

**Vinayak Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1174802](http://sooperkanoon.com/1174802)

**Court :** Mumbai Goa

**Decided On :** Sep-22-2014

**Judge :** U.V. Bakre

**Appeal No. :** Criminal Revision Application No. 5 of 2013

**Appellant :** Vinayak

**Respondent :** State

**Judgement :**

Oral Judgment:

1. This revision application has been preferred against the judgment and order dated 07.01.2013 passed by learned Additional Sessions Judge, Mapusa ("Appellate Court", for short) in Criminal Appeal No.153/2011. The said Criminal Appeal was, in turn, filed against the judgment and order dated 31.10.2011 passed by the learned Judicial Magistrate, First Class, "C" Court Bicholim ("J.M.F.C.", for short) in Criminal Case No.70/S/09/C. The applicant shall hereinafter be referred to as the accused and the respondent as prosecution.

2. Facts giving rise to the revision application, in short, are as under:-

The accused was tried for offences punishable under Sections 279, 337 and 338 of Indian Penal Code, 1860 ("I.P.C." for short) in said Criminal Case No.70/S/09/C under the allegation that on 14.04.2009 at about 8.10 a.m., the accused drove

minibus bearing No.GA-01-U-4699 in a rash and negligent manner and lost control over the same due to which the vehicle went towards the left side of the road and fell in the paddy field which was at lower level. Due to the said accident several passengers received injuries some simple and some grievous injuries.

3. The accused pleaded not guilty to the charge framed against him and explained to him. In support of its case, the prosecution examined ten witnesses. PW1 Shri Rizwan Jarpatgi and PW9 Shri Sukdo Usapkar, acted as panch witnesses for the panchanama of the scene of accident and sketch which are at Exhibits 9 and 10 respectively. PW2, Shri Vishwanath Bhomaikar, PW3, Shri Tulsidas Suralkar, PW4, Shri Razak Munnla and PW6, Smt. Asha Gaonkar were the occupants of the said bus. PW3 was the cleaner whereas PWs 2, 4, and 6 were some of the passengers. PW5 Sharadchandra Naik was the owner of the said bus bearing No.GA-01-U-4699. PW7, Shri Meghasham Pilankar was the Motor Vehicle Inspector at the relevant time and he had inspected said mini bus. PW8, Dr. Siddhi Kansar examined the injured passengers. Lastly, PW10, Shri Atmaram Gawas, Head Constable Buckle No.3073 is the investigating officer.

4. The statement of the accused was recorded under section 313 Criminal Procedure Code, 1973 ("Cr. P.C." for short). The case of the accused was that the bus was not driven at fast speed and that the rod of the mini bus broke and further there were pot holes on the road due to which accident occurred. In short, the defence of the accused was that the accident had occurred due to mechanical defect which occurred in the bus at the time of the accident. The accused did not examine any witness in his defence.

5. Upon consideration of the entire evidence on record, the learned J.M.F.C. held that the said mini bus was driven in a rash and negligent manner by the accused due to which he lost control and, therefore, the mini bus went towards the left hand side of the road and fell into the paddy field. The accused has been held guilty and convicted of the offence punishable under Sections 279, 337 and 338 of I.P.C. For Section 279 of I.P.C., the accused has been sentenced to undergo simple imprisonment for a term of 2 months; for Section 337 of I.P.C., he has been sentenced to undergo imprisonment till the rising of the Court and to pay

compensation of Rs.1000/- to Mohammad Rizwan, in default to undergo simple imprisonment for 10 days. Lastly for offence punishable under Section 338 of I.P.C., he has been sentenced to undergo imprisonment till rising of the Court and to pay compensation of Rs.1500/- to the charge-sheet witnesses No.3, 4 and 6 each and in default to undergo simple imprisonment for 15 days.

6. Aggrieved by the judgment and sentence imposed by the learned J.M.F.C., appeal was filed before the Sessions Court being Criminal Appeal No.153/2011. By judgment and order dated 07.01.2013, learned Appellate Court dismissed the appeal thereby holding that the defence of mechanical defect was not proved by the accused. It is the said judgment and order of the learned Appellate Court which has been impugned in the present revision application.

7. This Court is aware of the fact that revisional jurisdiction can be exercised where material evidence has been over looked either by the trial Court or by the Appellate Court or the order is passed by considering irrelevant evidence. This Court is also aware of the fact that revisional jurisdiction can be exercised only in exceptional cases where interests of the public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice.

8. There can be no dispute that the accident had occurred on 14.04.2009 involving accused and there is also no doubt that some passengers of the bus had sustained simple injuries and some had sustained grievous injuries. The fact that the passengers sustained injuries, some simple and some grievous, due to the accident involving the said Minibus driven by the accused is proved by the testimonies of PW2, PW3 and PW6 read with the evidence of the doctor namely PW8 and the hurt certificates at Exhibit C-41/colly. However, though the case of the prosecution was that the minibus had gone towards the left hand side and had fallen down in the paddy field, however, PW2, PW4, and PW6 all categorically say that the bus fell into the paddy field on the right hand side. Be that as it may, there are concurrent findings of the learned J.M.F.C. and the learned Appellate Court that the mini bus driven by the accused suddenly went on the left hand side i.e. on the wrong side of the road and fell down in low lying paddy field.

