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Court : Mumbai Aurangabad

Decided On : Apr-25-2016

Judge : A.I.S. Cheema

Appeal No. : Criminal Appeal No. 592 of 2003

Appellant : The State of Maharashtra

Respondent : Madhav Vitthal Bansode

Judgement :

1. This Appeal by State has been filed against the orders passed by the Joint Judicial Magistrate, First Class, Bhusawal on 31st May 2003 in Summary Criminal Case No.32 of 1999 whereby the trial Court, while convicting the Respondent accused for offence under Section 184 of the Motor Vehicles Act, 1988, instead of passing sentence of imprisonment or fine, directed his release on the bond of Rs.5000/- and the bond of "one month's period contemplated in Section 4" of the Probation of Offenders Act, 1958 ("Probation Act" in brief). The present Appeal was filed by the State seeking leave under Section 377 (1) of the Code of Criminal Procedure, 1973 ("Cr.P.C." in brief), with prayer to enhance the sentence awarded by the J.M.F.C. The Appeal was admitted on 5th October 2005.

2. In brief, the case is as follows:

(A). On 17th December 1998 at about 4.15 p.m., complainant Raman Chaudhari (PW-1) filed F.I.R. with Bhusawal City Police Station informing that when he was

at his tailor's shop in the market, he came to know that Bhanudas s/o Gopal, the brother of the complainant, had met with an accident near Hambardikar Bakery. He went there. School Bus No. MH-19/2446 was standing there on the road. There was blood near the rear left wheel of the bus. There was big crowd. He came to the hospital and found that body of Bhanudas, a 13 years old boy was lying on the table and that the boy was dead. The boy was going to attend classes on cycle when the incident had occurred.

(B). Police recorded Spot Panchnama (Exhibit 18) at about 6.00 6.30 p.m. The incident had occurred in Hambardikar square. The child had come from South towards North and was approaching the square when the incident occurred. Police recorded statements of witnesses. Other necessary steps as required by investigation were taken. After completing the investigation, chargesheet came to be filed.

3. The J.M.F.C. explained particulars for offence under Section 279, 304A of the Indian Penal Code, 1860 ("I.P.C." in brief). Particulars were also explained about Section 184 of the Motor Vehicles Act. The accused pleaded not guilty. The prosecution brought on record evidence of five witnesses. After holding the trial, the Magistrate acquitted the accused of offence under Section 279 and 304A of I.P.C. but convicted him under Section 184 of the Motor Vehicles Act.

4. Against the conviction under Section 184 of the Motor Vehicles Act, the accused did not file any Appeal. The State has not filed this Appeal against the acquittal under Section 279 and 304A of I.P.C. Before proceeding to discuss the prayer of the State to enhance the sentence, it would be appropriate to make a quick reference to the evidence which has come on record.

5. There is evidence of PW-1 Raman Chaudhari the complainant, uncle of the victim. There is also evidence of PW-3 Gopal Chaudhari, father of the victim. The evidence of these witnesses shows that PW-4 Shaligram Teli who happens to be acquainted with them, reached the spot of incident soon after the incident and on identifying the victim, had informed the brothers. The evidence is that these brothers rushed to the spot and having seen the spot, proceeded to the hospital to find the victim dead. PW-2 Mahadeo Bonde is Panch of the spot who proved

Panchnama Exhibit 18. PW-5 Kailas Barhate is the eye witness.

6. Section 184 of the Motor Vehicles Act reads as under:

"**184. Driving dangerously**. Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

7. Keeping in view this Section, it would be appropriate to visualize the spot and circumstances of the case, nature, condition and use of the place concerned where the vehicle was driven, including the traffic.

