

State Vs. Mohandas S. Gawade

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Court : Mumbai

Decided On : Oct-12-2006

Reported in : 2007CriLJ850

Judge : N.A. Britto, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 279 and 337; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 5 of 2005

Appellant : State

Respondent : Mohandas S. Gawade

Advocate for Def. : J.A. Lobo, Adv.

Advocate for Pet/Ap. : Winnie Coutinho, Adv.

Judgement :

N.A. Britto, J.

1. This is a State's appeal against the acquittal of the accused under Sections 279, 337, I.P.C., by Judgment dated 1-3-2004 of the learned J. M. F. C., Panaji.

2. There is no dispute that the accident took place between the Mini Bus driven by the accused bearing No. GA-01 -T-5686 and the Mini Bus bearing No. GA-01-T-

4568 driven by Rajesh Jadav/P.W. 6 6. The Mini Bus driven by the accused was coming from the direction of Ponda to Panaji while the Mini Bus driven by Rajesh Jadav/P.W. 6 6 was proceeding from Panaji towards Ponda and the said accident took place near a primary school at Sapem, Ribandar on 27-7-2002 at about 17.00 hours. A message of the said accident was received on telephone by Head Constable Pramod Gawas/P.W. 9 of Old Goa Police Station who recorded the same on the station diary, an extract of which was produced at Exh. PW9/A, and, he proceeded to the scene and conducted a scene of offence panchnama and prepared a sketch in support of which Ramakant Shirodkar/P. W. 5 was examined and the said panchnama and the sketch were produced at Exh. PW5/A. The injured passengers travelling in the bus driven by the accused were taken by the accused to Goa Medical College and were examined by Dr. Wajke/P.W. 1 and the certificates of their examination were produced at Exh. PW1/A to D. The vehicles were got inspected from a mechanic by name Jacob Fernandes/P.W. 2 whose reports were produced at Exh. PW2/A and B. In all, the prosecution had examined 9 witnesses to support the charge against the accused that it was the accused who drove the said Mini bus in a rash and negligent manner and gave a dash to the oncoming bus driven by Rajesh Jadav/P.W. 6 6 as a result of which the passengers from both the buses including the driver had sustained injuries.

3. The case of the accused was that Rajesh Jadav/P.W. 6 6 had caused the said accident and that he was not guilty of any offence.

4. Was the Mini bus bearing No. GA-01-T-5686 driven by the accused

5. The learned J. M. F. C. has come to the conclusion that the accused was not driving the said bus and has observed that the accused was not identified by any eye witnesses including Sushil Halbekar/P.W. 3, Rajesh Jadav/P.W. 6 6, Dattaram Sawant/P.W. 7 and Pramod Gawas/P.W. 9. The conclusion arrived at by the learned J. M. F. C. is nothing but perverse. The driver of the other bus, Rajesh/PW 6 had categorically stated that the accused was driving the Mini bus bearing No. GA-01-T-5686. There was not even a denial put to Rajesh/PW 6 to suggest that the accused was not driving the said bus and if that is so there was no reason for the learned J. M. F. C. not to accept the said statement of Rajesh/PW 6. The

