
(2006) 04 BOM CK 0025

In the Bombay High Court

Case No : Criminal Revision Application No. 207 of 1998

Madhukar Bhausahab Mhaske

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

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

Citation : (2006) CriLJ 3700

Hon'ble Judges : S.P. Kukday, J

Bench : Single Bench

Advocate : R.L. Kute, holding for R.N. Dhorde, for the Appellant; Ranjanna Reddy, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—Petitioner came to be convicted by Chief Judicial Magistrate, Ahmednagar of the offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code. The petitioner is sentenced to suffer simple imprisonment for one month and to pay fine of Rs. 500/-, in default, to suffer simple imprisonment for fifteen days for commission of offence punishable under Sections 279 and 337 of the Indian Penal Code and he is further sentenced to suffer S.I. for three months and is directed to pay a fine of Rs. 1,000/-, in default, to suffer S.I. for one month for commission of offence punishable u/s 304-A of the Indian Penal Code.

2. The matter was carried in appeal. Criminal Appeal No. 116/1992 came to be dismissed by order dated 22-7-1998 by learned Sessions Judge, upholding the order of conviction and sentence passed-by the trial Court. These two orders are impugned in the present petition.

3. The facts, in nutshell, are that : Aasaram Ghodke (P.W. 1) was serving with Khandelwal family. On 30-11 -1987, at about 8 O'clock in the morning, as usual, Aasaram was taking Sumit, son of Shri Khandelwal, to Sports Meet organised by

the school. After reaching the school, Aasaram came to know that the venue is shifted to the church school. He, therefore, turned back and had descended the bridge near Collector's office on the station road. While he was going by the left side, a truck bearing registration No. MTD-4581, driven by the petitioner in a high speed, gave a dash to his cycle. As a result, Aasaram and Sumit fell down. Wheel of the truck passed over the legs of Sumit. The truck had to travel for a considerable distance before coming to halt. The injuries were then taken to the hospital. After eight days, Sumit succumbed to the injuries. A complaint in respect of the occurrence came to be lodged by (P.W. 5) Devid Baburao Chavan. The matter was investigated and the petitioner came to be charge-sheeted.

4. At the conclusion of the trial, learned trial Judge found that rash and negligent driving of the truck by the petitioner had resulted in causing death of Sumit and injuries to Aasaram. In this view of the matter, learned trial Judge convicted the petitioner of the offences punishable under Sections 279, 337 and 304-A of the I.P.C. and sentenced him as stated earlier.

5. The Appellate Judge found that the evidence on record is properly appreciated and the findings are based on sound reasoning. He, therefore, confirmed order of conviction and sentence passed by the trial Court and dismissed the appeal. These orders are impugned by the petitioner in the present petition.

6. According to the learned Counsel for the petitioner," the vehicle was not driven at a high speed. Therefore, the conclusions reached by the lower Courts that the death of Sumit is caused on account of rash and negligent driving by the petitioner, cannot be sustained.

7. Per contra, learned A.P.P. Smt. Ranjana Reddy has referred to the evidence of witnesses to show that the incident is caused on account of rash and negligent driving by the petitioner. According to learned A.P.P., the findings recorded by the trial Court are based on the evidence placed on record. Therefore, no interference with the order passed by the lower Courts is called for.

8. Facts of the present case are not disputed. The occurrence took place on 30th November, 1987, near railway station. Aasaram (P.W. 1) was returning with son of his master namely Sumit. Both were riding the bicycle. A dash was given to the bicycle from back side by the truck driven by the petitioner. On account of the impact, Aasaram and Sumit fell down and the boy came under front wheel of the truck. Both his legs were crushed. Right leg was amputated and the left leg was in bandage. In spite of the efforts. Sumit succumbed to the injuries after eight days.