8. The Spot Panchnama shows that it was Bhusawal Yawal road proceeding from the side of Pani Gate to Gandhi Statute. It was proceeding from South to North. It was 30 ft. broad road with 5 X 5 Kacchha portion. The bus, at the time of Panchnama, was standing towards East of one Hemraj Restaurant, on main road at 10 ft. On the cleaner side, from rear wheel towards South on main road at about 2 ft., there were blood stains. From spot at about 3 ft. Atlas Gold Line cycle was lying with books scattered and school bag.

9. Apart from above, in the evidence of virtually all the witnesses, the accused himself brought on record various details of the Spot Panchnama. To avoid repetition, reference to even evidence of PW-5 Kailas Barhate would be sufficient. Evidence of PW-5 Kailas is that he was working at Hambardikar medical, which is situated near Hemraj Hotel. According to him, the incident took place at about 3.45 p.m. by the side of Hemraj Hotel. He deposed that he saw the MSEB school bus coming from railway bridge side. He deposed that the bus gave dash to one cyclist school going boy and the boy was thrown by the side of the bus from cleaner side.

Blood came out from the mouth of the boy. According to this witness, at that concerned time, he was present in the shop. He deposed that the said bus was coming in fast speed and it dashed from rear portion of the cleaner side.

. Evidence shows that the concerned Hambardikar square has branches going North, South, East, West. On East, road goes to DRM Office. On West, road goes towards Satara. Towards North, it goes to Court. To the South of the square at some distance it appears that Satara bridge comes down and then there is an incline towards the square. The said road coming to the bridge appears to be coming from Yawal.

. The evidence of PW-5 (and also other witnesses) shows that the medical store where this witness was working, is towards Southern side of the square. PW-5 admits that there is railway station road and road approaching to Mamaji Talkies going from near their medical shop. There is also Ajanta Lodge towards Western side. Witness admitted that there are flower shops near his medical shop on Mamaji Talkies road. There were two Pan shops at the corner of Kachane building. The width of the road was narrow at the time of incident. There was electric pole at the corner of the hotel and Kachane building was to the West of the electric pole. There was one cycle repairing shop near the electric pole. There were two Pan Shops and cycle repairing shop at the corner of Dutt Hotel. All these shops were on the road. There were railway quarters, medical stores and handloom shops and other shops on the other side of the road. There is always crowd in the said shops. There was one vegetable shop to the East-North corner of the building. Apart from medical stores, there were beer bars near the building. The witness (PW-5) admitted that traffic coming from railway station side, Court side and Mamaji Talkies side flows by the railway bridge road only. The railway bridge is narrow. Near the medical shop of this witness there is Hambardikar Bakery and another hotel. The witness admitted that steps of all these shops were "on the road". Witness admitted that there is downward slope towards railway bridge and Court side road is ascending. Witness admitted that generally vehicles coming from bridge side are in slow speed because of the slope of the road. Witness admitted that road condition was bad and there were ditches on the road.

10. The above evidence which was brought on record by accused himself and regarding which there is no dispute, shows that it was a congested square with stairs of the shops coming down directly on the road and vegetable shops and Pan Shops and other vendors crowding the place and it was a main square with heavy traffic. The time was also of 3.45 p.m. which are working hours. At such spot where generally the vehicles moved slow, the evidence of PW-5 is that the bus driven by accused came in fast speed. Details of the Spot Panchanama and the exact place where by the dash of the bus the cycle was thrown, shows that in such crowed place, the victim was going on cycle and received dash from rear left side portion of the bus. The trial Court while dealing with Sections 279 and 304A of I.P.C. observed that at the spot there is always crowd and in such situation it was highly improbable (?) that one should drive in rash speed. Discussing the evidence, trial Court concluded that rashness or negligence was not established. I need not go into those findings as the acquittal on that count is not challenged. However, the same Judge while dealing with the evidence of PW-5 observed that the evidence of PW-5 shows that the vehicle was coming in "some what?" more speed than expected in such crowed place. It observed that mere speed is not criteria to connect the accused with the offence under Section 279 of I.P.C., but it could be considered for Section 184 of the Motor Vehicles Act. The trial Court accordingly convicted the accused under Section 184 of the Motor Vehicles Act.

