

Vasudev Naik Vs. State Represented by the PP

Vasudev Naik Vs. State Represented by the PP

SooperKanoon Citation : sooperkanoon.com/1175495

Court : Mumbai Goa

Decided On : Jun-11-2014

Judge : A.R. Joshi

Appeal No. : Criminal Revision Application No. 17 of 2012

Appellant : Vasudev Naik

Respondent : State Represented by the PP

Judgement :

Oral Judgment:

1. Heard rival arguments at length. This criminal revision is filed by the applicant/original accused challenging the judgment and order of conviction dated 16/08/2012 passed by Judicial Magistrate First Class, Vasco in Criminal Case No.63/S/2010/D and also challenging the order dated 13/04/2012 passed by Additional Sessions Judge, Fast Track Court, South Goa, Margao dismissing the Criminal Appeal No.84/2011.

2. Present applicant/original accused was charged for the offences punishable under Section 279 and 304 of Indian Penal Code. He was convicted by the Judicial Magistrate First Class, Vasco and was sentenced to suffer simple imprisonment for 6 months and one year respectively for the said offences. He was also directed to pay the respective fine amounts. The fine amounts are reportedly paid. Being aggrieved by the conviction and also dismissal of the

appeal, present revision petition is filed.

3. Prior to discussing the rival arguments certain factual position can be narrated. The said incident occurred at about 9.25 a.m. on 24/05/2010 in which apparently the kadamba bus then being driven by the present applicant gave a dash to a motorcycle then being driven by first informant PW1 Ravindra. On the said motorcycle, the victim Mahesh was the pillion rider. According to the case of prosecution at the relevant time, the present applicant was driving kadamba bus on a highway and was overtaking the motorcycle and in that process gave a dash to the handle of the motorcycle. Thereafter, apparently, the rider of the motorcycle i.e. PW1 lost balance and he fell on the road. So also the motorcycle was fallen on the road, but to his fortune PW1 fell on the road towards the left side. However, the pillion rider, victim Mahesh, fallen on the right side of the road and in that process was run over by the kadamba bus and actually the head and the upper part of the body of the victim came under the left rear wheels of the bus. The running over of the head and upper part of the body of the victim by the bus resulted in instantaneous death. Still the bus proceeded ahead for about 200 meters or so and then it was halted. Also, according to the case of prosecution one passerby rider of the another motorcycle i.e. PW7 one Rajesh witnessed the incident and stopped the bus. During the trial, total 9 prosecution witnesses were examined out of which important witnesses are PW1, the first informant Ravindra, who was riding the motorcycle and PW7 Rajesh, who was apparently the eye witness. Other witnesses are PW2 pancha of scene of offence, PW3 Doctor, PW4 Conductor, PW5 Motor Vehicle Inspector, PW-6, 8 and 9 are the Police Officers, who carried out the investigation.

4. During the arguments, learned Counsel for the applicant assailed the evidence of CW1 and CW7 and submitted that it was an unfortunate accident and it cannot be attributed to any rash and negligent act on the part of the applicant in driving the kadamba bus. To substantiate these arguments attention of the Court is drawn towards the evidence of these witnesses regarding any rash and negligent driving. CW1 mentioned regarding fast driving on the part of the present applicant. According to CW1, he was also driving his motorcycle at the speed of 40 kms per hour. This has appeared in his cross-examination. According to this witness