accused in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 also did not state that he was not driving the said Mini bus bearing No. GA-01-T-5686 and impliedly admitted that he was driving the same but he was not guilty of any offence. In addition to that, Sushil Halgekar/P.W. 3, who was sitting on the first seat towards the left side of the bus driven by the accused, had also categorically stated that the accused was driving the said bus at the time of accident. A suggestion was put to him that accused was not driving the bus, a suggestion which he denied. The evidence of Sushil/ PW 3 clearly shows that he had categorically stated that the accused was driving the said bus and a suggestion to the contrary was denied by him. Purshottam Naik/P.W. 4 was another passenger sitting on the second seat behind the accused in the said Mini bus driven by the accused and he too had categorically stated that their Mini bus was driven in a fast speed by the accused. A suggestion to the contrary that the accused was not driving the said bus on the date of the accident, was denied by him. In further cross-examination, Purshottam/P.W. 4 had stated that he had stated before the Police (in his statement) that the accused was driving the said bus on the date of the accident and he was confronted with the statement where it was not recorded. However, the said omission was subsequently not proved by the defence and in the absence of having proved the said omission as required, the same could not be taken benefit of on behalf of the accused to discredit the version of the said witness Purshottam Naik/P.W. 4. In other words an omission cannot be exploited without proving it. Summet Halgekar/P.W. 8 was another passenger who was sitting on the back side of the driver i.e. the accused, and he too had stated that the accused was trying to overtake some other vehicle and in that process had given a dash to the oncoming bus due to which he along with other passengers had sustained injuries. Although Summet/P.W. 8 had fairly conceded and stated that he had not stated before the Police that the accused was driving the said bus on the date of accident, he too was allowed to be confronted with his previous statement when in the light of his admission there was no necessity of he being confronted with his statement to the police. The evidence of the aforesaid witness was more than sufficient to conclude that it was the accused who was driving the said bus and the conclusion arrived at by the learned Magistrate that the accused was not driving the bus is wholly

unsustainable.

6. The learned Magistrate has also come to the conclusion that the medical evidence is not supported by any direct evidence. One does not know what the learned Magistrate wishes to convey by the said expression. All the passengers of the bus driven by the accused namely Sushil/P.W. 3, Purshottam/P.W. 4, Dattaram/P.W. 7, Summet/P.W. 8 as well as Rajesh/PW 6 have deposed as regards the injuries suffered by them. To prove the injuries suffered by the said witnesses prosecution had examined Dr. Walke/P.W. 1 who had produced the medical certificates prepared by her. The evidence of Dr. Walke/ PW 1 when read with the said certificates sufficiently proves that Rajesh/PW 6 had suffered a CLW and an abrasion on the upper lip and on the left arm, respectively, the said Summet/P.W 8 had suffered CLW's on the front bone and lower lip respectively and abrasions on the right knee, right leg, right shoulder and ecchymosis on the right eye. Purshottam/P.W. 4 had suffered CLW's on posterior 1/3rd of right lower leg, on the middle 1/3rd of right lower leg, on middle 1/3rd of left leg, posterior lateral aspect, on the front bone of the skull and on the right arm; and the said Sushil/P.W. 3 had suffered an abrasion on the right temporal region of the skull. The other details of the said injuries of the said witnesses have been deposed to by Dr. Walke/P.W. 1 and have been elaborately described in the hurt certificates produced by her. The said witnesses had also deposed as regards the injuries suffered by them. In the light of the said evidence one fails to understand as to how the learned Magistrate could have concluded that medical evidence is not supported by any direct evidence. Prosecution had sufficiently proved that the aforesaid witness who were travelling in the said bus of the accused as well as the driver of the other bus had suffered the said injuries and had thus proved an offence under Section 337, I.P.C.

7. The learned Magistrate has come to the conclusion that there is no direct or circumstantial evidence to establish the guilt of the accused. The learned Magistrate has also held that the prosecution has failed to prove that the accused had driven the bus in a high speed, as if that was a sine qua non, to prove an offence of rash and negligent driving.

