

(2012) 01 BOM CK 0151

In the Bombay High Court

Case No : Criminal Revision Application No. 292 of 2010

Deepak Babusing Pardeshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 184
Penal Code, 1860 (IPC) — Section 279, 304A, 304B, 337, 338
Probation of Offenders Act, 1958 — Section 3, 4, 4(1)

Citation : (2012) BomCR(Cri) 814

Hon'ble Judges : U.D. Salvi, J

Bench : Single Bench

Advocate : P.B. Patil, for the Appellant; S.N. Kendre, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

U.D. Salvi, J.—Heard. Perused.

2. This is a Criminal Revision Application challenging the concurrent findings of guilt and sentence under Sections 279, 304-A, 337, 338 of Indian Penal Code, 1860 and u/s 184 of Motor Vehicles Act recorded by the Courts below.

3. There is no dispute that at the material time the applicant/ accused was driving the vehicle in question in Ghat section, and was negotiating upward slope at a place where on the left there was a valley and it was raining around that time. It is in these circumstances, the applicant/ accused ventured to overtake a truck ahead of him and came across a truck from opposite direction and to save himself dashed to the truck he was overtaking. As a result of this accident one lady lost her life and several others in the vehicle were injured.

4. Learned advocate for the applicant/ accused has nothing to say about the conviction of the accused under Sections 304-A, 338, 337, 279 of Indian Penal Code, 1860 and u/s 184 of Motor Vehicles Act. However, he pleads for lesser

sentence. He submits that punishment of imprisonment is not imposed in cases of such kind and it is a plain simple case of accident, where culpability of the accused person can be minimal. He further submitted that the applicant/ accused in fact met with an accident in a bid to save his vehicle and its inmates from head on collision with truck coming from opposite direction. In support of his submissions he cited the following Judgments :

- (1) Emperor Vs. Khanmahomed Shermahomed,
- (2) Bhalchandra Waman Pathe Vs. State of Maharashtra 1968 Mh.L.J. 423
- (3) Vijay Namdeorao Kute Vs. State of Maharashtra 2007 ALL MR (Cri) 3037
- (4) Manish Jalan Vs. State of Karnataka,

5. Learned A.P.P. for the State submitted that the courts below had given due thought to the question of sentence in the present case. He further pointed out that the learned Adhoc Additional Sessions Judge, Dhule took a rational view and ordered the sentences imposed for the conviction under Sections 304-A, 338, 337, 279 of the Indian Penal Code, 1860, u/s 184 of the Motor Vehicles Act to run concurrently instead of consecutively as ordered by the learned trial Court. He further invited the attention of the Court to the loss of human life in the instant case and urged the Court to maintain the sentence.

6. On philosophy of sentencing in the matters of such kind the judgment rendered by the Hon''ble Chief Justice Beaumont, as he then was, in the case of Emperor Vs. Khanmahomed Shermahomed (supra), provides a deep insight. In Khanmahomed Shermahomed''s case, the accused was driving a motor lorry and he was in process of overtaking a bullock cart, when he found that he was in a great danger of running into a private car coming from opposite direction and in order to avoid crashing into the private car and killing the occupant, he swerved sharply to the right and went over some waste ground. In so doing, he hit the approaching car and occasioned a certain amount of damage but did not hurt the occupants. However, a man who was sitting on a cask in back of the lorry was thrown outside on the road due to a bump occasioned as a result of the lorry going over rough ground and was, unfortunately, killed. In this case, the learned Magistrate took a view that deterrent sentence was called for on three counts :

- (1) that a human life was lost;
- (2) there was a rash and callous conduct of the accused causing the accident without the least justification;
- (3) accidents of this nature are of frequent occurrence and in the interest of administration of justice and protection and safety of human life, such offences are required to be sternly dealt with.

The Hon''ble Chief Justice Beaumont, as he then was, made following observations in that context :

We held the other day that the mere fact that a human life is lost, does not justify us in passing a deterrent sentence, if the lost life could not have been reasonably anticipated by the accused, then the learned Magistrate says that there was "extremely rash and callous conduct of the accused causing the accident without the least justification". If I took that view of the accused's conduct, I should certainly be in favour of enhancing the sentence. I think that in all these cases, one has to consider whether the rash and negligent act of the accused which has occasioned death, shows callousness on his part as regards the reason, but which he was exposing other persons. I think the severity of the sentence must taken to a great extent on the degree of callousness which is present in the conduct of the accused. Here I do not think there was any callous conduct. As I stated before, the accused committed an error of judgment, but having done so, he did his best to avoid the consequences of his error. The learned Magistrate's third ground is that :

Accidents of this nature are of frequent occurrence, and in the interest of administration of justice and protection and safety of human life, such offences are required to be sternly dealt with.

I do not agree with that principle. One has to remember that driving motor cars has become essential part of human activities and it is impossible to avoid a certain number of accidents. In my view, it is no part of the duty of the Court to punish with savage sentences every motorist who has the misfortune to have an accident, which results in a loss of life, even though the accident be due to an error of judgment on the part of the driver. The circumstances of each case must be considered in imposing sentence.

