



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.511 OF 2003

The State of Maharashtra,
Through The Public Prosecutor,
High Court, Bench at
Aurangabad.

...APPELLANT

VERSUS

Rajendra s/o Namdeo Shinde,
Age-32 years, Occu:Service,
Resident Of-Jail Quarters,
Harsool, Aurangabad.

**...RESPONDENT
(Ori. Accused)**

...

Mr. S.M. Ganachari, A.P.P. for Appellant.
Mr. Ajay S. Deshpande Advocate for Respondent.

...

WITH

CRIMINAL REVISION APPLICATION NO.333 OF 2003

- 1) Hanumant Yeshwant Pawar,
Age-49 years, Occu:Service,
Resident Of-Jail Quarters, Central Jail,
Harsool, Aurangabad,
(Since deceased, through
Legal Representatives) **(Ori. Complainant)**

1A) Smt. Indubai widow of Hanumanta Pawar,
Age-50 years, Occu:Household,
Resident of-Nagapur, Tq-Kannad,
Dist-Aurangabad,

1B) Deepak s/o Hanumant Pawar,
Age-35 years, Occu:Agriculture &
Business, Resident of-Nagapur,
Tq-Kannad, Dist-Aurangabad,

1C) Suresh Hanumant Pawar,
Age-25 years, Occu:Agriculture &
Business, Resident of-Nagapur,
Tq-Kannad, Dist-Aurangabad.

...APPLICANTS

VERSUS

Rajendra Namdeo Shinde,
Age-33 years, Occu:Service,
Resident Of-Jail Quarters,
Harsool, Aurangabad.

**...RESPONDENT
(Ori. Accused)**

...
Mrs. A. N. Ansari Advocate for Applicants.
Mr. Ajay S. Deshpande Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 12TH APRIL, 2016

DATE OF PRONOUNCING JUDGMENT: 25TH APRIL, 2016

JUDGMENT :

1. Respondent - original accused Rajendra Namdeo Shinde was convicted by VIIth J.M.F.C. Aurangabad in Regular Criminal Case No.1332 of 2001 on 11th January 2002 under Section 304-A of the Indian Penal Code, 1860 ("I.P.C." in brief) and was sentenced to suffer R.I. for two years and to pay fine of Rs.2000/-. In default of payment of fine, he was directed to suffer R.I. for further three months. Accused Rajendra Shinde carried Criminal Appeal No.2 of 2002 before Additional Sessions Judge, Aurangabad and in the Appeal he came to be acquitted by Judgment and Order dated 6th March 2003. Thus, the State has filed this Criminal Appeal No.511 of 2003 against acquittal. The complainant Hanumant, who lost his daughter in the incident of rash and negligent driving, filed the Criminal Revision Application No.333 of 2003 against the orders of the Sessions Court. On his death, his Legal Representatives have come on

record.

2. The facts in brief are as under:-

(A). Complainant Hanumant Pawar, on 10th March 2001 at about 4.10 p.m. registered Crime No.54 of 2001 with police station, City Chowk, Aurangabad against the Respondent Rajendra Shinde (hereafter referred as "accused"). Complainant reported that on that day at about 2.15 p.m. he was in his house. (He resides in the jail quarters at Harsool.) He informed that he was sleeping in his house and came to know from children that accident has taken place. He came outside his house and saw his wife Indubai (PW-4) sitting with his daughter Dipali in her lap. When he saw his daughter, she had bleeding injury near her waist and blood was also coming out from her nose and mouth. He came to know from his wife and people assembled that the accused, who is constable at the jail, had driven Jeep No. MH-20-W-9502 in high speed and

dashed against Dipali (hereafter referred as "victim") and the victim had got injured and was unconscious. Victim had also injury near hear stomach. Complainant with the help of one Akhtarkhan Pathan (PW-6), on Moped M-80, took the victim to the hospital of one Patel who asked them to take the victim to Ghati Hospital and they hired rickshaw and took the victim to Ghati Hospital, where she was declared brought dead. Complainant reported that the accused Rajendra was smelling of liquor and had driven the vehicle against cycle and dashed against the victim who had expired.

(B). P.S.I. Kisan Thakare (PW-7), after registration of the offence, investigated the matter. He drew the Spot Panchnama (Exhibit 22) on the same day. The accused was got medically examined and the medical certificate was brought on record at Exhibit 24. Statements of witnesses were recorded. The vehicle was of the jail and the

same was got examined from R.T.O. The report was brought on record at Exhibit 30. After investigation, charge-sheet came to be filed.

3. The trial Court framed charge under Section 304-A of I.P.C. The accused pleaded not guilty. His defence in the trial Court was of complete denial.