8. The damages to both the vehicles were proved in the evidence of Fernandes/P.W. 2 who was a mechanic and who had inspected both the vehicles namely both the Mini buses driven by the accused and Jadav/P.W. 6 6. The damages on the bus driven by the accused have been deposed to by him and otherwise can be seen from the report prepared by him and produced at Exh. PW 2/A and which, inter alia, show that front glass of the bus was broken and the wiper damaged. There was also damage on the driver's door and the glass was broken and so also the lock was broken. There was damage to the cabin rear body, there was damage to the right side both inside and outside, etc. The total damage was assessed by him as Rs. 80,000/ -. Likewise, the evidence of Fernandes/P.W. 2 read along with the report Exh. PW 2/B shows that the damages of the bus driven by Jadav/P.W. 6 6 and the damages, inter alia, are that the front glass was broken and the wiper was damaged, right side all lights were damaged, cabin driver's side was damaged, etc. In fact, it is not necessary to reproduce all the damages found on both the Mini buses by Fernandes/P.W. 2 which have been described by him in detail in his evidence and the reports prepared by him. From the damages described it can be seen that it is the front right portion of both the vehicles that came in contact with one another. The panchanama/sketch produced through Ramakant Shirodkar/P. W. 5 shows that the Mini bus driven by the accused was totally on the wrong side of the road and it has been stated to be so by Ramakant/P.W. 5. The panchanama and the sketch produced by him further prove that the width of the tar road at the place of accident was 5.5 metres and the width of kutcha road was about 60 cms. on the left side and 90 cms. on the right side of the said tar road in the direction the accused was coming from Ponda to Panaji. The said sketch also shows that the bus driven by Jadav/P.W. 6 6 was on the extreme left side of the road which was the correct side of Jadav/P.W. 6 6. The learned Magistrate for no apparent reason has labelled Ramakant/P.W. 5 as a partisan witness as he is the owner of the bus driven by Jadav/P.W. 6 6. All that he had stated was that as he was in the transport line for over 30 years he knew the Police and he was near the spot of the accident when he was requested by the Police to act as panch witness. There was not even a remote suggestion put to him that he owned the bus driven by Rajesh/PW 6. No doubt, a suggestion was put to Head Constable Gawas/P.W. 9

that Ramakant/P.W. 5 was owner of the said MRF bus, a suggestion which he has denied. One fails to understand as to how on the basis of a suggestion, that too put to another witness, the learned Magistrate could have concluded that Ramakant/P.W. 5 was a partisan witness. He ought to have been considered as an independent witness. The evidence of Ramakant/P.W. 5 read with the panchanama and sketch clearly proves that after the accident, the vehicle of Rajesh/PW 5 was on right/correct side of the road whilst, the vehicle of the accused was on the wrong side of a road which was more than 6 meters, which would normally allow two vehicles cross one another.

9. Rajesh/PW 6 in his evidence stated that he was driving the said bus and was proceeding towards MRF factory and when he reached near the primary school, he saw one Mini bus coming from the opposite direction and was overtaking (sic crossing) his vehicle and came towards his side, due to which he slowed down his bus, but the said Mini bus came and gave a dash on the right side of his bus due to which the accident took place and due to the impact his bus got damaged and passengers from his bus sustained injuries and he sustained injuries on his leg and on his hip. In cross-examination, he stated that he had not seen the vehicle which was overtaking his bus. He denied the suggestion that the Mini bus (of the accused) was not overtaking any other bus. In further cross-examination, he admitted that he recollected the number of the bus, as stated by him was GA-01-T-5686 only after he read the said number from the summons issued to him by the Court. He denied the suggestion that he was driving the bus in a fast speed or that he could not control it and gave a dash to the Mini bus (of the accused). He also denied that he was driving his bus at a speed of 90 kms. per hour or that the accident had taken place due to his negligence. He also denied the suggestion that it is he who had given a dash to the Mini bus (of the accused) due to which the Mini bus was seen turned in a different direction. Although Rajesh/PW 6 did not specifically state the reason behind the Mini bus of the accused coming towards his side and dashing on his bus the same can be found in the evidence of other witnesses. Sushil/P.W. 3 who was sitting on the first seat towards the left side of the bus driven by the accused had clearly stated that when they reached at a place which comes after Old Goa, the bus driven by the accused in the process of overtaking a truck gave a dash on the oncoming bus due to which the