9. What is required to be ascertained is whether the death of Sumit is caused on account of rash or negligent driving of the truck by the petitioner. According to learned Counsel, the petitioner was driving the truck at a slow speed. Therefore, it cannot be said that the petitioner was driving the truck rashly and negligently. This contention is fallacious. Rashness or negligence are not dependent on the speed of the vehicle. The speed of the vehicle is only one of the several other

factors which determine whether the act is rash or negligent. Negligence is the absence of due care and caution, whereas culpable rashness results from lack of circumspection. Similar view is taken by the Madras High Court in the matter of *In Re, J.C. May*, reported in AIR 1960 Mad 50. Referring to the concept of negligence and rashness, it is observed by the learned Judge that the negligence connotes want of proper care and rashness conveys the idea of recklessness or the doing of an act without due consideration. Culpable rashness consists in acting with consciousness that mischievous and illegal consequences may follow but with the belief that the actor has not taken sufficient precaution to prevent that happening. On the contrary, culpable negligence consists in acting without consciousness that illegal and mischievous effects will follow. Both the circumstances would show that the actor has not exercised the caution incumbent upon him. Whether the act of the petitioner is rash or negligent will have to be decided in conformity with this concept.

10. In the present case, panchanama of scene of occurrence shows that there were brake-marks for about 8 ft. It is also not in dispute that the truck was heavily loaded with sand. Evidence of the labourers, who were riding in the rear side of the truck shows that the truck suddenly veered from the left to the right at the, time of the occurrence. The evidence of labourers and injured Aasaram shows that the area near the railway station is always congested. There is always heavy traffic on this road. The evidence of witnesses and the panchnama of the scene of occurrence shows that the truck descended the bridge at a high speed. For avoiding the collision, the petitioner suddenly turned towards right, but could not control the vehicle. The vehicle thus knocked down the bicycle riders and when they fell down, passed over legs of Sumit. The brake-marks indicate that the truck was driven at a high speed. When the truck stopped, it was not parallel to the left edge of the road, but had stopped diagonally in the middle of the road. It is, therefore, apparent that the petitioner was driving the truck at high speed and could not control the speed at the time of occurrence, as a result, dash was given to the cycle. The impact resulted in the fall of Aasaram and Sumit and passing of the front wheel over both legs of the boy. Having regard to these facts, contention of learned Counsel for the petitioner that the petitioner is not guilty of rashness or negligent, as the truck was in slow speed, cannot be sustained. Having regard to the evidence on record, no fault can be found with the finding recorded by the lower Courts.

11. Revisional jurisdiction is to be exercised only in the rare cases to prevent miscarriage of justice. In the present case, the findings recorded by both the Courts below are based on proper appreciation of the evidence on record. Learned A.P.P. has rightly submitted that having regard to the reasoning, the findings cannot be condemned as perverse. No other illegality or impropriety has been pointed out or noticed. Thus, no case has been made out to warrant interference by this Court in the exercise of its revisional jurisdiction. The petition, therefore, must fail.

12. At this juncture, learned Counsel for the petitioner has submitted that leniency be shown to the petitioner. According to learned Counsel, the incident had taken place long back on 30-11-1987. The petitioner is the sole earning member of the family, therefore, he deserves leniency. On the other hand, learned A.P.P. Smt. Reddy contends that the petitioner is responsible for causing death of a young boy. Therefore, this is not a fit case where leniency can be shown.

13. In the present case, both the Courts below have applied deterrent theory of punishment. The wrong-doer is punished to ensure that other similarly situated are deterred from committing similar lapse. Protected litigation can be said to be one of the mitigating circumstances. However, in the present case, it can be seen that the prosecution is not responsible for causing the delay. The time is consumed for contesting the cause as the petitioner has availed all the remedies available to him. In these circumstances, protracted litigation cannot be a ground for showing leniency to the petitioner. Having regard to the nature of the offence, application of deterrent theory of punishment is indicated. Reformatory theory cannot be applied to such cases. Therefore, the prayer for leniency, at this stage, cannot be granted. As no case for interference is made out, the petition is dismissed. Rule is discharged. The petitioner shall surrender himself to the bail before the lower Court on or before 8th of May, 2006 for serving remaining portion of the sentence.