

The Hon'ble High Court Time Bound Matter.

Presented on: 11.04.2016

Registered on: 11.04.2016

Decided on: 12.05.2021

Duration: 05Y 01M 01D

Exh. 2

**IN THE COURT OF METROPOLITAN MAGISTRATE,
29TH COURT, DADAR, MUMBAI**

(Presided over by Pravin P. Deshmane)

**JUDGMENT
(U/SEC. 355 OF Cr. P. C.)**

- a] The serial number of the case : 2900867/PS/16
- b] The date of commission of offence : 20.10.2015
- c] The name of the Prosecution if any : The State of Maharashtra through Bhoiwada Police Station in C.R. No. 459/2015.
- d] The name of the accused persons, his parentage and residence : Smt. Swapnila Suhas Sakhalkar, Age: 56 years, Occu: Business, R/o: C/20, Bhagyanagar, Khot Lane, Mahim, Mumbai-16.

29th Court, Dadar

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Judgment 2900867/PS/2016
CNR NO. MHMM15-005231-2015

- e] The offence complained of or proved : U/sec. 279, 338 of the Indian Penal Code read with 134 (a) (b) of M.V. Act.
- f] The plea of the accused and his examination if any : Accused pleaded not guilty and claimed to be tried.
- g] The Final Order : As per final order.
- h] The date of such Order : 12/05/2021

Appearances :

Learned A.P.P. for State : Mr. U. V. Taralgatti
Learned Advocate for accused : Mr. Bhushan Deshmukh

J U D G M E N T

(Delivered on this 12th day of May, 2021)

Accused is facing trial for the offence punishable U/sec.279,338 of IPC and 134(a), 134(b)of the M.V.Act. The prosecution came to be launched on the report of Miss. Apeksha Mahedra Shaha with police station, Bhoiwada on 05/12/2015.

The prosecution story in nutshell is as under :

2. On 20.10.2015 the informant Apeksha at about

3.....

9.00 a.m. was proceeding by walk towards her office though Naigaon Cross road. When she reached at Parsi Agyari, one four wheeler came from her back side and dashed her, due to which she fell down on road towards left side of said vehicle. At that time, the left front tyre of said car ran over her right calf, due to which her right leg thumb was injured. Said driver stopped ahead of some distance and mob gathered over there kept her aside. She noticed car no. MH 01-MA 1531 which was being driven by a lady. Thereafter, said lady took her car toward DR. B.A. road from Naigoan Cross road. She appraised said fact to her father, who instructed to attend KLS Hospital, Vileparle. Doctor conducted X-ray of her leg and intimated about fracture of right leg thumb. On 21/10/2015, her father had filed application with police station pertaining to said accident. On 5/12/2015 she gave her detailed statement. Accordingly, her report came to be registered. Investigation officer after completion of investigation filed charge-sheet against the accused. At the outset, on 21/10/2015 itself, the father of Miss. Apekash filed complaint with police station that on 20/10/2015 while his daughter walking from Naigon cross, one car being driven by lady dash his daughter from her back and ran her right leg. Due to which his daughter's toe was damaged as per treatment in KLS Hospital and she is under rest for one month.

3. My predecessor framed plea vide Exh.2. The particulars of the charge were read over and explained to the accused in

vernacular, to which she pleaded not guilty and claimed to be tried. The statement of accused under section 313 was recorded vide Exh.15 wherein she took specific defence that said car was not being driven by her and false case came to registered with a view to receive compensation.

4. The following points arise for my determination along with my findings thereon are as under:-

POINTS

FINDINGS

1) Whether the prosecution proves that, on 20.10.2015, at about 09.20 hours, in front of Parsi Agyari, Naigaon Cross Road, Dadar (E), Mumbai -14, accused drove motor car bearing no. MH-01-MA-1531 on the public place in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person and thereby committed an offence punishable under section 279 of IPC?

