

(2013) 07 BOM CK 0057

In the Bombay High Court

Case No : Criminal Revision Application No. 22 of 2012

Rosario Fernandes

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 627 : (2013) 4 BomCR(Cri) 147

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : S.D. Lotlikar and J.C.A. Simoes, for the Appellant; S.R. Rivonkar, Public Prosecutor, for the Respondent

Judgement

Chavan R.C., J.—This revision is directed against the concurrent findings of the trial Court as well as the First Appellate Court holding the accused guilty of the offences punishable under sections 279 and 304A of the Indian Penal Code and sections 134(a) and (b) of the Motor Vehicles Act and sentence of Simple Imprisonment for six months and fine of Rs. 1,000/- on first count, Simple Imprisonment for one year on second count and Simple Imprisonment for two months on third count imposed upon the applicant by learned Magistrate. The facts which are material for deciding this revision are as under:

On 1/12/2009, a pedestrian by name Abbasali received a dash by Tipper Truck on Ambedkar Square in village Curchorem. Police registered an offence and on finding that said Abbasali had succumbed to injuries, performed inquest and sent body for postmortem examination. They recorded statement of witnesses and on conclusion of investigation, arrested and charge-sheeted the present applicant. The applicant pleaded not guilty to the charge framed against him and, therefore, was put on trial at which the prosecution examined in all 10 witnesses in its attempt to bring home the guilt of the applicant. After considering the prosecution evidence in the light of the defence of false implication, learned Magistrate convicted and sentenced the applicant as aforementioned. The applicant appealed before the Court of Sessions, but his appeal was turned

down. Aggrieved thereby, the applicant is before this Court.

2. I have heard learned Counsel for the applicant and learned Public Prosecutor for the State and with the help of both, I have gone through the evidence on record.

3. PW 1-Vikram Gosavi is a panch at the panchanama of spot. PW 2-Leopoldo D"Costa is a panch at the inquest panchanama. PW 3-Sudarshan Mauria stated that police came to the spot and took the injured to Hospital and that he later learnt that the victim had died. PW 4-Jaipal Diwani seems to be a Surveyor, who examined the vehicle bearing No. GA-02-U-5430 and found that the vehicle had no mechanical defect. PW 5 Dr. Swatilana Gomes performed autopsy and proved notes of examination which show that the victim died as a result of vehicular accident. PW 6-Prabhal Vast claims to have been eye-witness to the accident. He stated that on the day of accident, he was proceedings from Quepem to Curchorem in his Santro Car and saw Tipper Truck bearing No. GA-02-U-5430 coming from Xelvon. Tipper Truck gave dash to pedestrian, who was crossing the road. The Truck went towards Sanguem after hitting the pedestrian. The pedestrian was seriously injured and smashed. The witness further proceeded towards his destination. He identified the applicant to be the person, who was driving the Truck at the relevant time. He was cross-examined at length. He denied having stated to the police that he was proceeding on motorcycle and not in Santro Car as he had claimed in his deposition. However, the Investigating officer who had recorded his statement and who was examined as PW 9, proved the contradiction. He denied the suggestion that he had not witnessed the incident, but had made false statement in order to save his friend Pramod Dhavali from being charge-sheeted. PW 7-Head Constable Pradip Naik registered the offence, proceeded to spot, performed panchanama of spot and stated that they have tried to trace the driver of the unknown vehicle. PW 8-Mohiddin Sab was panch at the panchanama in respect of Truck bearing Registration No. GA-02-A-5430 which has been seized by the police on 7/12/2009. PW 9-PSI Vinayak Patil and PW 10 PSI Vijaynath Kavlekar conducted the investigation in parts.

4. Learned Magistrate believed the evidence of PW 6-Prabhal Vast and convicted the applicant. Learned Additional Sessions Judge found nothing amiss in learned Magistrate's placing reliance on the testimony of PW 6-Vast.

5. The discrepancy as to whether PW 6-Vast was driving a car or riding a motorcycle seems to have been brushed aside by the learned Magistrate as also learned Sessions Judge as inconsequential. Learned Additional Sessions Judge observed in paragraph 22 of the judgment that though the accused suspected that PW 6 had falsely implicated the accused in order to save Pramod Dhavali, there was nothing on record to show that Pramod Dhavali was friend of PW 6 or was involved in the accident. Learned trial Magistrate as well as learned Additional Sessions Judge can be excused for making such observation, though had they been a little more active in their duty to ensure that justice was done in the case, by looking at the statement of PW 6-Vast which was recorded and

contradiction wherein was proved by PW 9 PSI Patil, they would have reached the truth. This statement recorded on 5/12/2009 i.e. about four days after the incident, shows that the witness claimed that when he was reading daily newspaper, he was surprised to read that different Tipper Truck bearing registration No. GA-02-V-7115 had been attached in the said motor accident and police had arrested driver by name Pramod Uttam Dhavali. He claims to have been upset by this news that police had arrested an innocent person and attached wrong Truck involved in the accident. He then went on to state as to how the accident occurred and gave registration number of offending Truck as GA-02-U-5430. There can be no doubt that the cross-examining Counsel should have cross-examined the witness with reference to these disclosures made in the statement. This was not done by them. But when the accused was arrested on the sole testimony of such witness, who first having seen the pedestrian being dashed, rather smashed according to witness, did not even bother to wait at the spot or inform the police, and had come up with a story about being surprised on seeing that an innocent person was arrested and, therefore, went forward to give a twist to police investigation, the learned Magistrate should have seen that he was not reliable witness and the accused could not have been convicted on the testimony of such witness. Though the Presiding Officers of Criminal Courts should not descend in the arena, they cannot be mere spectators in the trial, particularly when the statement recorded by the Investigating Officer had been placed before the Court which learned Magistrate must have read at least while framing the charge. Learned Magistrate also must have noted the contents of the statement when the witness was contradicted with reference to a part of the statement. Even if this part in the statement of PW-Vast was brought on record by contradicting him, still the fact remained that the witness had given incredible story of having been totally insensitive to what had happened very much before his eyes and had left injured person in the lurch without even bothering to inform the police for four days. If he did not know Pramod Dhavli why should he have been upset that an innocent person was being arrested, is also unclear. This is apart from the fact that first he came with a story that he was riding motorcycle and then changed it to having been driving Santro Car, while deposing in the Court. Learned trial Magistrate and learned Additional Sessions Judge could have seen that the evidence was grossly inadequate to sustain the conviction. The revision application is, therefore, allowed. The conviction of the applicant for the offences punishable under sections 279 and 304A of Indian Penal Code and sections 134(a) and (b) of M.V. Act and sentences imposed, are set aside. The applicant/accused is acquitted of the said offences.