passengers from the bus sustained injuries. In cross-examination he stated that he was not issued a ticket as he is a student and students are charged at half the rate. He also stated that he later on came to know that he had a fracture on his right hand and he denied the suggestion that he was not present in the said bus driven by the accused when the accident took place. In further cross-examination, he stated that he was shifted to Goa Medical College by the accused in a Maruti car. He stated that he denied the suggestion that he was sitting on the back side of the back side of the accused and for that reason he had no front vision (sic. view). He stated that no passengers were standing in the said bus and denied the suggestion that the bus of the accused was packed with passengers and for the reason he could not see what was happening in the front side. At the same time, he stated that no passengers were sitting in the said bus and this last statement was pointed out by the learned Counsel on behalf of the accused that a witness who makes a contradictory statement could not be believed. It was also pointed out on behalf of the accused that it was doubtful whether Sushil/P.W. 3 was at present all in the bus as he did not have any ticket. It may be noted that Sushil/P.W. 3 was a young student of 13 years of age. His presence in the said bus cannot be doubted because he was an injured and was subsequently examined by Dr. Walke/P.W. 1. who has certified the injuries sustained by him. It is common knowledge that tickets in private buses are issued more as an exception than as a rule and students who pay only half of the fare are not issued the tickets. Sushil /PW3 was travelling in the very bus driven by the accused and had sustained injuries and he has implicated the accused as responsible for the said accident in spite of the fact that he was travelling in the very bus driven by the accused. It is difficult to accept that Sushil/P.W. 3 would have falsely implicated the driver of the bus he was travelling in to save the other bus driver for whom he had no sympathy and with whom he had no connection. Purshottam/P.W. 4. who was sitting on the second seat of the Mini bus driven by the accused has also stated that when their bus reached near the school at Ribandar, the bus while overtaking, dashed on the oncoming bus due to which the passengers from their bus sustained injuries and he too sustained injuries on his leg and hands and he was admitted in Goa Medical College Bambolim. In cross-examination he admitted that he was not issued a ticket by the conductor and that is the reason he had not

maintained a ticket. He stated that the bus was packed with passengers but he could not tell the number of passengers but he stated that in front of him there were no standing passengers and they were sitting behind him. He denied the suggestion that he was asleep in the said bus. He was asked about the speed of the bus of the accused and he stated that he could not tell the exact speed but the accused was repeatedly overtaking the buses in a fast speed. He denied the suggestion that from the place he was sitting he could not see the driver.

10. Dattaram /PW7 was fast asleep, as stated by him, when the accident took place and he got up when he heard the sound of the accident. His evidence could be safely discarded.

11. Summet/P.W. 8 who was sitting towards the back side of the driver /accused had stated that the bus driven by the accused was proceeding towards Panaji and when it reached near the primary school at Ribandar at 7.00 a.m. the accused was trying to overtake another vehicle and in that process gave a dash to the oncoming bus by going towards its right side and as a result of the dash he along with other passengers in the said Mini bus sustained injuries. In cross-examination, he state that he did not have a ticket to produce because he was never issued a ticket by the conductor as private buses are not issuing tickets. In further cross examination he stated that he was sitting in the front seat on the right side behind the accuse and had denied the suggestion that he had not seen the accident.

12. As already stated the evidence of Rajesh /PW6, the driver of the other bus, was sufficiently corroborated by 3 passengers who were travelling in the bus driven by the accused namely Sushil/P.W. 3 Purshottam /PW4 Summet /PW8 who had all explained as to how the accused in the process of overtaking another vehicle had gone on the other side of the road, on the side of the bus driven by Rajesh/PW6 and had dashed against the said bus. The version of Jada /PW6 was not only corroborated by the panchanama/sketch but also by the evidence of the said passengers. The panchanama/Sketch clearly proves that the MRF bus driven by Rajesh/PW6 was on the extreme side of the road partly on the kutchha road of 90 cms. and partly on the tar road and that itself was sufficient to corroborate his version though his version is also otherwise corroborate by the said passengers