4. Evidence of complainant Hanumant was brought on record as PW-1. He proved the F.I.R. Exhibit 13. PW-2 Shobhabai Koli, PW-3 Yuvraj Hazare, and PW-5 Kamalbai Jadhav who were examined as witnesses, turned hostile. PW-6 Akhtarkhan Pathan who admits to have helped the complainant to carry the victim to the hospital, also turned hostile as regards witnessing the incident. On record, important evidence is of PW-4 Indubai Pawar, the mother of victim. In the trial Court, the Inquest Panchnama (Exhibit 17) and Postmortem Report (Exhibit 18) were admitted by the accused.

5. The trial Court took note of the above evidence. Trial Court referred to the evidence of complainant Hanumant, who deposed as per the contents of the complaint, referred above. Trial Court also discussed evidence of PW-4 Indubai. Trial Court recorded that PW-4 Indubai is mother of deceased Dipali. It appears that Dipali was about 11 years old at the time of incident. Trial Court recorded that PW-4 Indubai is eye witness of the incident which occurred on the day of Dhuli- Vandan in 2001 at about 1.30 p.m. in front of her neighbouring quarter. Discussing the evidence of PW-4 Indubai, the trial Court recorded that the accused was residing in the jail quarters at Harsool in the same lane where the complainant was residing and there was no record that there was any enmity between the complainant as well as Indubai with accused. Trial Court found that there was no reason as to why Indubai should depose against the accused. Trial Court found the witness

to be natural and trustworthy and observed that a woman would not speak lie relating to death of her daughter who died before her own eyes. The trial Court found corroboration in the evidence of complainant husband who, when he came out of the house, saw PW-4 Indubai with injured Dipali in her lap. Trial Court discussed the Spot Panchnama Exhibit 22 proved by P.S.I. Thakare, which Panchnama recorded that although there were no brake marks on the spot, there were marks of the vehicle giving dash to the wall of Quarter No.86 in front of which the incident had occurred. The vehicle was not found on the spot and the trial Court noted that possibly the accused took away the same. The observations of the trial Court are that the spot where the accident occurred was not public road and was situated within the premises of the Central Jail. Trial Court concluded that the vehicle was out of control of the accused and dashed against innocent girl Dipali who was standing in front of Quarter No.86, and then the

vehicle colluded with wall of Quarter No.86. It discarded the defence that Dipali fell from cycle and got injured and died because of the same. For such reasons, the trial Court found the accused guilty and convicted him, as mentioned above.

6. When the matter was carried to the Court of Sessions, the Sessions Court, after recording points for consideration, recorded that the trial Court has relied on the evidence of PW-4 Indubai and "there is no error in the appreciation of the trial Court". However, it went on to add that Indubai was unable to tell the name of the person to whom the neighbouring quarter was allotted. Sessions Court referred to the evidence of Indubai regarding accused driving the vehicle and giving dash to the victim. It went on to add that "from this version there is impression that, this witness might have seen the incident. But, in her whole testimony she does not state that, she was present at the time of incident". Sessions Court

further reasoned out that PW-4 Indubai stated that victim came in front of wheel of the Jeep and her neighbour Sangita took out Dipali from that wheel. According to Sessions Court, if PW-4 Indubai was present, she should have rushed to save her daughter. Then the Sessions Court found further fault with the investigation that the said Sangita was not examined and as to why Sangita and PW-4 Indubai had not caught hold of the accused. The Sessions Court, while referring to the evidence of investigating officer P.S.I. Thakare recorded that he found that the vehicle had dashed to the staff quarter No.86 and bicycle also was found to have been crushed and added that "But this is not incriminating evidence against the accused". According to the Sessions Court, the P.S.I. had not recorded the statement of Jail Superintendent when the vehicle was of the jail. It noted that no evidence was brought as to in whose charge the vehicle was or how accused procured it. According to Sessions Court, only because accused was

charge-sheeted, does not make him responsible. Sessions Court also recorded that although it was stated that blood was coming out from the injuries of victim, no blood was found on the spot. It was observed that if the victim was standing on the Otta, there should have been some damage to the Otta (platform). According to the Sessions Court, the spot panchnama did not show measurement and the cycle was also not seized from the spot. For such reasons, the Sessions Court reversed the Judgment of the trial Court and acquitted the accused.

7. I have heard the learned A.P.P. for State, learned counsel for the accused as well as learned counsel for legal representatives of the original complainant. The counsel for the legal representatives of the original complainant and A.P.P. have, both, argued to restore the Judgment of the trial Court finding fault with the reasonings of the Sessions Court. They support

reasons recorded by the Trial Court. According to them, the evidence of PW-4 Indubai could not have been discarded by the Sessions Court presuming that she was not an eye witness. The reasons recorded by the Sessions Court were not maintainable. Even if there was no measurement of the spot, the Sessions Court forgot that it was only a lane within the jail campus and the Spot Panchnama did record that the vehicle in the incident, also dashed against the wall of Quarter No.86. Reading evidence of PW-4 with the Spot Panchnama, the conviction recorded by the trial Court was correct, it is stated.

