
(2014) 06 BOM CK 0187

In the Bombay High Court

Case No : Criminal Appeal No. 113 of 2011 in Sessions Case No. 150 of 2008

Paras Janardan Thorat

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 184, 192A, 66(1)
Penal Code, 1860 (IPC) — Section 279, 304, 304A, 337, 338

Citation : (2014) ALLMR(Cri) 3231

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : Tushar Sonawane, Advocate for the Appellant; A.A. Mane, APP, Advocate for the Respondent

Judgement

Mridula Bhatkar, J.—This Appeal is preferred against the judgment and order dated 29th January, 2011 passed by the Additional Sessions Judge, Nashik thereby convicting the appellant/accused for the offences punishable under sections 304 (II), 279, 337, 338 of the Indian Penal Code and also for the offence punishable under sections 184 and section 66(1) punishable under 192-A of the Motor Vehicles Act. It is the case of the prosecution that a luxury bus bearing No. MH-01-L-6956 carrying 81 passengers went to Saptashrungi Temple in District Nashik on 18th January, 2008. The appellant was a driver of the said vehicle. The bus started return journey from Saptashrungi Gad at about 9.30 p.m. The road was having several turns and when the bus travelled half a distance, the appellant/driver lost his control. The bus was in excessive speed and while taking U turn, it broke the safety wall and straightway fell in the deep valley. The appellant/driver jumped out of the bus at that time. However, out of 81 passengers in the bus, 41 passengers died and remaining 40 passengers were injured. The case was registered with Abhona Police Station at C.R. No. 05/2008 on 21st January, 2008 against the appellant/driver. The police drew spot panchnama, recorded the statements of the witnesses and collected necessary evidence. They seized the driving licence of the appellant. The appellant/driver

was arrested. Inquest panchnama of the deceased were made. After completion of the investigation, Investigating Officer filed charge sheet in the Court of Judicial Magistrate First Class, Kalwan. As the offence was registered under section 304 Part II being triable by the Court of Sessions, the case was committed to the Court of Sessions. The charge was framed against the accused on 4th June, 2010. The accused pleaded not guilty and claimed to be tried.

2. The prosecution in all examined 8 witnesses including the passengers of the said bus, panchas and the police officers. The prosecution relied on the spot panchnama at Exhibit 95, panchnama of the road at Exhibit 98. The prosecution also produced death certificates of the persons who lost their lives in this unfortunate accident. The trial concluded in conviction. The punishment awarded by the learned Sessions Judge to the appellant/driver is thus:

"(i) For the offence punishable under section 304 (II) of IPC, he was sentenced to suffer R.I. for seven years and to pay fine of Rs. 5,000/- i/d. R.I. for one year.

(ii) For the offence punishable under section 279 of IPC, he was sentenced to suffer R.I. for six months and to pay fine of Rs. 500/- i/d. R.I. for two months.

(iii) For the offence punishable under section 337 of IPC, he was sentenced to suffer R.I. for six months and to pay fine of Rs. 500/- i/d. R.I. for two months.

(iv) For the offence punishable under section 338 of IPC, he was sentenced to suffer R.I. for one year and to pay fine of Rs. 500/- i/d. R.I. for two months.

(v) For the offence punishable under section 184 of M.V. Act, he was sentenced to suffer R.I. for six months.

(vi) For the offence under section 66(1) punishable under section 192-A of M.V. Act, he was sentenced to pay fine of Rs. 3,000/- i/d. S.I. for one year."

3. The learned counsel for the appellant has submitted that the appellant was not rash and negligent at the time of driving the said bus. He relied on the evidence of PW-2 Pramod Shankarrao Deshmukh/driver of the ambulance, who was called immediately after the accident and he made six trips to Kalwan hospital. He further submitted that PW-2 Pramod Deshmukh in his cross-examination has admitted that the road of Saptashrungi Gad is 11 kms. from the bottom to the top and 20 minutes are required to climb the Gad and 10 minutes for coming down. There are 20 to 25 speed breakers before U turn while coming from the top. The learned counsel has submitted that PW-1 Chhedilal Bholanath Yadav has stated that the bus started at 9.30 p.m. to come back and the bus came to U turn at 10 p.m. On the basis of this evidence, the learned counsel made his submissions that this shows that the driver was not negligent, but he was driving the vehicle cautiously. The learned counsel further submitted that he cannot be convicted under section 304 Part II as he had no knowledge that this would amount to death or serious injuries to the passengers. The learned counsel submitted that this is an accident which could have been tried under section 304A of IPC. The learned counsel alternatively argued that the appellant was

arrested on the same day. He was behind the bars for some period, then he was released on bail when the case was committed to the Sessions Court. He was on bail till the conclusion of the trial. As he was convicted, his bail bond was cancelled and the appellant is in the custody since 29th January, 2011. The learned counsel further submitted that the appellant/accused has undergone the sentence nearly for 4 years. He lost his son when he was in prison and he is having two minor daughters. Therefore, leniency be shown and the sentence awarded to him be reduced upto the period undergone the sentence.