11. While arguing before me, the learned counsel for the Respondent accused did not question the correctness of the conviction under Section 184 of the Motor Vehicles Act. He merely submitted that the accused is a person who has served in military. According to him the incident was unfortunate. He stated that it was first incident and accused daily used to carry children. According to him, the trial Court rightly gave benefit of The Probation of Offenders Act to the accused.

12. The learned A.P.P. has however drawn my attention to the above evidence and observations of the trial Court to submit that in such a serious matter where in such crowded place, admittedly there was evidence on record showing that the accused drove the bus in a fast speed which was inappropriate at the place concerned, the accused has been let off lightly. According to learned A.P.P., this was not a fit case looking to the facts, to grant benefit of the Probation of

Offenders Act. According to him a little boy hardly 13 years of age lost his life and although the trial Court found that in the factual situation the speed and manner in which the vehicle was driven was dangerous, and accused was liable to be punished under Section 184 of the Motor Vehicles Act, still virtually no punishment was awarded.

13. The present Appeal is under Section 377 of the Cr.P.C. for enhancing sentence. What the trial Court did is that after convicting the accused, it simply passed orders "instead of passing any sentence of imprisonment or fine, he be released on the bond of Rs. 5000/- and the bond of one month's period contemplated in Section 4 of the Probation of Offenders Act."

. Where one month is contemplated, is not clear.

14. Section 4 of the Probation of Offenders Act, 1958 in sub-Section (1) requires the Court that:

"when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour."

(Emphasis supplied)

. Sub-Section (2) of Section 4 of the Probation of Offenders Act requires that the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. In the present matter, the record of the trial Court does not show that at any time the report was called. The Court did not resort to sub-Section (3) of Section 4 also where supervision orders could be

passed. I have gone through the original record of the trial Court. The Roznama shows that on 31st May, 2003 the Court passed the Judgment. The operative part of the Judgment has been reproduced in the Roznama. The Roznama was then closed and shut. The record does not show that any such bond as mentioned in the operative order was even taken. The operative order of the trial Court gives a feeling that trial Court had not even read the provisions properly. There is nothing like a bond of one month's period contemplated. If the record is perused, it can be said that although the trial Court convicted the accused under Section 184 of the Motor Vehicles Act, it practically let off the accused without passing any sentence and even without taking any bonds. At least the record is totally silent.

15. Now, the question before me is the applicability of Section 377 of Cr.P.C. Section 377 of Cr.P.c. relates to inadequate sentence. Here no sentence has been passed. But the order is under the Probation of Offenders Act. As per Sub-Section (2) of Section 11 of the Probation of Offenders Act, where an order under Section 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court. The present conviction is of 2003. Section 377 of Cr.P.C. before amendment vide Act 25 of 2005 provided for an appeal to the High Court against the sentence on the ground of its inadequacy. Thus, although the present Appeal tendered relied only on Section 377 of Cr.P.C., I treat the appeal as one under Sub-Section (2) of Section 11 of the Probation of Offenders Act, 1958 read with Section 377 of Cr.P.C. Support, if any, though does not appear to be necessary, can be taken even from Judgment in the matter of **State (Union Territory), Chandigarh vs. Manjit Singh and others, reported in 1983 CRI. L.J. 1401**.

16. Coming to the sentence, the Judgment of the trial Court shows that for the lenient approach it took into consideration the arguments for the accused that he was a retired military person who spent life in discipline and the incident occurred because of the crowded place as well as the fact that it was first incident. He was in permanent service of M.S.E.B. The Court observed that the sentence of imprisonment or fine will ruin the future career of the matured bus driver of the school bus and thus resorted to give benefit of Probation of Offenders Act. Thus the trial Court was concerned with the future career of the accused but ignored the

plight of the victim and the future of family of the victim and that it is a menace that vehicles should be driven in high speed in such crowded places, unmindfully of the surrounding circumstances. The trial Court had not collected any information about the accused by calling report as contemplated by sub-Section (2) of Section 4 of the Probation of Offenders Act. Looking to the facts of the case, I do not concur with the trial Court regarding it resorting to an order purporting to be under Section 4 of the Probation of Offenders Act without ensuring any compliance as required by law. The order on this count deserves to be quashed and set aside.