8. Learned counsel for the accused stated that this is a case of no eye witness being there. According to the counsel, the evidence of PW-4 Indubai was rightly discarded by the Sessions Court. The evidence from jail authorities was not brought that the accused had unauthorizedly driven the vehicle. The accused argued that it was

unnatural that mother would not take out the body of her child from below the wheel and let somebody else do it. The counsel for accused wants the Appeal and Revision to be dismissed.

9. I have gone through the material which was brought on record and the arguments. Looking to the fact that the Sessions Court has acquitted the accused, if I have to interfere, it is necessary for me to see if the Sessions Court has wrongly reversed the trial Court Judgment illegally discarding the evidence.

. It would be appropriate to refer to the evidence of PW-4 Indubai in some details, as the dispute almost narrowed down to the question as to whether or not Indubai was eye witness. PW-4 Indubai has deposed that she was residing in the quarters of central jail and she knows accused. The accused was residing in quarter in the same lane. Accused was serving as constable in the

central jail. Regarding the incident, Indubai has deposed that it occurred on Dhuli Vandan of that year at about 1.30 p.m. in front of quarter of her neighbour. Her evidence is that:

"My Daughter Dipali was standing on the Ota of my adjoining quarter with bicycle. The accused drove jail jeep in speed and gave dash to my daughter Dipali. Dipali came under the front wheel of the jeep. My neighbourer Sangita Wagh taken out Dipali from the wheel of the jeep and gave me."

. Indubai further deposed that when the neighbour gave Dipali in her hand, blood was oozing from mouth and nose of Dipali and she had become unconscious. PW-4 Indubai is corroborated by her husband PW-1 Hanumant, who has deposed that he came to know from the children about the incident and when he came out, he saw the victim in the lap of her mother and he took the victim to the hospital. Indubai has also deposed that her

husband came out and took Dipali to hospital.

. Now, if the cross-examination of PW-4 Indubai regarding incident is perused, she stated that she did not know name of the neighbour where Dipali was standing. She denied the suggestion that Dipali was playing with the bicycle and fell down on stone and got injured. She denied the suggestion that she was deposing falsely that accused drove jeep in speed and gave dash to Dipali. She further denied the suggestion that her neighbour Sangita had not taken out Dipali from below the wheel of the jeep and gave to her. The accused suggested that he was not driving the jeep. Even this suggestion was denied. She further denied that she was deposing at the instance of her husband. These are the suggestions which were given to Indubai regarding her evidence of the incident. There is not a single word that she was not witness of the incident or that she had heard and on that basis she has given evidence.

10. Evidence of PW-4 Indubai was recorded by the trial Court which was the best judge to see the demeanour of the witness and what she was deposing. The Sessions Court accepted that the appreciation of the evidence of the trial Court was correct and there was no error. The trial Court in its Judgment, has also clearly recorded that PW-4 Indubai was eye witness to the incident. The incident occurred in the same lane where Indubai was residing and in front of quarter of her neighbour presence of Indubai cannot be doubted. In spite of all this, the Sessions Court, after referring to the evidence of Indubai, appears to have recorded without basis that, the evidence gives "impression" that the witness "might have seen" the incident. The Sessions Court wrongly kept searching words from the mouth of witness to claim that she was "present" at the time of incident. Sessions Court wrongly discarded the evidence of Indubai on the basis that, why

Indubai herself did not take out the victim from below the wheel of the Jeep and allowed Sangita to do so. There is no straight jacket formula as to how a mother would react if she sees her minor daughter getting entangled in an incident like this. If she gets shocked by the incident and a nearby person reacts by picking up the injured and giving the child to the mother, I do not find anything surprising in such evidence. The reasonings recorded by the Sessions Court are clearly perverse. This is like doubting for the sake of doubting. I agree with the trial Court that Indubai was eye witness of the incident and she had seen the incident.

11. The incident occurred at about 2.15 p.m. and the victim was rushed to some private doctor first and then to Ghati hospital and when the victim was declared as brought dead, PW-1 Hanumant almost immediately filed the F.I.R. Exhibit 13 at 4.10 p.m. recording the facts and also naming the

accused. He also further recorded in the complaint that the accused was smelling of liquor. In evidence, however, PW-1 Hanumant has not deposed that accused was smelling of liquor. The evidence of Investigating Officer brought on record the medical certificate Exhibit 24, which recorded that accused was examined on the same day at about 9.00 p.m. and he was smelling of liquor but was not under influence of liquor. Although this document was marked exhibit in the trial Court and the accused did not object, but I would prefer to ignore it in the absence of evidence of doctor. I ignore part of the F.I.R. mentioning accused was smelling of liquor. But rest of the F.I.R. is proved. The F.I.R. which was almost immediately filed, does directly link the accused with the incident. The Sessions Court could not have held in favour of the accused by observing that only because charge-sheet is filed, the accused should not be presumed to be driver. There is evidence of PW-4 Indubai, an eye witness of the incident and

immediate F.I.R. naming the accused and this evidence was rightly considered by the trial Court and wrongly discarded by the Sessions Court.