kadamba bus overtook him and in that process gave a dash to his motorcycle handle on the right side causing damage to the accelerator, right side of the leg guard and right side indicator lights. Due to this impact there was also the scratch mark to the extent of 1.5 feet just above the front left tyre, directed towards the back side of the vehicle. So far as evidence of CW7 Rajesh is concerned, he does not mention regarding the rash and negligent driving on the part of the applicant, but what he mentions is that he witnessed the accident between the kadamba bus and a motorcycle when both were proceeding towards Panaji direction from Vasco. He had seen KTC bus trying to overtake the motorcycle and in the process it dashed motorcycle and its handle. He further stated that after the impact motorcycle fell down and the kadamba bus proceeded ahead from the spot of the accident. According to this witness, he was knowing the rider of the motorcycle by face and he noticed that pillion rider got fatal injury as his head was crushed by the wheels of the bus. According to this witness, after sometime the police came to the spot and conducted panchanama and took the dead body in an ambulance. Evidence of these witness was assailed much on behalf of the applicant mentioning that he is a got up witness inasmuch as his statement was recorded by the police after 4 days. By pointing out this, it is submitted on behalf of the applicant that if this witness had seen the incident and also the accidental death in a motor accident and also saw the police party arriving and taking the dead body, he would not have waited for 4 days for police to record the statement. Moreover, in his cross-examination this witness has mentioned that his statement was recorded in Hindi, but was written down by police in Marathi. In further cross-examination when it was brought to the notice of this witness that his statement was recorded in English he had no answer and he kept silence. By pointing out this, it is submitted on behalf of the applicant that this is not the witness telling the true and correct factual position as to how the incident had occurred. Otherwise also, if the evidence of this witness coupled with the evidence of PW7 is accepted there is nothing like rash and negligent driving attributed to the applicant. After going through the substantive evidence of these witnesses this argument on behalf of the applicant is required to be accepted. On this aspect, as to the establishment of the rash and negligent driving on the part of the accused in order to bring home the guilt of the applicant of the offence punishable mainly under

Section 304-A of Indian Penal Code following authorities are cited on behalf of the applicant:

- (i) **Jacob Mathew V/s. State of Punjab and Anr.** reported in **(2005) 6 SCC 1**, and
- (ii) **Kisan Pandurang Pachange V/s. State of Maharashtra** reported in **CDJ 2004 BHC 1113**.

There is no dispute regarding the ratio propounded by the above authorities and as mentioned earlier in the substantive evidence of PW1 and 7. There is nothing to that effect as to the bus being driven in such a reckless manner as to cause the death of pillion rider.

5. Apart from the above, it is argued on behalf of the applicant that though the impact of the bus with the handle of the motorcycle is accepted, still it was not such a rash and negligent act, so as to cause the death of anybody riding on the motorcycle. This is more so, further argued as there was absolutely no injury to the rider of the motorcycle i.e. PW1 and it was the unfortunate incident that the pillion rider fell on the ground towards the right side of the motorcycle and in that process was ran over by the vehicle. On this aspect, the factual position is significant to be observed that the victim came under the left rear wheel of the bus and in fact the bus proceeded further for about 200 meters and then it was halted. This fact is substantiated by PW4 the conductor of the bus and also by PW7 Rajesh. This factual position substantiates the submission on behalf of the applicant that he had no knowledge that some deadly incident had occurred as to the pillion rider being run over by the vehicle. On this aspect, this Court has gone through the sketch of the scene of offence and which was subsequently recorded during the panchanama. The initial impact of the bus with the two wheeler was apparently at the middle of the road where definitely the motorcycle was at the speed of 40 kms per hour and, apparently, the bus was also of the same speed. The said spot is at the middle of the highway. Considering these aspects and considering that there is nothing on record either by way of substantive evidence of PW1 and 7 even to substantiate the rash and negligent driving on the part of the applicant, in the opinion of this Court it must be said that both the earlier Courts have fallen in an error in convicting the applicant for the offences charged.

6. Considering the ratio propounded by the above cited authorities and still considering that the driver of a bigger vehicle i.e. the bus, has more responsibility to be taken, in the opinion of this Court certain distinction is required to be drawn in the accident caused due to rash and negligent driving and there being immediate proximity between the act of rashness and negligence with the death and the situation when there is no such direct proximity between rash and negligent act and the death. In any event, it must be said that the prosecution has failed to establish that the death of the victim was on account of rash and negligent driving on the part of the applicant and in that event the benefit of doubt must go in favour of the accused. As such, under the revisional jurisdiction there is a need to alter the earlier findings of the JMFC Court and, consequently, the finding of the Sessions Court dismissing the appeal. In the result, the present Criminal Revision succeeds and same is disposed of with following order :

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The impugned order dated 16/08/2012 passed by the Judicial Magistrate First Class, Vasco and the order of the appellate Court dated 13/04/2012 dismissing the appeal, are set aside.
- (iii) The applicant is acquitted of the offences as charged.
- (iv) The bail bonds of the applicant stand cancelled.
- (v) The fine amount already paid shall be returned back to the applicant.