

(1997) 05 GUJ CK 0012
In the Gujarat High Court

Case No : Criminal Revision Application No. 113 of 1986

Kanaiyalal Arjandas

APPELLANT

Vs

Tribhovandas Devsibhai Pandit and Another

RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Evidence Act, 1872 — Section 25
Motor Vehicles Act, 1988 — Section 116
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1998) CriLJ 3482

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : P.M. Raval, for the Appellant; H.N. Jhala, for No. 1 and S.R. Divetia, Public Prosecutor, for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Pandit, J.—Kanaiyalal Arjandas-original complainant in Criminal case No. 82)9 of 1984 on the file of the Judicial Magistrate, First Class, Narol has preferred the present Revision Application against the order of the learned Additional Sessions Judge, Ahmedabad (Rural) at Narol passed on 17th September, 1985 in Criminal Appeal No. 55 of 1985. Neither Revision Applicant nor the applicant's advocate is present, but as this Revision Application is admitted and as the record and proceedings is on record, I proceed to decide this Revision Application on merits after perusing the record and after hearing the learned -Additional Public Prosecutor Mr. Divetia supporting the Revision Applicant.

2. The respondent No. 1 was charge-sheeted by the police of Narol police station on the allegation that on 49-1 1-84, at about 12.45 p.m., he drove his truck No. GTC 2265 at Kubernagar, "G" ward near Radhaswami Auto Centre in rash and negligent manner and caused death of Kishorbhai, aboy aged about 15 years. The learned Magistrate at Narol had framed charge against the accused for the

offence punishable under Sections 304-A and 279 of the Indian Penal Code. The respondent No. 1 accused had pleaded not guilty to the charge and his defence was a total denial.

3. In order to prove its case against the respondent No.1, the prosecution had examined number of witnesses. On considering the evidence before him, learned Judicial Magistrate came to the conclusion that the accused who was the driver of the said truck No. GTG 2265 at the time of the incident had driven his truck in rash and negligent manner and had caused death of Kishorbhai. He therefore, sentenced the respondent No. 1 u/s 304-A of the Indian Penal Code to suffer RI for one year and to pay a fine of Rs. 500/-, in default, to suffer RI for one year, but chose not to award any sentence u/s 279 of the Indian Penal Code as well as u/s 116 of the Motor Vehicles Act.

4. Feeling aggrieved by the said decision, the respondent No. 1 had preferred Criminal Appeal No. 55 of 1985 before the Sessions Court. The said appeal was heard by the learned Additional Sessions Judge. Learned Additional Sessions Judge came to the conclusion that from the material on record, the prosecution had failed to prove beyond reasonable doubt that the accused was the driver of the said truck No. GTG 2265 at the time of the incident, though the prosecution has proved that the deceased Kishorbhai had met with death due to injuries sustained by him on account of passing over of the said truck No. GTG 2265. He therefore, gave the benefit of doubt to the present respondent No. 1 and acquitted him of the offence with which he was charged by his judgment dated 17th September, 1985. Being aggrieved by the said decision, the deceased's brother-original complainant Kanaiyalal Arjandas has preferred the present Revision before this Court.

5. Learned Additional Sessions Judge has written an exhaustive and detailed judgment, the reasoning of which is running in 9 pages. He has taken into consideration the evidence of P.W. Kanaiyalal Arjandas, P.W. Rameshbhai, P.W. Babubhai Kanjibhai, P.W. Merna Mohanbhai, P.W. Dolaibhai, P.W. Mohanbhai Ghanshyambhai, P.W. Ramanbhai, P.W. Babubhai Manabhai, P.W. PSI Mali and after, discussing the evidence of each of them, has come to the conclusion that the prosecution has failed to prove beyond reasonable doubt that the respondent No. 1 -original accused was driving the truck) at the time of the incident. Out of those witnesses; examined by the prosecution, P.W. Rameshbhai P.W. Merna Mohanbhai, P.W. Mohanbhai Ghanshyambhai are the witnesses from-the-placel of incident, but. it is very pertinent to note that none of them has staled on oath that the respondent No. 1 before this Court-original accused was driving the truck at the time of the incident. As a matter of fact, not a single witness has deposed before the trial Court that the original accused-respondent No. 1 before this Court was driving the truck at the time of incident. The accused has taken a positive defence that he was not driving the truck at the time of the incident. When such a positive defence was taken by the accused, it was necessary for the prosecution to prove by direct evidence that he was in fact, driving the truck at

