

State (Through Public Prosecutor) Vs. Abdul Karim Hodur

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Court : Mumbai Goa

Decided On : Feb-05-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Appeal No. 10 of 2011

Appellant : State (Through Public Prosecutor)

Respondent : Abdul Karim Hodur

Judgement :

The appeal is filed against the judgment and order of Criminal Appeal No. 76 of 2010 which was pending before the Assistant Sessions Judge, North Goa, Panaji. Sessions Court has acquitted the respondent of the offences punishable under Section 279, 304-A of I.P.C. The respondent was convicted and sentenced for these offences by the learned Judicial Magistrate First Class, Ponda in Criminal Case no.11/S/2009/C.

2. Both the sides are heard.

3. In short, the facts leading to the institution of the appeal can be stated as follows:-

The accident took place on 3.6.2008 at about 18.10 hours near Vijay Shaw Mills situated at Bhoma, Banastari -Ponda road. The truck bearing No. GA-01-W-6555 was being driven by the respondent and he was proceeding towards Ponda. The

scooter of the complainant was also proceeding towards Ponda side. The accident took place when the scooter was ahead of the truck. It is the allegation of the rider of the scooter, the complainant that the dash was given to his scooter from back side. His wife died in the accident as she came under the rear wheel of the truck. The learned Judicial Magistrate, First Class, believed the witnesses like the rider of the scooter. The learned Judicial Magistrate, First Class, considered circumstance like the identification of the driver which is done in the evidence of the cleaner of the truck. Other circumstances are also considered. The learned Assistant Sessions Judge has considered the circumstance like the report of the RTO office to the effect that the air brakes of the truck was not working and also the circumstance like inconsistency in the evidence of two witnesses and circumstances noted in the spot panchanama.

4. The main witness for the prosecution was the complainant, Subhash (PW3). He has given evidence that the tipper truck came from the back side with fast speed and it gave dash to his scooter. He has given evidence that due to the dash, he fell by the side of the road but his wife came under the rear tyre of the truck and she died on the spot. In the evidence he has not specifically stated as to how the driver of the truck was rash or as to how he was negligent.

5. As against the aforesaid evidence from the complainant there is evidence of Mustafa Edkar (PW6), cleaner of the truck. He has given evidence that initially, he heard big noise of the accident and then he realised that the driver of the truck had lost control over the vehicle as the brakes were not working. He has given evidence that the truck was driven with the speed of 40 to 50 kilometres per hour. His evidence shows that probably the stepny fixed on the left side of the truck hit the scooter and the accident took place.

6. The accident took place in June and at about 600p.m. there was sufficient light. The total width of the tar road is mentioned as 7.3 metres and the width of the side patthy on left side was 2 metres. There was side patthy on the right hand side having width of 1.5 metres. From the point of impact, there was some portion like 0.10 metres tar portion towards left side and the remaining portion of the tar road on the right hand side was 6.4 metres. From the point of impact the scooter was

lying at a distance of 7.8 metres on the left hand side of the road. The tipper truck standing on the left hand side of the road was at the distance of 159 metres, from the point of impact. No tyre marks were noticed showing that the truck driver could apply the brakes. In spot panchanama there is mention that some portion of the stepny fixed on the left side of the truck had come in contact with the other vehicle as there were fresh marks of brushing of that portion. There is sketch map showing aforesaid location with the spot panchanama.

7. The cleaner of the truck is not declared hostile by the State. The circumstances mentioned in the spot panchanama are consistent with the evidence given by the cleaner. He does not corroborate that the truck gave dash to the back side of the scooter. The wife of the complainant had come under the rear wheel on the left side of the truck. No damage was therefore to the truck to the front portion.

8. The defence has tried to bring on record that at the relevant time some drainage work was going on by the side of the road. The cleaner has admitted this suggestion but the rider of the scooter has denied this suggestion. There is no mention of such repair work or drainage work in the spot panchanama. Even if this evidence is ignored, the fact remains that the wife of the complainant had come under the rear wheel of the truck which was on the left side. Both the vehicles were proceeding in same direction. Considering the total width of the road and the fact that the air brakes of the truck was not working the possibility that the truck driver lost control or there was error of judgment of either driver cannot be ruled out. The evidence of the rider of the scooter that the truck was being driven with fast speed cannot itself indicate that there was rashness and negligence on the part of the truck driver. The other possibility is there. This possibility is considered by the learned Assistant Session Judge.

9. The Accident Report Form in respect of the truck supports the version of the cleaner that the Air brakes of the truck was not working as there was leakage to the air pipe coming from the tank. The circumstance that the truck was stopped at the distance of more than 150 metres from the point of impact also supports this version of the cleaner. This circumstance is also considered by the learned Assistant Sessions Judge.

10. The aforesaid circumstances show that the view taken by the learned Assistant Sessions Judge is a possible view. In view of these circumstances, this Court holds that there is no possibility of interference in the decision given by the Assistant Session Judge.

11. In the result, the appeal stands dismissed.

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