
(1980) 09 BOM CK 0013

In the Bombay High Court

Case No : Criminal Revision Application No. 804 of 1979

Motiram Tanumal Lalwani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-09-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 116
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1980) 09 BOM CK 0013

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

Bench : Single Bench

Advocate : S.R. Chitnis, for the Appellant; V.V. Kamat, Public Prosecutor, for the Respondent

Judgement

P.S. Shah J.

1. The petitioner, Motiram Tanumal Lalwani, who is a truck driver was prosecuted for offences under sections 279 and 304-A of the Indian Penal Code and also u/s 116 of the Motor Vehicles Act in the Court of Judicial Magistrate, First Class, Kolhapur, District Kolhapur. The prosecution arose out of an accident which took place on October 26, 1973, at night time in Bombay Poona Road. At about 2 a.m. on that day Gopal Naidu, the driver of truck bearing No. MRS-8708, had parked his motor truck on Bombay Poona Road for carrying out certain repairs. While he was replacing fan belt to his truck, another truck bearing No. MHF-1289 driven by the accused who was also proceeding towards Poona in the same direction collided with the stationery truck. As a result of the collision, the stationery truck moved up to a distance of about 60 feet and the cleaner of the said truck who was then replacing the fan belt received injuries and died in Kolhapur hospital. Naidu, however did not sustain any injuries. On a consideration of the evidence, the learned Magistrate held that the accident occurred but to rash and negligent driving of the petitioner. In the result, he convicted the petitioner for the aforesaid three offences and sentenced him to suffer rigorous imprisonment for

three months and to pay a fine of Rs. 1000/-. The petitioner's appeal challenging this conviction and sentence was also dismissed with by the learned Sessions Judge, Kolhapur. The petitioner has, therefore, filed this revision application challenging his conviction.

2. Mr. Chitnis, the learned Counsel appearing for the petitioner, submitted that having regard to the facts and circumstances of this case, it cannot be said that the prosecution has established its case against the accused beyond a reasonable doubt. He submitted that the evidence shows that it was a pure case of error of judgment on the part of the petitioner, while he tried to avoid the accident. Having carefully gone through the evidence on record, I find that there is considerable merit in this contention. It appears to me, that the courts below have not taken into account certain important factors which militate against the case of the prosecution. The prosecution evidence shows that on that night, witness, Gopal Naidu, was driving his truck No. MRS-8708 on Bombay Poona Highway. He was proceeding from Bombay towards Poona side. When his truck reached near village Chowk in Kholapur Taluka the fan belt of his truck was cut and he had, therefore, to take the truck to the left side of the road and halt it for replacing the fan belt. It was then 2 a.m. while the witness, Gopal Naidu, along with the cleaner of the truck, Rashid, were busy fixing the fan belt, another truck No. MHF-1289 driven by the accused which also came from Bombay side dashed against the stationary truck (MRS-8708) from behind. Rashid was thrown aside and sustained injuries and became unconscious, Rashid was taken to the hospital at Karjat in the same truck for treatment. However, he died in the hospital. Gopal Naidu went to Karjat Police Station and lodged his First Information Report. The Police Jamadar, Raikar, who has been examined in this case visited the place of the accident, drew the panchnama and also prepared the sketch of the scene of the accident. Apart from Gopal Naidu, the prosecution also relied on the evidence of Kimatram Dhanraj Sukhvani who appears to have been travelling in that truck. His evidence, however, is not of much assistance to the prosecution because in his examination-in-chief he stated that he did not see as to how the accident took place. The evidence of the Gopal Naidu will have to be weighed in the light of the defence of accused as well as certain facts found and recorded in the panchanama. Admittedly, Naidu's truck was stationary at material time and the fan belt was being replaced. Now, it is not possible to replace the fan belt unless the vehicle is in neutral gear. It will all depend on the level of the road portion over which the truck moved and the nature of the impact as to how far the truck would be pushed. The panchanama shows that the truck No. MRS-8708 of Gopal Naidu halted at a distance of about 60 feet. As for the impact of the vehicle of the accused with the other truck is concerned, there are two important circumstances to be noticed. Naidu had stated before the Police that the damage to his truck was about Rs. 100/- although he tried to improve upon his story by contending that the damage to his truck was about 500/-. Secondly, the panchanama shows that the truck of the accused moved only upto a distance of about 22 feet. The damage to Naidu's truck was more on its right side at the

back which to some extent supports the case of the petitioner that on seeing the stationary truck he tried to avoid the collision by trying to swerve his own truck towards the right. This circumstance clearly shows that the petitioner tried to avoid the collision. It is the case of the petitioner that the parking lights of stationary truck were not on at the time of the accident. As far as this aspect of the matter is concerned, witness, Gopal Naidu, in his examination-in-chief did State that he had put on the parking lights as it was night time. In his cross-examination he, however, admitted that he had not stated to the police that he had put on the parking lights of his truck when he had stopped it by the side of the road. This is an important omission which cannot be lightly ignored. It is also important to note that witness, Kimatram Sukhvani, who was an occupant of that truck has not stated anything on this material aspect. The courts below have, however, lightly brushed aside this important contradiction which raises a doubt about the claim of the witness Naidu, that the parking lights of his truck were on. It is the defence of the petitioner that at the time of the incident it was slightly raining. One truck from opposite direction came in full light and there were no parking lights to the stationary truck. In order to avoid the collision with the stationary truck he took his vehicle to the right side, but in the process his truck had slightly brushed with the stationary truck. The fact that petitioner had attempted to avoid the collision does support his version about the accident. It is true as observed by the courts below that no suggestion about the truck coming from the opposite direction in full light was made to the two witnesses, Naidu and Kimatram. Having regard to the manner in which the incident took place and also bearing in mind the fact that the petitioner was not driving the truck very fast and also the facts that the damage to the stationary truck was negligible, I do not think that the defence of the petitioner is false. The burden of proving its case that the accident had occurred because of the rashness or negligence on the part of the petitioner lay on the prosecution. In view of the circumstances mentioned above, it cannot be said that the prosecution has been able to discharge its burden beyond a reasonable doubt. The petitioner, therefore, is entitled to the benefit of doubt. In the result, the petitioner succeeds. The order of the conviction and sentence is set aside and the accused is acquitted. Fine, if paid, to be refunded. Bail bonds cancelled. Rule made absolute, accordingly.