9. The only question that arises for my determination is whether the said accident occurred due to the rash and negligent driving of the accused or because there was some mechanical defect in the said bus, at the time of accident.

10. It is true that PW1 and PW9, the panch witnesses for the panchanama of the scene of accident both turned hostile. Both are mechanics by profession. Perusal of the cross examination of PW1 reveals that he was confronted with the portion of the said panchanama of the Scene of accident at Exhibit 9 from points "I" to "I". In the said portion between the points "I" to "I", it is specifically recorded in the said panchanama that steering excel rod of the said bus was broken. This is a document prepared by the investigating Officer himself and its contents are nowhere stated to be false. In such circumstances, prosecution cannot deny the fact that the steering excel rod of the said bus was broken.

11. Perusal of the evidence of PW2 reveals that at the relevant time of the accident, vehicle was getting jumps. The evidence of PW3, the cleaner of the said bus, in his examination in chief, reveals that the bus was in slow speed and the road at the spot of the accident was not even and the bus got jumps on account of uneven road and further there were pot holes to the road. PW3 specifically stated that bolt of the arm rod of the steering got misplaced and, therefore, bus went slowly and fell into the paddy field. Though PW3 has been cross examined by the learned Additional Public Prosecutor on the ground that he had resiled from his police station, the evidence of PW3 otherwise is corroborated by the panchanama of the Scene of accident conducted by the investigating officer himself, wherein it is specifically stated that steering excel rod was broken.

12. According to PW4, bus had fallen on account of application of brakes. This was a new version brought in. He also stated that road at the spot of accident had ups and downs and even if a bus had proceeded at a speed of 10 kilometres per hour it would get jumps. It is pertinent to note that PW4, who is a driver by profession, in his cross examination, could not deny the suggestion that on the relevant day the accident took place on account of sudden fall of steering arm rod due to which the bus went into the paddy field. To the said suggestion, PW4 answered that he does not know.

13. The evidence of PW7, the Motor Vehicles Inspector, reveals that though the accident had taken place on 14.4.2009, however, he had inspected the said bus bearing No.GA-01-U-4699 on 16.04.2009, i.e. after two days and that also at the garage and not at the spot. He has stated that he had inspected the vehicle at M/s Goa Steel Fabricators at Kandola, Marcel. A suggestion was put to PW7 to the effect that if the connecting rod of the steering arm brakes all of sudden, driver of the vehicle may loose control over the vehicle. The answer of this expert witness is that this is possible. However, he voluntarily added that said rod of the steering was not broken in the present case and if the rod was broken it was not possible to move the vehicle from the spot. It appears that said steering rod was not literally broken but was dismantled from its place. The evidence of PW9, who is mechanic by profession, and who had signed the panchanama of scene of accident, reveals that the said bus had went off the road as its arm rod was broken. He, being a motor mechanic, can also be taken as an expert in vehicles. He also stated that if arm rod of the bus gets broken while the bus is in motion the driver cannot control the same. He has specifically stated that they had repaired the arm rod of the bus on the spot and had taken the bus to the garage for further repairs. That explains as to how during the panchanama of the Scene of accident, which was conducted on 14.4.2009, soon after the accident, the steering excel rod was found broken, but PW7, on 16.4.2009, at the Goa Steel Fabricators at Kandola, Marcel, found arm rod in place.

14. It cannot be expected that a professional driver of a passenger bus, like the accused, would suddenly lose control of the bus and would allow the bus to go off the road and allow it to fall in the paddy field which is low lying. The defence taken by the accused in the present case is probable and in fact the evidence of the prosecution witnesses itself supports the same. The point for determination, therefore, gets answered in the affirmative.

15. In such circumstances, I am of the view that there is manifest illegality and gross miscarriage of justice in the judgment of lower Courts which requires to be prevented in the exercise of revisional jurisdiction. I am of the considered view that the judgments of the lower Courts thereby convicting and sentencing the accused for the offences with which he was charged are erroneous and bound to be

quashed and set aside. The accused is entitled to acquittal. Non bailable warrant was issued against the accused since he did not appear before this Court. However, today the accused is present before this Court.

16. In view of the discussion supra, I pass the following:-

## **ORDER**

i. Criminal Revision Application is allowed.

ii. The impugned judgment and order of the Appellate Court in Criminal Appeal No.153/2011 and judgment, order, and sentence passed by the learned J.M.F.C. in Criminal Case No.70/S/2009/C are quashed and set aside.

iii. Applicant/accused is given benefit of doubt and is acquitted of the offences punishable under Sections 279, 337, and 338 of I.P.C.

iv. NBW ordered by this Court stands cancelled.

v. Bail bonds, if any, furnished by the accused and his surety are discharged.

17. Revision Application stands disposed of accordingly.

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