

(2015) 02 BOM CK 0270

In the Bombay High Court

Case No : Criminal Revision Application No. 364 of 2002

Uddhavrao

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 184

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

Citation : (2015) ALLMR(Cri) 2553

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; D.R. Kale, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J—The present Revision Application is preferred by Uddhav Bais [P.W. 2], since is aggrieved by the acquittal of non applicant No. 2 by the learned Judicial Magistrate First Class, Naigaon (B.Z.) for the offence punishable u/s. 279, 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act. Heard Mr. V.D. Gunale, the learned counsel for the applicant, Mr. D.R. Kale, the learned A.P.P. for respondent No. 1 - State and Mr. Amol Gandhi, the learned counsel for respondent No. 2 in extenso.

2. Non applicant No. 2 faced prosecution for the offence punishable u/s. 279, 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act. According to the prosecution, on 25/10/2000, he was driving tractor - trolley bearing No. MH-26/C-9249 and MH-26/C-8693 at 7.00 p.m. on Naigaon - Kolambi road in rash and negligent manner and due to such rash and negligent driving, near Ancholi fata within the village limits of Godhamgaon, caused death of Nagorao Ramrao Bais.

3. In order to substantiate its case, prosecution has examined in all six witnesses. P.W. 2 Uddhav Bais, who is the applicant, though is not an eye

witness, has lodged First Information Report [hereinafter referred as "F.I.R."] [Exh. 10]. P.W. 1 Kerba and P.W. 3 Sanjay along with P.W. 4 Pandharinath were examined as eye witnesses. According to the prosecution, these witnesses were traveling along with deceased in trolley.

4. In view of Inquest Panchanama [Exh. 11] and Postmortem report [Exh. 12] and in the light of the evidence of eye witness, it is clear that Nagorao died in the incident when non applicant No. 2 was driving the tractor.

5. The question is whether, death of Nagorao is due to pure accident or it has resulted into because of rash and negligent driving of the non applicant No. 2.

6. The learned counsel for the applicant submitted that if the evidence of eye witnesses are read in their true perspective, then it is clear that non applicant No. 2 is responsible for the death of Nagorao due to his rash and negligent driving of the tractor.

7. Kerba [P.W. 1] has stated in examination-in-chief as under:

"Nagoji Bais was sitting on the trolley when tractor was passing by the road near Godhamgaon, the bag slipped down and Nagoji also fell down".

8. Uddhav Bais [P.W. 2], the first informant though is not an eye witness, has deposed before the Court that the tractor was loaded with the grocery articles containing gunny bags and plastic bags and his brother was sitting in the trolley over the said goods.

9. Eye witness Sanjay Bais [P.W. 3] is the son of the deceased. He was accompanying with him. In the Examination-in-chief itself he has stated as under:

"(a) My father was sitting on gunny bag, slipped along with the same and went below the wheel of the trolley;

(b) the bags which were in trolley slipped between tractor and trolley;

(c) the bags in trolley were not properly tied with rope ".

Further, in his cross examination also he has reiterated the position that his father was sitting on gunny bags, which was kept on plastic bag.

Independent witness Pandharinath Panchal [P.W. 4], who was also one of the occupants of the trolley, has also pointed out in his evidence that Nagorao Patil was sitting on the bag.

10. From the aforesaid evidence, it is crystal clear that deceased Nagorao was sitting on plastic bag which were not properly tied with rope. It slipped down along with deceased.

11. The evidence of Pandharinath [P.W. 4] shows that there was a speed breaker on the road and accused applied the brake at 25-30 ft. before speed breaker and because of which Nagorao fell down.

12. If the aforesaid evidence is evaluated in its correct perspective, then it is crystal clear that non applicant No. 2, who was driving the tractor can not be said to be negligent or rash while driving the said tractor. He was required to apply brake due to the speed breaker. The time of the accident is at 7.00 p.m. Since the gunny bags were not properly tied by the road, non applicant No. 2, who was required to apply brake, appears to have been slipped down. The deceased, who was sitting over said gunny bags, it appears that was unable to control himself and also fell down in between tractor and trolley, resulting into his unfortunate death.

Therefore, in my view, the incident is result of pure accident. It not be attributed to the non applicant No. 2 that he was rash and negligent while driving the tractor.

13. The learned trial Court, in my view, has not committed any mistake in acquitting non applicant No. 2 on the basis of aforesaid evidence. In that view of the matter, the present Revision Application is dismissed. Rule discharged.