...In the negative

2) Whether the prosecution proves that, on the same date, time and place, accused caused grievous hurt to informant Kum. Apeksha Mahendra Shah by driving her motor car bearing no. MH-01-MA-1531 and given dash to informant and fractured to her right leg toe, so rash and negligently as to endanger human life or the personal safety of others and thereby committed an offence punishable under section 338 of

... In the negative.

IPC?

- 3) Whether the prosecution proves that, on the above date, time and place the accused without providing medical aid to injured and information to police flee away from the spot and thereby committed offences punishable u/sec.134(a), (b), of M.V.Act ?

...In the negative

- 4) What order ?

..... As per final order.

REASONS

Point No.1 and 2

5. It is incumbent duty of prosecution to establish that the accused drove driver said car rashly or negligently, such negligence or rashness resulted in dash to injured Apeksha In the above requisition, negligence or rashness is the pivotal factor. The Hon'ble appex court in the case of STATE OF MADHYA PRADESH Vs.BACCHUDAS @ BALRAM AND OTHERS reported in in 2007 (2) B. Cr. C 775 (S.C.) vividly elaborated the term negligence as 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 and individual in particular. Rashness means doing a dangerous or wanton act with the knowledge that it so , and that it may cause injury and doing so

with the consciousness of risk that even consequences will follow but with the hope that it will not . The negligence or rashness is to be assessed in the light of the factual scenario at the spot and ocular account of witnesses.

6. Prior to appreciate ocular evidence in regards negligence, it would be appropriate to clarify the actual spot and situation prevailing thereat. On this facet, the Hon'ble Bombay High Court in the case of *State Vs. Ian Josheph Salzar reported in 2011 (Crimes 638) (BOM)* laid down as '*in order to find out whether there was rashness or negligence on the part of driver of the vehicle, it is absolutely necessary to know exact location of two vehicles which were involved in the accident, the width of road and the speed at which the vehicles were driven.*

7. Ld. APP argues that involvement of the car is specifically cameforth in the FIR as well in the evidence of Apeksha and accused was negligent due to which accident took place causing injury to victim.

8. Per contra, Advocate for accused Shri. Bhushan Deshmukh argues that there is no established evidence to hold that the accused was driving car at relevant time. So also, there is no injury caused to informant, as no document proved to

substantiate the same. There is no evidence at all to show negligent or rashness on the part of said lady driver. Apart, the delay is unexplained and no independent witness has been examined to buttress the informant. There are major flaws in the investigation too. Thus, accused is entitle for clear acquittal.

9. Pursuant to above ratio, it is significant to trace out the actual prevailing situation at the spot. P.W. 2 – Mr. Shivaji Pandurang Pawar – Spot panch for spot panchanama Exh. 9 even though resiled, but there is nothing in his cross-examination to substantiate the same. On this facet, I.O. P.W. 3 – Mr. Sambhaji Raje deposed that on 05.12.2015, he had been at the spot and conducted the spot panchanama (Exh. 9). However, he failed to give specification regarding width of road, exact location of accident, its distance from the extreme left side foot path edge and other prevailing conditions at the spot to gather the negligence of either party. In his cross-examination also there is no whisper at all pertaining to said specification.

10. On taking stock of spot panchanama Exh. 9, it is apparently very cryptic conducted on 05.12.2015 even though accident took place on 20.10.2015. Thus, there is no scope at all to find out exact traces at the scene of accident. It reflects accident took place on Naigaon Cross Road having width 30 feet, in front of Parsi Agyari and there one footware shop and electric pole on foot

path at 5 feet distance from the spot of accident. It is crystal clear that accident took place on road and not on the foot path and the spot is from 5 feet inward from the left edge of the foot path. It is established now that the informant was walking on road and not on foot path.