17. Now, if sentence under Section 184 of the Motor Vehicles Act is to be passed, Section says that there can be imprisonment for a term which may extend to six months "or" with fine which may extend to one thousand rupees. Thus the option is only in alternative. The difficulty before me is that the incident occurred as long back as on 17th December, 1998. Now, we are in 2016. After about 18 years, when the Respondent-accused must have now retired from M.S.E.B. also and should be above 70 years old now, would it be appropriate to send him to jail ? If I pick the other option of fine, it can extend only to Rs.1000/-.

18. Looking to the facts of the matter, it appears to me appropriate that compensation should be awarded. I would thus, resort to first option but make it nominal and as the fine would not form part of the sentence, invoking sub-Section (3) of Section 357 of Cr.P.C., compensation would be necessary to be directed.

19. The compensation has to be reasonable and not arbitrary. As mentioned, I am keeping in view the fact that the accused must be quite old by now as in 1998 he was shown to be 57 years old. He served military and then was in permanent employment of M.S.E.B. He must have retired and getting pension. The compensation cannot be very high. At the same time, keeping in view the tragedy suffered by PW-3 Gopal Ramdas Chaudhari of having lost his son hardly 13 years of age, some compensation would be appropriate.

20. In this matter I find myself in a fix. It is difficult to send accused to jail looking to his advance age and other factors like no other earlier criminal antecedents. There is constraint even as regards the compensation which he can be made to pay looking to the fact that he must have retired quite some time back. In my view

father of the victim should have been given compensation of at least Rs.1 Lakh at the time concerned. But now, the accused being retiree, there is difficulty. These factors are on one side and on the other is, the victim whose father must have suffered trauma due to loss of his little son of 13 years of age. There is definitely loss to the family and the family needs to be rehabilitated for the injury and loss caused to it. I propose to invoke Section 357A of Cr.P.C. for awarding necessary compensation by the District Legal Services Authority, as the compensation I am awarding under Section 357 of Cr.P.C. is really not adequate. The State must pay the compensation as may be decided by District Legal Services Authority as State is also responsible for letting exist the utter chaos in the street as seen above in which citizens are put to constant risks.

21. I thus, proceed to pass the following order:

ORDER

(I) The Appeal is allowed.

(II) Part of the order of the trial Court where instead of passing any sentence of imprisonment or fine it was directed to release the accused on bond of Rs.5000/- and the bond under Section 4 of the Probation of Offenders Act, is quashed and set aside.

. Instead, it is directed that the accused having been convicted under Section 184 of the Motor Vehicles Act, is sentenced to suffer simple imprisonment till rising of the Court and under Sub Section (3) of Section 357 of the Code of Criminal Procedure, he is directed to pay compensation of Rs.40,000/- (Rupees Forty Thousand) to PW3 Gopal Ramdas Chaudhari. The amount should be deposited in Trial Court and shall be then paid to PW-3 Gopal Ramdas Chaudhari.

(III) The Respondent accused shall appear before the trial Court on 9th May 2016. The amount of compensation shall be deposited in two equal installments within four months thereafter.

(IV) The trial Court shall get the sentence executed. (V) Under Section 357-A of Cr.P.C., recommendation is made to the District Legal Services Authority, Jalgaon

to provide compensation to PW-3 Gopal Ramdas Chaudhari. The District Legal Services Authority shall decide the quantum of compensation to be awarded under Section 357-A of Cr.P.C. and the State would be bound to pay the compensation as may be decided by the District Legal Services Authority.

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