the time of incident in question. But no such evidence was produced by the prosecution.

6. Learned Judicial Magistrate had held guilty respondent No. 1 before his Court on the basis of two circumstances (1) P.W. Babubhai Kanjibhai has deposed at Exh. 16 that he was the owner of "the truck in question GTG 2265 and the respondent No. 1 employed on the said truck as the driver by him. But he has also clearly deposed that on 19-1-84, i.e. on the day of incident, he was out of Ahmedabad and he was also not in State as on that day, the accused was in charge of the said truck as a driver of the said truck. But merely because the accused was employed by him as a driver of the said truck, no conclusion could be drawn without any hesitation of mind that the accused was actually driving the truck at the time of the incident in question. The learned Judicial Magistrate had said that when the respondent No. 1 was employed as a driver of the truck, the burden of proof lies on him to prove that he was driving the truck at the time of the incident. It must be remembered that it is a criminal trial and in the criminal trial, burden of proof is on the prosecution to prove that rash and negligent act was committed by the person who is charge-sheeted by the prosecution and it is not for the said person to show or prove that he had not committed any rash and negligent act.

7. Another circumstance taken into consideration by the learned Magistrate in holding the respondent No. 1 guilty was the evidence of P.W. Babubhai Manabhai, the police constable on duty at Kurnagar police chowky. Now, the said witness had deposed that the present appellant had come to the said chowky and had informed him about the accident in question and thereupon he had given intimation to Sardarnagar police station and then he had handed over the respondent No. 1 to the police Sub-Inspector Shri Mali. It is very pertinent to note that the evidence also does not show that the accused had given intimation to the said police constable Babubhai Manabhai that he was driving the truck at the time of the incident. Merely because he happened to give an intimation of the accident, it could not be said that he must be the driver of the truck. Even if he had given an intimation that he was driving the truck at the time of the accident in question to the said police constable. Said part of his information is hit by the provision of Section 25 of the Evidence Act as it would amount to an inculpatory statement of an accused. Therefore, merely because he happened to give information of the accident, the conclusion arrived at by the learned Magistrate that he was the driver of the said truck; was not justified as has been held by the learned Additional Sessions Judge.

8. Therefore, as discussed above, learned Additional Sessions Judge has re-appreciated the oral evidence on record and has come to the conclusion that the prosecution had failed to prove beyond reasonable doubt that the original accused-respondent No. 1 before this Court was actually the driver of the truck in question. Said conclusion of the learned Additional Sessions Judge could not be said to be either perverse or manifestly erroneous so as to interfere with the

said finding while exercising revisional jurisdiction.

9. It must be also mentioned here that the present application is filed by the original complainant in a State case. The State has chosen rightly so not to prefer any Revision against the order of acquittal passed by the learned Additional Sessions Judge. The powers of the Court in Revision by a private complainant in a State case to interfere with the order of acquittal are very restricted as has been held by the Apex Court in the case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, . As per the said decision in such matters, if the High Court happened to come to the conclusion that the findings of the learned Additional Sessions Judge in allowing the appeal are perverse or manifestly erroneous, then to remand the matter to the trial Court for a fresh trial and the High Court cannot straightway convict the accused. But anyway, from the material on record, I am unable to hold that this is a fit case for exercising a revisional jurisdiction. I therefore, hold that the present Revision Application will have to be dismissed. Revision is dismissed. Rule is discharged.