who were travelling in the very bus driven by the accused. There is absolutely no explanation on the part of the accused as to how his bus left the left side of the road and went on the right side of the road and dashed against the bus driven by Jadav/P.W. 6 6 and the reason could be obvious and that is, as stated by Jadav/P.W. 6 6, and the said other passengers, that the accused went and dashed against the bus driven by Jadav/ PW6 in the process of overtaking another vehicle. Negligence connotes want of proper care while rashness conveys the idea of reckless doing of an act without consideration of any consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances , out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Rashness is doing an act with utter indifference to the consequences of which the doer may be conscious and which he hopes may not take place. In other words, rashness concerns of hazarding a dangerous or want on act with the knowledge that it is so but with the hope that it may not cause injury. The facts proved by the prosecution with the evidence of the witnesses referred to herein above clearly indicate that the accused in utter disregard to the oncoming MRF bus driven by Rajesh/PW6 tried to overtake another vehicle and in that process went to the right side of the road and dashed against the MRF bus driven by Rajesh/PW6 causing damage to the said bus and injuries to its passengers as well as to Rajesh/PW6 and in doing so the accused drove his bus rashly. It is now well settled that the principle of *res ipsa loquitur* can be applied to a limited extent in a trial of negligence as held by the Apex Court speaking through 3 learned Judges, in the case of *Jacob Mathew v. State of Punjab* : 2005 CriLJ3710 . In my view, the prosecution had abundantly proved its case beyond reasonable doubt against the accused for offences under Sections 79, 337 I.P.C.

13. As alreadyed, upon receiving the information of the accident, Head Constable Gawas/P.W. 9. of Old Goa Police Station had proceeded to the scene and drawn the scene of offence panchanama. He had also produced the extract of the station diary where he had recorded the said information. Normally, in all such accident cases after the panchanama and the statements are recorded, Police Officer/s

generally arrive at a conclusion as to who was rash or negligent and thereafter filed a formal complaint on behalf of the State. However, in this case, it appears that a formal complaint was recorded on 29-7-2000 from none other than the said Rajesh/PW6. The said complaint was produced through Gawas /PW9. The learned Magistrate has found fault that the said complaint was not produced through Rajesh /PW6 in spite of the fact that he was the person who had lodged the same. No doubt the said complaint, ought to have been produced through Rajesh/PW6 but non production of the same in that manner, in my view, is not of consequence to the case of prosecution, considering overwhelming reliable evidence produced on behalf of the prosecution.

14. The learned Magistrate has found that Summet (PW8), Purshottam (PW4) and Sushil /PW3 whose certificates were produced by Dr. Walke /PW1 were not examined. One does not know whether the learned Magistrate suffers from any myopia. The name of Purshottam Naik/P.W. 4. is correctly typed in his deposition and is correctly written on the hurt certificate Exh. PW1/C. Similarly, the name of Summet / PW8 was correctly written in the certificate Exh. PW1 /B as well as in his deposition and therefore the learned Magistrate could not have observed that they were not examined by the prosecution. Sushil/P.W. 3 is his brother. Sushil/P.W. 3s name and father's name were correctly written on the certificate Exh. PW1 /E and his deposition but his surname came to be typed in the deposition as Arkekar instead of Halgekar. The accused had not taken any objection when Sushil/ PW3 was examined stating that he was not a witness who was not cited in the charge-sheet. It is quite probable that his surname came to be wrongly typed either due to mispronunciation or typing of the said surname. In the absence of any objection having been taken, to the examination of Sushil/P.W. 3, and his name and father's name having been correctly recorded, the learned Magistrate could not have concluded that Sushil/P.W. 3 who was examined by Dr. Walke/P.W. 1. was not examined by the prosecution. I will deal with this aspect little later more elaborately.

15. In the light of what has been stated herein above, prosecution had proved its case beyond reasonable doubt against the accused that the said accident was caused due to rash driving of Mini bus bearing No. GA01T5686 driven by the

accused as a result of which the passengers who were examined as prosecution witnesses including the driver of the other bus had suffered injuries. Although, Sushil/P.W. 3 claimed that later on he came to know that he had suffered a fracture, no medical evidence was produced to prove the same. I, therefore, allow the appeal, set aside the Judgment of the learned Magistrate and convict the accused under Sections 279, 337 I.P.C.