11. In the light of aforesaid scenario at the spot, I would like to access and scan ocular account of injured /victim. The informant P.W. 1 Apeksha Shah deposed that on 20.10.2015, at around 09.30 while she was going by walk towards her office and reached in front of Parsi Agyari, one four wheeler came from her back side and dashed her, due to which she fell down. The front left wheel of said car ran over on her right leg in between knee and ankle portion due to her toe was damaged with bleeding and nail came out. On the very facet of causal factor of accident, I would like to state that as dash was given from back side, however, injured failed to specify her exact location on the road, why she was not taking the footpath meant for pedestrian and how -come car was negligent while dashing her despite her care to avoid untowards incident.

12. The informant kept mum on this very crucial aspect and plainly deposed that four wheeler car dashed her from back side, causing bleeding injury on her right toe. On this aspect, in her cross-examination she admitted that said Naigaon

Cross road is somewhat crowded, car was dashed from her back, the distance between spot of accident and turning of the car is around 50 to 60 meter. She also expressed her oblivion to state speed of the car while dashing and said driver was not got down from the car. She further falsified that there is distance of 60 to 70 meter from the spot of accident and foot path. So also, she clarified it was on the extreme left of the said road. She also narrated that car number was MH-01-MA-1531.

13. If the evidence of informant is assessed in the light of spot panchanama as well the spot situation cameforth in the cross-examination, I am of the opinion that the informant could not specify why she was on road even though pedestrian foot path was available at spot of accident, how car driver was negligent or rash. In my opinion, the evidence of informant is vague and general way without specifying the exact causal factor attributing negligence or rashness on the part of said lady car driver.

14. The defence side specifically assailed that the accused was not at all driver of the vehicle. Therefore, it is very elementary to prosecution to establish the role of accused in said case when the owner of the vehicle car i.e. MH-01-MA-1531 was different. The informant also specified that when the car stopped at some distance, then she noticed said car was bang driven by the

lady and she noted down car number from its rear side. The FIR is clear that the driver was not got down and she was in car. In this back drop, when the I.O. was aware that somebody was the actual owner of the car, then it is expected on his part to get identified the role or involvement of accused in commission of accident. Informant on this aspect deposed that the accused was driver of the said car. In cross-examination clarified that police showed and cross-checked accused in identification parade in police station when she was there to lodge report. On specific questioning she was narrated that there was only accused accompanied with male fellow. In my opinion, even though the fact of identification has been deposed, however, said identification is not as per the rules of evidence to conduct identification. This very fact of identification has been negatived and falsified by the I.O. as P.W. No. 3 Sambhaji Raje specifically denied that at the time of lodging report, he called upon accused in police station in presence of informant for confirming the identification. In my opinion, in this backdrop and the difference in registered owner than accused, this fact could not get momentum and created serious doubt about very involvement of accused. Not only this, the I.O. and prosecution was knowing this fact from beginning that register owner of the car is different from R.C. Book than accused. This flaw also give major jolt to the prosecution story. Apart said informant herself made this fact clear in her MACT petition before MACT no. 225/16. Thus, I am of the opinion that the very

involvement of the accused in said accident is also doubtful.

15. Furthermore, the defence side assailed at the truthfulness or veracity of the accident itself by saying that when wheel/tyre ran over the calf portion, but there is nothing on record to show calf sustained injury, but fracture shows on the thumb. At the outskirts, I have to state that there is nothing on record to establish the medical injury certificate even though it is claimed to be of private hospital of Mr. Ashish Jain. The prosecution also failed to specify as to how the toe or shin of informant remained uninjured and fracture injury was caused to thumb itself. Furthermore, there is nothing on record to substantiate any injury to informant either by examining by private doctor. No x-ray was filed on record to substantiate fracture. Prosecution also failed to explain why the informant did not take recourse of government hospital for medical examination at least to show medico legal evidence. On this facet, P.W.3 I.O. Sambhaji Raje deposed that injury certificate was given by injured herself and he had not made any inquiry pertaining to the same. In my opinion, this fact also creates doubt not only about causing of injury to informant to thumb excluding shin or calf, but also injury itself. This aspect also creates doubt about the very truthfulness ocular of accident, as different story put forth in the petition before Hon'ble M.A.C. Tribunal.

