
(2009) 02 BOM CK 0113

In the Bombay High Court

Case No : Criminal Revision Application No. 2 of 2009

Smt. Devki Vassudev Gadekar and another

APPELLANT

Vs

State of Goa and another

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2009) 02 BOM CK 0113

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : V.A. Lawande, for the Appellant; Winnie Coutinho, Public Prosecutor for Respondent No.1, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This revision is at the behest of the wife and daughter of deceased Vassudev Gadekar who died in an accident on or about 6-3-2005 at Poira, Bicholim. The Respondent No.2/Accused came to be tried with an allegation that on 6-3-2005 at about 15.15 hours while he was proceeding from Mayem to Poira he drove his motorcycle bearing No.GA-01-K-6458 in a rash and negligent manner and dashed against the said Vassudev Gadekar who was walking by the side of the road and caused his death. By Judgment and Order dated 22-9-2008 the Accused came to be acquitted under Sections 279, 304-A of IPC. The case of the accused, in his statement recorded u/s 313 of the Criminal Procedure Code(Code, for short) is one of denial simpliciter. The accused has also stated that he was falsely implicated in the case by the Bicholim Police. It appears that in the course of cross-examination it was suggested on behalf of the Accused to Pandurang Naik/PW3 that the accident was caused due to the fault of the deceased as the deceased was crossing on the right hand side when there were two to three vehicles coming behind the motor-cycle. Learned Counsel appearing on behalf of the accused has submitted that on the basis of the suggestion as well as the statement of the accused recorded u/s 313 of the

Code the involvement of the accused was proved in the said accident.

2. This is a revision application and it would be impermissible of this Court to reassess the evidence led on behalf of the prosecution which has resulted in the acquittal of the accused. There is no perversity in the Order. Amongst several witnesses examined by the prosecution, the evidence of Prabhakar Gadekar/PW2, a cousin brother of the deceased Vassudev Gadekar, Pandurang Naik/PW3 and Govind Sawant/PW4 was of some importance to the case of the prosecution and the trial Court after a detailed analysis of the facts stated by them has rejected their evidence. According to Prabhakar Gadekar/PW2 who had lodged a complaint, after the accident, he had reached the scene after about two minutes and had seen the deceased fallen on the road. He had, inter alia, stated that Prashant Gadekar/PW1 had told him and showed him that the accused was riding the motorcycle but the said Prashant/PW1 in turn had deposed that he was shown the spot of accident by Laxman Sawant. Admittedly, the said Laxman Sawant was not examined and therefore what was stated by Prabhakar Gadekar/PW2 was clearly inadmissible. Moreover, Prabhakar/PW2, as noted by the learned trial Court, could not name a single person who was present on the spot. Admittedly, he was not an eye witness. Pandurang Naik/PW3's evidence has also been rejected by the trial Court as his presence at the scene has been doubtful. It appears that the statement of this witness, as stated by him, was recorded after about 15 to 20 days of the accident and he had further stated that one Krishna was present at the spot and the said Krishna was not admittedly examined by the prosecution. He too could not name a single person and for this reason as well his presence has been doubted at the scene. Likewise, Govind Sawant/PW4's evidence has also been doubted as that of a person who was present and seen the accident had taken place. He had stated to the Police that there was a pillion rider along with the Accused a fact which he denied at the time when his statement was recorded in the Court. He had stated that Vassudev was walking on the left hand side of the road and was proceeding towards the hotel of Pundalik Y. Sawant and at that time a motorcycle bearing No.GA-01-K-6458 came towards Poir side which was driven by the Accused and dashed against the said Vassudev from behind due to which he fell down and on seeing that he rushed to the spot along with other villagers. As per the panchanama the road at the scene of accident is about 15 meters and if that be so Govind Sawant/PW4 gave no explanation as to what was the occasion for the accused to dash the deceased from behind. There are other inconsistencies in his evidence pointed out by the learned trial Court. Admittedly, as stated by the prosecution, the deceased and the accused were going in the same direction.

3. The submissions made by the learned Counsel cannot be accepted in a criminal trial. A suggestion put to a prosecution witness by a counsel cannot be taken as evidence or an admission on the part of the accused. An accused has a right to maintain profound silence in the course of the trial. It is also settled law that the prosecution case has to be tested independently of the defence version and a weakness or falsity of the defence version cannot sustain the guilt of the

accused. A false answer can provide a missing link only after other links in the chain of the case of prosecution are proved. This is a case which has ended in acquittal on proper appreciation of evidence by the learned J.M.F.C. The view held is a plausible view. Being so, there is no scope re-appreciating the evidence in revisional jurisdiction. The criminal revision application is therefore hereby dismissed.