16. On the point of sentence, the learned Counsel Mr. J.A. Lobo has submitted that the accused was 24 years of age at the time of the accident and had taken the injured to the hospital and considering the same a lenient view be taken. Mr. Lobo, to support his submission that in a similar situation a lenient view was taken has placed reliance on State v. Suhas Satardekar : 1999(5)BomCR507 .

17. Sentence it is said is the most public face of the criminal justice system. A sentence imposed by the Courts should have a deterrent effect more so when accident cases are on the rise. Courts are required to ensure that whenever an accused is found guilty, he does not escape the clutches of law very lightly. Sentencing discretion has to be exercised considering the facts of each case. In this case, the age of the accused as well as the fact that he promptly took the injured to the hospital are certainly mitigating circumstances but deterrence also remains one of the main object to be achieved while imposing the sentence. Considering the facts of the case, I hereby sentence the accused to undergo S. I. for one day till rising of the Court each under Sections 279 and 337 I.P.C. to run concurrently. In addition the accused is hereby directed to pay compensation in the sum of Rs. 1000/- each to Sushil/P.W. 3, Purshottam /PW4, Rajesh /PW6, Dattaram/P.W. 7, Summet /PW8 and in default to undergo S. I. for three months. The accused to surrender before the learned J. M. F. C. within a period of 10 days to undergo the said sentence and to pay the compensation. In case the compensation is paid, the learned Magistrate shall pay the same to the aforesaid witnesses.

18. Before parting with the Judgment, it is necessary to make certain observations particularly as regards to the names of the witnesses to which not much attention is being paid by the Magistrate/Judges and which gives ample opportunity to

contend that the witnesses examined are not the witnesses who were cited in the charge-sheet. We have already seen one example in this case where the name of Sushil Shrikant Halgekar was typed in his deposition as Sushil Shrikant Halgekar and the learned Magistrate on the basis of the same proceeded to conclude that Sushil was not examined by the prosecution. Magistrates/ Judges should ensure that in case the names of witnesses are not familiar and there is difficulty in pronouncing the names, the name is got written down from the witness itself and passed on to the typist so that no mistakes are made whilst dictating the same giving opportunity to defence Counsel to argue that the witnesses cited were not examined and who were examined were impostors. It is also observed that there was a practice in this State for the witness to sign the deposition which is recorded. It is not known why the said practice has been abandoned in this case. It is desirable that all the Magistrates/Judges adhere to the said practice and after the deposition of the witness is recorded the witness signs the deposition preferably in the very name which is recorded in the deposition if not by initials. That will help to know the correct name of the witness and avoid ingenious submissions being made. It is also observed that at times it becomes extremely difficult to understand the deposition of the witness either because of the typing mistakes, the grammatical mistakes or mistakes which make no sense are allowed to remain on record without correction whatsoever. We have noticed such a mistake in the deposition of Sushil Halgekar/P.W. 3 when he stated that no passengers were sitting in the said bus which statement was contrary to very tenor of his deposition when he himself was a sitting passenger and there were other sitting passengers who were examined and such a statement he had denied earlier. Nobody expects that no mistakes would be made but Judges and Magistrates ought to know that the cases decided by them are subject to appeal and what is recorded by them is also required to be appreciated by the appellate Courts as and when appeals are preferred in such cases. It was a very strenuous exercise in this case to understand some of the mistakes which continued to appear in the deposition of the prosecution witnesses. Many a times an endorsement like R. O. F. C. is placed at the foot of the deposition but the least which is expected from the Magistrate/Judges is that if there are any mistakes either in the names or in the depositions, whether they are typographical,

grammatical or other mistakes which make no sense they are corrected at least at the stage of arguments or before pronouncing the Judgment.

19. A copy of this Judgment be sent to both the District Judges with instructions to issue directions to all the Magistrates/ Judges in light of the above observation so that such mistakes in the names of the witnesses, or in the deposition, etc. do not remain on record and are corrected by them so that the depositions are easily understandable not only by the trial Court but also by the appellate Court.

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