

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1238 OF 2012

The State of Maharashtra ...Appellant

vs.

Kuldeep Subhash Pawar
R/o. Bambawade, Tal.: Tasgaon
District Sangli

...Respondent

Mr. N. B. Patil – APP for the Appellant-State
Mr. Aashish Satpute – Appointed as amicus curiae for the
Respondent

CORAM : S. M. MODAK, J.

DATE : 03rd MARCH, 2023

JUDGMENT. :-

1. Heard learned APP Shri Patil for the Appellant-State and learned Advocate Shri Satpute appointed by way of Legal Aid to represent the Respondent.

2. Respondent is acquitted by the Court of JMFC, Tasgaon on 24/08/2011 in S.C.C. No. 274 of 2009. He was charged for being responsible of the death of the bicycle driver and one bullock. The Respondent is driver of Tata Sumo jeep bearing no. MH-10-AG/3440. The incident took place on 01/11/2009 at an early hour of the day i.e. 8.30 a.m. on a public road. The spot is situated on a road going from Manerajuri to Kumtha village in the village

Uplavi Taluka – Tasgaon. The first informant was driving his bullock cart. Whereas one Balaso Krushna Mane, resident of village Uplavi was driving bicycle. The Tata sumo driver dashed to the bullock cart and also to the bicycle. The intimation was given to Tasgaon Police Station. Initially investigation was carried out by P.W. No. 5 -ASI Mahavir Bapu Chougale. He found the negligence of the Respondent – accused and that is why F.I.R. is registered on 01/11/2009 for the offence punishable under Sections 279, 337, 338, 304-A of the Indian Penal Code and under Section 134 of the Motor Vehicles Act.

3. During trial five witnesses were examined. P.W. No. 1- Vasant Desai, who is owner of the bullock cart. Whereas P.W. No. 2- Jotiram Patil was passerby and eye witness. P.W. No. 3- Subhash Chavan is a Police Patil who visited the spot after getting information about the accident. P.W. No. 4- Balasaheb Patil is spot panch and Panch No. 5- Mahavir Chougale is investigating officer.

4. With the assistance of both the sides, I have gone through the evidence. It is important to note that the P.W. No. 1 and P.W. 2 while giving evidence had given exact opposite direction of the bullock cart. That is to say whether the bullock cart was going from Southern to Northern direction or Northern to Southern direction. As per the P.W. No. 1, he was going from Northern to Southern

direction. Whereas as per P.W. No. 2, the bullock cart was going from Southern to Northern direction.

5. During cross-examination of the P.W. No. 2, he has admitted that he has not stated before the Police that he had seen the incident from the distance of 50 feet. He was resident of the same village which bullock cart owner P.W. No. 1 resides. Rather than this version of the P.W. No. 2, we have to consider the version given by the bullock cart driver P.W. No. 1.

6. The question does not ends there. It is important to consider in what direction the Tata sumo driver was driving his jeep. According to the P.W. No. 1 Tata sumo came from northern side and it came from Sangli side. There is also confusion about location of the Sangli. It is important to consider the situation at the spot. As per the spot panchnama, the bullock cart was lying on a Southern side and facing Eastern side. It is probable that this location is correct because bullock cart driver says that he was going from Northern to Southern side. About location of the bullock cart also P.W. No. 4 – panch witness has said differently. According to him, the bullock cart was found towards northern side of the road. It means just opposite of road described in the spot panchnama. P.W. No. 2 had given certain description of the direction. Village Sangli is towards

western side whereas Uplavi village wherein the bullock cart was moving was on southern side. If the Tata sumo driver is coming from Sangli side, it is on the Western side. Whereas P.W. No. 1 has said that he was coming from the northern side.

7. With the assistance of both the sides, I am trying to understand the direction as per documentary evidence and the oral evidence. We have tried to understand it from various angles but we could not arrived at a particular conclusion what are the directions.

8. It is really strange state of affairs, when such matters are conducted neither Investigating Officer has prepared a map/rough sketch, nor trial court has taken pains in recording directions correctly in the evidence. If there is some confusion, the trial Court could have clarified it from the witnesses by putting questions which is permissible by law.

9. It has also come on record that there are tea stalls situated around the spot and learned Advocate Shri Satpute tried to submit that statements of such persons were not recorded. Police Patil is not the eye witness to the incident as evidence is only relevant to what he has seen after the incident. P.W. No. 2 has given direction contrary to what has been given by P.W. No. 1. It is difficult to believe him.

10. So we do not find any evidence to corroborate the version given by the P.W. No. 1. No doubt he said that Tata sumo came speedily. It has to be appreciated on the basis of other available materials. Act of the driving is punishable only when it is rash and negligence. Rashness implies the speed which is unwarranted. Whereas act of the negligence involves not taking proper care and attention while driving.

11. It is true that the consequence of the accident are the death of the one bullock and the bicycle driver. For want of evidence, the trial court could not come to the conclusion about rash and negligent driving by the Respondent. Even this Court is unable to come to that conclusion for the above reasons.

12. So this Court has no alternative but to confirm the findings of the trial Court. Hence the finding cannot be interfered with. Hence appeal is dismissed.

13. Office to pay necessary fees to the learned Advocate Shri Satpute for the assistance given by him.

[S. M. MODAK, J.]