver, the convict-accused, has preferred the present revision application to challenge the said two judgments and orders.

2. Heard learned Advocate, Mr. Popat, for the Revisionist and learned Additional Public Prosecutor, Mr. Nanavati, for the State.

3. At the outset, it must be recorded that learned Advocate, Mr. Popat, has failed to demonstrate any legal perversity or a legal error on the part of either of the Courts below.

3.1 Mr. Popat took this Court through the evidence and vehemently urged that about 18 years have gone by and the evidence is not good enough to hold that the Revisionist was solely responsible for the accident and, therefore, the revision application may be accepted. According to Mr. Popat, the evidence of witnesses, Kiritbhai, Ishwarji Dhiraji and Atul has not been properly appreciated by the Trial Court. He submitted that, if the depositions of these persons were considered, there is evidence that there was no negligence on the part of the Revisionist. He submitted further that the bus driver, being an employee of the Corporation, tried to save his skin by lodging a wrong F.I.R., which aspect has not been appreciated by either of the Courts below. He, therefore, submitted that this revision application may be allowed.

3.2 Mr. Popat, by way of alternative submission, submitted that benefit of Probation of Offenders Act may be granted to the Revisionist or, if the Court is of the view that conviction is required to be upheld and benefit of probation is not to be given, then the Revisionist may be sentenced with imprisonment already undergone by him, which would be 15 to 20 days. Mr. Popat relied on certain judicial pronouncements in support of his case.

4. Learned Additional Public Prosecutor, Mr. Nanavati, has opposed this revision. According to him, apart from evidence of Kiritbhai, Ishwarji Dhjiraji and Atul, there are other depositions on record, which go to show negligence on the part of the Revisionist. The depositions of Kiritbhai, Ishwarji and Atul would not abrogate the impact of other pieces of evidence. He also submitted that this is a case where principle of *res ipsa locutor* can be applied because, if the Panchnama is seen, it is clear that the jeep travelled on the wrong side of the road and collided with the bus. The impact was such that pieces of flesh and brain substance were scattered all around and some have flung even into the bus. The

bus stopped within a distance of 10 feet whereas the jeep travelled further by about 150 feet after causing damage to the bus on the left front portion. The jeep was converted into various pieces, where the roof was found lying on one side, the rear seats were found on the other side and the wheels were lying scattered. All these factors would go to show that the Jeep was travelling at an excessive speed. Mr. Nanavati submitted that in absence of any legal error or perversity, this Court may not interfere in this revision.

5. Having regard to rival side submissions, it must be again noted that Mr. Popat has not been able to indicate any legal perversity or legal error on the part of either of the Courts below and the revision application, therefore, must fail on this short ground. However, in view of the fact that much time has lapsed, the merits are considered by this Court only to reassure itself that there is no error on the part of the Courts below, even on factual aspect.

6. Having gone through the record and proceedings, it has to be noted that apart from the evidence of Deepsinh, there is evidence of Ishwarbhai and other eye-witnesses, who, in terms, have stated that the bus was travelling west bound and the jeep was going towards east. There was a curve where the accident occurred. The jeep travelling on its wrong side collided with the left front portion of the bus. This impact is near the southern edge of the road. There are brake marks of the vehicles, which showed that the bus stopped within 10 feet. The Jeep travelled about 150 feet beyond the place of impact. There is no dispute on identity of the jeep driver, the Revisionist being the jeep driver. The resultant effect of these pieces of evidence is that the Revisionist was driving the jeep at an excessive speed while negotiating a curve on the road. The jeep was proceeding on the wrong side of the road, as a result of which, it collided with the bus, which was coming from the opposite direction on its correct side and even after the impact, the jeep travelled further by 150 feet. It is not only the speed of the jeep which is a conclusive factor for holding the jeep driver rash and negligent, but his act of driving the jeep on the wrong side of the road at an excessive speed, which leads this Court to confirm the findings of both the Courts below. The act of the Revisionist has resulted into death of three persons. The Panchnama of the place of incident draws a gruesome picture of the scene of offence. There are pieces of flesh and brain substance stuck on the outside body of the Bus, lying on the ground and even inside the Bus. In the opinion of this Court, both the Courts below were justified in holding the Revisionist guilty for the offences and awarding the sentence.

7. Mr. Popat has relied on three judgments of the Apex Court, rendered in (1) S.N. Hussain Vs. The State of Andhra Pradesh, (2) Nageshwar Shri Krishna Ghobe Vs. State of Maharashtra, and (3) Mrs. Shakila Khader and Others Vs. Nausheer Cama and Others, in support of his contention that speed is not the sole criterion for deciding the question of rashness and negligence and that culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will depend upon circumstances of each case.

There cannot be any dispute on this principle. In the instant case, as noted earlier, the Revisionist was driving the jeep car on the wrong side of the road at a curve at an excessive speed without anticipating a vehicle on its correct side from the opposite direction. The speed was so much that the vehicle travelled 150 feet after the impact. Although there is evidence to show that brakes were applied, the vehicle could not stop before the impact. Differently put, the vehicle was not driven in a manner which could have enabled the Revisionist to stop it any time to avoid any such calamity or unanticipated situation. Therefore, these judgments cannot help the Revisionist.

7.1 Mr. Popat has then relied on two decisions of the Apex Court reported in N.T.C. (South Maharashtra) Limited Vs. Rashtriya Mill Mazdoor Sangh and Others, and (2) Talaksi Malsi Sawala and Others Vs. State of Maharashtra, In the first case, it was a case where the conviction for murder was reduced to a conviction u/s 324, IPC and sentence was reduced to that already undergone. In the other case, the case was under the Gambling Act, where the sentence for imprisonment was set aside and fine was imposed because of lapse of time. Neither of the judgments lays down any absolute proposition of law that where there is lapse of time, the sentence is required to be reduced. The judgments were rendered in facts of those cases.

7.2 Mr. Popat then relying on the decision in the case of S.N. Hussain (supra) submitted that where an accident is caused due to misjudgment, it cannot be termed as negligence on the part of the driver. In the instant case, as discussed earlier, it is not a case of misjudgment, it is a case of sheer negligence when a driver drives his vehicle at a high speed on the wrong side of the road even at a curve. None of the judgments relied upon by Mr. Popat can come to the rescue of the Revisionist. The revision application must fail and stands dismissed. Rule is discharged.

8. Learned Advocate, Mr. Popat, states that the Revisionist may be granted time upto 24th November, 2009 to surrender to custody. In the facts of the case, time, as prayed for, is granted.