12. Coming to the spot, the Investigating Officer P.S.I. Thakare has proved the document at Exhibit 22. The P.S.I. was acting in official capacity and the Spot Panchnama was recorded on the same day immediately after the offence was registered. The Spot Panchnama was recorded at 4.25 p.m. on 10th March 2001. It noted that the spot was in jail colony in front of House No.86 and 82. Now of the final report form under Section 173 of Cr.P.C. filed by the Investigating Officer is perused, it recorded address of the complainant Hanumant as residing in the jail colony in House No.82. The F.I.R. also records the address of complainant at House No.82 of Central Jail Quarters. This makes it more clear that the incident occurred just near the house of Indubai although more exactly in front of House No.86.

This also makes it clear that the Sessions Court was not right in presuming that PW-4 Indubai was not an eye witness. She was a natural witness on the spot. The Spot Panchnama shows that it was a road going East-West and there were no brake marks of the vehicle, however the wall of the house No.86 to the South bore marks of dash being given and the vehicle had gone over the cycle which had got crushed. It recorded that ring and mud-guard of the cycle had been crushed. It is surprising to find the Sessions Court referring to this evidence and then declaring that, this was not incriminating evidence against the accused. Only because the P.S.I. did not seize the cycle from the spot, such evidence could not have been ignored. Although it would have been appropriate for the Investigating Officer to record measurement of the width of the said road, that by itself does not mean that the accused can be acquitted on such basis. Although in Spot Panchnama P.S.I. referred the spot to be road

going East-West, it cannot be forgotten that witnesses have referred to the spot to be a lane. PW-4 Indubai has clearly deposed that the accused was residing in the quarter "in our lane". The accused did not challenge the evidence that it was not a mere lane. Accident report form Exhibit 30 recorded that the right side mud-guard of the vehicle had bent. If the house No.86 was to the South and the vehicle had the mud-guard bent on its right, it appears that the vehicle was moving from West to East and after the incident it dashed against the wall of House No.86.

13. The observation of the Sessions Court that blood was not found on the spot is something which should weigh in favour of the accused, is also not maintainable. The facts show that the victim was almost immediately picked up from near the wheel of the Jeep and the blood was "oozing" from the nose and ears of the victim. A difference is required to be made between blood oozing and

blood flowing. Victim was also injured near her waist. Only because blood did not fall on the ground, does not mean that the evidence of PW-4 Indubai could be ignored.

14. Similarly, there is no substance in the argument of the counsel for the accused and the reasonings of the Sessions Court that evidence from the records of jail authorities should have been brought as to who was in-charge of the vehicle and how accused took it etc. The accused may or may not have been in-charge of the vehicle but if he drove it and was seen by PW-4 Indubai driving the vehicle and giving dash to her daughter regarding which immediately F.I.R. has been filed, the evidence cannot be discarded only because record from jail authorities was not called as to who was official driver on the vehicle.

15. For above reasons, I do not find that the

Sessions Court could have upset the well reasoned Judgment of the trial Court. Reasonings recorded by the trial Court and analysis of the evidence appears to be correct. The reasons recorded by the Sessions Court are perverse and it wrongly discarded the evidence branding PW-4 Indubai as not an eye witness. The Sessions Court got misguided on such basis and the Judgment of the Sessions Court cannot be maintained.

16. For the above reasons, I pass following Order:

O R D E R

(I) Criminal Appeal No.511 of 2003 is allowed. The impugned Judgment of the Sessions Court, Aurangabad in Criminal Appeal No.2 of 2002 dated 6th March 2003 is quashed and set aside.

(II) The Judgment of conviction and sentence as passed by the trial Court in Regular Criminal Case No.1332 of 2001, dated 11th January 2002 is restored.

(III) The bail bonds of the Respondent-accused are cancelled. The Respondent-accused - Rajendra Namdeo Shinde shall surrender before the trial Court immediately and suffer the sentence. The trial Court shall ensure compliance of conviction and sentence passed by it.

(IV) The Criminal Appeal stands disposed of, accordingly.

(V) The Criminal Revision Application No.333 of 2003 is also disposed of in terms of the order passed in Criminal

Appeal. As such no separate orders are
necessary.

[A.I.S. CHEEMA, J.]

asb/APR16