16. Defence side also assailed delay in lodging FIR on 05.12.2015 even though the accident took place on 20.10.2015. In my opinion, the informant herself clarified not only in FIR, but also in the testimony that her father had given complaint to police station on 21.10.2015 itself. On very aspect P.W. 4 Mahendra Shaha deposed that he filed complained with police station on 21.10.2015 itself. Thus, I am of the opinion that the father of informant had filed complaint in police station Exh. 12 on very next day. Thus, I am of the opinion that delay has been properly explained and same could not be attributed with afterthoughtness or the coloured version to falsely implicate the accused.

17. In view of the foregoing reasons and flaws surfaced in the evidence of informant, the evidence of independent witness could have been of vital importance as accident took place in day time in crowded area. However, I.O. testified that he could not traceout the independent eye witness as accident was previous. In his cross-examination he failed to explain his failure to find out independent witness. In my opinion, had there been independent witness, the true facts would have been come on record to attribute not only involvement of accused, but also the causal factor of the accident. In my view this is major flaw on the part of prosecution to bring best evidence on record either from independent witnesses or C.C.T.V. footage. Thus, due to this flaw

the very involvement of the accused and negligent or rashness could not be inferred or concluded beyond reasonable doubt.

18. By taking stock of aforesaid witnesses, I am unable to fix nexus the accused with the offence of negligent driving, because neither nobody particularised her involvement nor her identification parade was conducted to clarify the actual involvement of the accused who was not owner of the vehicle itself. In my opinion this is a major flaw about involvement of the accused.

19. Perusing the entire evidence there is nothing trustworthy to fix the involvement of the accused in the alleged accident and no substantial particulars put-forth to establish the negligence driving of the alleged vehicle, because incident took place on the road beside foot path. I am of the opinion that while crossing or walking the road it is the duty of pedestrian to take precaution. If any mishap happened due to negligence of the pedestrian no criminal liability would be fixed on the vehicle. On this aspect I would like take valuable guidance from the case-law of *Mahadeo Hari Lokre Vs. State of Maharashtra 1971 STPL (L.E.-Crim)20774 SC* wherein the Hon'ble Apex Court in its para-4 laid down that- "If a person suddenly crosses the road, the bus driver, however, slowly he may be driving, may not be in a

position to save the accident. Therefore, it will not be possible to hold the bus driver was negligent.” On going through the facts of instant case and facts before Hon'ble Apex Court, the factual matrix is the most identical one as in instant case also the informant walked over the portion meant for vehicle and ignoring the foot path for pedestrians.

20. Thus, pursuant to above reasoning and lacking trustworthy evidence negligence in instant case also cannot be fastened against the driver of alleged vehicle involved in accident. I answer point no.1 and 2 in the negative.

Point No.3

21. In view of the aforesaid reason as point no.1 and 2 a very fact of involvement of the accused has not been established and negligence of the accused is also not established, hence no considered inference could be drawn for the alleged offence of leaving the place of incident without referring the deceased at the hospital. Hence I answered point no.3 in the negative.

22. In view of aforesaid reasons I am of the opinion that prosecution failed to prove the guilt of accused beyond reasonable doubt. Hence I pass following order.

ORDER

- 1)- The accused Smt. Swapnila Suhas Sakhalkar, Age: 56 years, is acquitted of the offences punishable under sections 279, 338 of IPC and 134(a)(b) of the M.V. Act vide Section 255 (1) of Cr.P.C.

- 2)- The accused shall comply bail under section 437-A of Criminal Procedure Code.

(Pronounced in open court)

Mumbai
Dt. 12.05.2021

Sd/-
(Pravin P. Deshmane)
Metropolitan Magistrate,
29th Court, Dadar, Mumbai.