
(2015) 09 BOM CK 0235

In the Bombay High Court

Case No : Criminal Revision Application No. 159 of 2001

Sawakar Geetaram Andhale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

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

Citation : (2015) ALLMR(Cri) 4041

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : B.G. Tangsali, Advocate, for the Appellant; Arfan Sait, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J.—The petitioner herein was working as a driver of bus run by Thane Municipal Corporation (Hereinafter referred as TMT). It is the case of prosecution that on 24/02/1997, one Ashok Virappa Salian lodged a report at Rabale Police Station alleging therein that he earns his living by plying auto rickshaw bearing No. MH 04 - V- 7196. On 24/02/1997, he returned home at about 07.00 p.m. and noticed that a bus of Thane Municipal Transport bearing No. MCU - 9965 was parked in front of his house. The driver had taken the bus in reverse mode. The bus had dashed against a stone and at that time had knocked down a small boy aged about 3 years who was identified as Ajay Nanasaheb Pawar. People in the vicinity had gathered immediately and had taken the injured to Shivaji Hospital at Kalwa. At the time of admission, injured was declared dead. Complainant had specifically alleged in the report that driver of the said bus had parked his bus negligently and was not seated in the said bus. That by his negligent act, the minor child had died. On the basis of his report, crime was registered for offence punishable under section 279, 304(A) of Indian Penal Code. Applicant was arrested, produced before Judicial Magistrate First Class and then enlarged on bail. After completion of investigation, charge-sheet was filed.

Summary Criminal Case No. 801 of 1997 was registered against the applicant. Prosecution has examined 7 witnesses to bring home the guilt of the accused. Learned Magistrate had observed that post mortem report below Ex. 27 was admitted by the accused, similarly inquest panchanama was also admitted.

2. Complainant was examined as examined as P. W. 1. He has deposed before the Court that on 24/02/1997 when he was present in the house, he heard a loud sound and by the time he came out, people had gathered on the spot. At that time, complainant had noticed that one boy was knocked down from the bus and that the bus had also dashed against rickshaw and had caused damage for about Rs. 5000/-. He had identified the driver before the Court. In the cross-examination, he had admitted that when he came out of the house, the boy was already taken to the hospital and he had not actually seen the bus knocking down the boy. He had seen the bus standing on the spot. It can be therefore inferred that complainant has not an eye witness to the incident of the bus knocking down the boy. He has admitted in the cross examination that he had not given the name of the driver in the F.I.R., however, he is not aware as to who had mentioned the name of the driver. Learned Magistrate has only considered the aspect that the accused was identified in the Court and the said identification amounts to substantive evidence.

3. P. W. 2 Baburao has deposed before the Court that he had only learnt about the death of the minor boy.

4. P. W. 3 Nanasaheb Pawar happens to be unfortunate father of the child. He has deposed before the Court that accused had parked his bus near the playground and the children were playing in the close by vicinity. He deposed before the Court that some person started the said vehicle and the said bus started moving in reverse direction and his minor son Ajay was crushed in between the stone and the tire of the bus. He has further deposed that accused had come to the spot after about 10 to 20 minutes of the accident. It is pertinent to note that witness was cross-examined. He had not stated anything about the applicant of hand brakes in his statement. He had learnt that accused was the bus driver. Witness has not identified the accused before the Court.

5. P. W. 4 Smt. Sujata Pawar has deposed before the Court that on 24/02/1997, she had gone to purchase kerosene and her son Ajay was playing in the ground. She learnt from neighbours that TMT bus had knocked down her son and that the bus was standing on the spot and the bus driver was not present. The rear portion of the bus had dashed against her son. Driver had thereafter, come on the spot after she heard the cries and hence, she had identified the driver.

6. P. W. 5 Rajendra has also stated that one boy aged about 9 to 10 years had started TMT bus by putting on ignition keys. The bus had started to run in the reverse direction and had dashed the stone. According to P.W. 5 the stone has got entangled in the wheels of the bus and had later had fallen on the stomach of said boy. At that time, the driver was not seen on the spot and he later came on

the spot and took the vehicle. He was arrested. He has specifically admitted in the cross-examination that he had also arrived on the spot only after hearing the cries of the people. Hence, it is clear that P. W. 5 has also not an eye witness to the incident.

7. P. W. 6 is Investigating Officer. He has admitted in the cross examination that Investigating Officer had not obtained any log sheet or report from the controller of TMT Depot.

8. It is thus clear that there is no direct evidence to show that minor boy had died at the hands of present applicant. It is true that applicant had parked the bus on the road. He had left the keys in the bus as he had been in close vicinity. He had no knowledge that any minor boy would enter into the bus and make attempt to start the bus. It can be said that the only negligence that can be attributed to the present applicant is that he had left the keys to the panel of the bus. Learned counsel for the applicant has therefore, rightly submitted that section 279, 304(A) would not be attracted. Learned Magistrate by Judgment and Order dated 20/08/1999 had convicted the applicant for offence punishable under section 304(A) of Indian Penal Code and sentenced to simple imprisonment for three months and fine of Rs. 500/-. Being aggrieved by the said Judgment and Order, applicant had filed appeal No. 62 of 1999 before Sessions Court. Learned Sessions Court had dismissed the appeal. Hence, this revision application.

9. Learned counsel for the applicant submits that section 304(A) of Indian Penal Code reads thus:

"Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. According to learned counsel for the applicant, no knowledge can be attributed to the applicant that any boy would start the vehicle. Learned counsel submits that the question arises as to whether it can be said that the applicant has caused the death of the boy by his negligent act. It is submitted that it is necessary to determine the degree of negligence attributed to the present applicant. It is true that applicant was not in the bus at the time of accident and was in the close vicinity since he had arrived on the spot soon after the accident.

11. Negligence is absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. Negligence is a breach of duty and negligence in law ranging from "inadvertence" to shameful disregard of the safety of others. In most cases, it is caused by "Heedlessness" or inadvertence by which the negligent party is unaware of the results which may follow from his act. The concept of duty, its reasonableness, the standard of care required cannot be put in a straitjacket formula. The applicant was reckless in leaving the key in the vehicle but had never fathomed that any child would try his hand at it and therefore, he cannot be punished for the same. Hence,

following order is passed.

"(i) Revision application is allowed.

(ii) The Judgment and Order dated 08/05/2001 passed by Additional Sessions Judge, Thane in Criminal Appeal No. 62 of 1999 thereby confirming the Judgment and Order dated 20/08/1999 passed by Third Judicial Magistrate First Class, Thane in S.C.C. No. 801 of 1997 is hereby quashed and set aside.

(iii) Applicant is acquitted for offence punishable under section 304

(A) of Indian Penal Code.

(iv) Bail bonds of the applicant stands cancelled.

(v) Fine amount, if paid, be refunded.

(vi) Rule made absolute in the above terms.

(vii) Revision application is disposed of accordingly."

CERTIFICATE

Certified to be true and correct copy of the original signed judgment.