4. Learned APP while opposing this Appeal has submitted that the appellant/driver was very rash and negligent. She relied on the statement of PW-1 Chedilal Yadav. She submitted that he was driving speedily and in a rash and negligent manner. She relied on spot panchnama wherein it is mentioned that the safety wall which was at the edge of the road was broken due to dash of the bus. She pointed out that though the capacity of the said bus was 54 passengers, 81 passengers were travelling in the bus and this amounted to rash and negligent act of the driver. She submitted that the driver should have been cautious and slow while driving bus when he was coming down from the mountain with the bus loaded with 81 passengers. She submitted that the number of children were more in the bus. In support of her submissions, she relied on the judgment of the Supreme Court in the Alister Anthony Pareira Vs. State of Maharashtra, .

5. Perused the judgment of the Sessions Court and the evidence of the witnesses. The fact of accident and the number of deaths and injuries is not denied by the defence and is proved by the prosecution. The accident has taken place when the appellant driver was returning from the Gad and when he came in the middle of the Gad at the time of taking "U" turn, the bus went straight in the valley and it was damaged into pieces. The evidence of PW-1 Chedilal Yadav and PW-4 Jitendra Kesav Sutar, who were travelling in the bus at the relevant time have stated that the appellant was driving the luxury bus at very high speed. The passengers tried to tell him to drive the bus slowly, however, he did not pay any attention to their suggestions and thereafter the bus fell down in the valley. Undoubtedly, the driver of any public vehicle should drive the vehicle cautiously, as he is responsible for the lives of the passengers who are travelling.

6. In the present case, the appellant was climbing down the mountain and thus, he was aware that the road is with steep turns and therefore he is required to be over cautious. The admissions given by the driver of the ambulance i.e. PW-2 as pointed out by the learned defence counsel creates some doubt about the speed of the vehicle. However, driving in excessive speed and rashly or negligently are two different things. A person may drive the vehicle slowly and yet it may be negligent or rash and a person driving speedily may not be negligent while driving the vehicle. Therefore, whether the vehicle was in high speed or in a slow speed cannot be the only criterion to measure the negligence of the appellant/driver. In view of the evidence of the eye witnesses and considering the fact that it was a night drive and the road was with steep turns, utmost caution and

diligence were required on the part of the appellant/driver. Learned APP has pointed out that the width of the road was 29 ft. and there was a kaccha road of 5 ft. and thereafter a safety wall was constructed. However, the bus damaged the said wall and went in the valley. Therefore, I am of the view that the conviction of the appellant under section 304 Part II is to be maintained. The alternate submission of the learned counsel for the appellant that the quantum of the sentence is to be reduced, as the act of the appellant was unintentional and all the deaths were accidental can be considered at this stage. In the case of Alister Anthony Pareira, the High Court has held the accused guilty under section 304 Part II of the Indian Penal Code for killing 7 persons but awarded 3 years punishment. The Supreme Court in its concluding paragraph No. 97 has observed that "three years punishment awarded by the High Court is too meagre and not adequate. However, since no appeal was preferred by the State, the Supreme Court refrained from considering the matter for enhancement". However, in the said case, the accused drove the vehicle in drunken condition and killed the persons on the footpath at about 4 a.m. The road was clear and the persons were sleeping on the pavement. In the present case, it is not a case of the prosecution that the appellant/driver was drunken when he was driving the vehicle. Thus, driving car in a drunken condition is undoubtedly a very serious incriminating circumstances against the driver facing the charge under section 304A or 304 Part II. The learned Sessions Judge has observed in its judgment that though the permissible capacity of the bus was of 54 passengers, 81 passengers were travelling in the said bus. It appears from the evidence of the witnesses that a special luxury bus was booked and it started from Worli on the earlier day to go to Shirdi and thereafter it went to Nashik. Thus, it shows that the driver was driving throughout. These extra passengers were not taken by the driver himself in the bus but they have already booked the vehicle. Till today, the appellant/accused has undergone the sentence of nearly 4 years and he has 2 minor daughters. In view of the circumstances and the manner in which the accident has taken place, I am inclined to accept the alternative submission of the learned counsel for the appellant on the point of reduction of sentence. Hence, I pass the following order:

"(i) The sentence of conviction is confirmed. However, the sentence of 7 years is reduced to 5 years.

(ii) The order of fine is maintained.

(iii) The Jail Authority to verify the sentence undergone.

(iv) Except the reduction of sentence from 7 years to 5 years, rest of the order passed by the learned Sessions Judge is maintained.

(v) Appeal is partly allowed."