7. Pertinently, by this judgment a reference made by the District Magistrate, Bombay Suburban district for enhancing the sentence of fine of Rs.150/- in default three months R.I. on conviction of the accused u/s 304-A of the Indian Penal Code recorded by the learned Magistrate was turned down.

8. In Bhalchandra Waman Pathe's case (supra), the Hon'ble Apex Court restored the sentence of fine of Rs.2000/ imposed on the appellant/accused for the commission of the offence punishable u/s 304-B of the Indian Penal Code and set aside the order of this Court of enhancing the sentence of fine to six months S.I. and fine of Rs.2000/-. The Hon'ble Apex Court while dealing with question of sentence in the said case, reiterated a cardinal principle to be adopted in evaluation of the sentence imposed in any given case in following words :

This takes us to the question of sentence. The trial magistrate after considering the various aspects of the case came to the conclusion that it was not necessary in the interests of justice to impose on the appellant a sentence of imprisonment. He thought that the ends of justice would be met by imposing a heavy fine on him. The High Court in the exercise of its revisional jurisdiction has altered the sentence as mentioned above. What sentence should be imposed in a given case is essentially within the discretion of the trial Court. The High Court would not be

justified in interfering with that discretion unless it is satisfied that the sentence imposed by the trial Court is unduly lenient or in other words grossly inadequate.

9. Perusal of this judgment reveals that the Hon''ble Apex Court took into consideration the judgment of this Court in Khanmahomed Shermahomed''s case (supra).

10. In Manish Jalan''s case (supra), the judgment of the High Court of Karnataka at Bangalore in Criminal Revision Petition No.159/2005 - reducing the sentence of simple imprisonment for one year and to pay fine of Rs.5000/-for the offences punishable under Sections 279 and 304-A of the Indian Penal Code imposed by the trial Court came under judicial scanner; and the Hon''ble apex Court, having regard to the facts and circumstances of the case, and particularly to the fact that the mother of the victim had no grievance against the appellant and had prayed for some compensation, further reduced the substantive sentence of imprisonment to the period of imprisonment already undergone and had ordered payment of compensation of Rs.1 Lakh to the mother of the victim.

11. In Vijay Namdeorao Kute''s case (supra), the Single Bench of this Court, while disposing off Criminal Revision Application No.133/2003 preferred against the concurrent findings of the trial Judge and the appellate Judge holding the applicant/ accused guilty of the offence punishable u/s 304-A of the Indian Penal Code, interfered with the sentence of imprisonment and fine imposed on the applicant/ accused for the reason of non consideration of the applicability of the Probation of Offenders Act to the facts and circumstances of the case, and ordered release of the accused/ accused on Probation of good conduct for three years on his executing necessary bond of Rs. 10,000/-with one surety u/s 4(1) of the Probation of Offenders Act and further ordered to pay a compensation of Rs. 5000/-to the heirs of the deceased victim.

12. Taking comprehensive view of these judgments, it can very well be sensed that the facts and circumstances of each case project unique picture which needs to be taken into consideration for imposing sentence and the thought for imposition of such sentence needs to be borrowed from the rationale expressed in Khanmahomed Shermahomed''s case.

13. In the instant case, learned trial Court rightly declined to extend benefit of probation under Sections 3 & 4 of the Probation of Offenders Act, 1968 to the applicant/ accused in the given circumstances of the case, particularly on account of loss of human life in the accident. However, for calibrating quantum of sentence one needs to take cue from the observations made in Khanmahomed''s case regarding the relationship between the severity of the sentence and degree of callousness present in the conduct of the accused. It is held that the severity of the sentence imposed depends to a great extent on degree of callousness present in the conduct of the accused. In the instant case, the accident took place in Ghat section comprising of twists and bends, while it was raining and the applicant/ accused was overtaking a truck going uphill. It can, therefore, be said

that the applicant/ accused very well knew gravity of the act of speeding uphill during night time when the acuity of the vision was affected by rains. This only means that he was not in a position to form a judgment about the situation he was tackling and, therefore, there could not have been any incident involving error of judgment. It is also in the evidence of PW-4 Suresh Bagul that the truck coming from the opposite direction gave light signaling his presence and despite this the driver did not stop and eventually gave dash to the rear side of the truck which he was overtaking. The applicant/ accused knew that he was driving the vehicle laden with the passengers in difficult terrain and yet he ventured to overtake a truck a risk knowingly taken by him in darkness of night. This certainly reveals some degree of callousness on his part as he was exposing innocent passengers in his vehicle who had reposed confidence in him, to a fatal risk. Only redeeming act on his part was that of saving vehicle from head on collision with the truck coming from opposite direction by swerving to the left and choosing lesser evil of ramming into back portion of the truck ahead of him. All this has been taken into account by the learned trial Court. Even learned trial Court gave thought to the defence of the accused revealed through the evidence of DW-1 Pundlik.

14. Considering these facts and circumstances, the learned trial Court chose to impose half of the sentence of the imprisonment stipulated by law for the offence punishable u/s 304-A of Indian Penal Code, 1860.

15. No interference is, therefore, warranted in the order imposing the sentence in the present case. Criminal Revision Application No. 292/2010 is, therefore rejected.