

Presented on : 05.12.2015
Registered on : 15.12.2015
Decided on : 10.10.2016
Duration: 25 09 --
Days Months Years

IN THE SESSIONS COURT, SOUTH GOA, AT MARGAO.

(Before Shri Desmond S. D'Costa, Sessions Judge)

CRIMINAL APPEAL NO.98 / 2015

Shri Sanket Naik,
s/o Somnath Naik,
major in age, service,
r/o H.No.1154, Pontemol,
Curchorem-Goa.

.... Appellant.

v/s

S T A T E
Through P.P., Margao

.... Respondent.

Learned Advocate Shri A. Prabhudessai for the appellant.

Learned P.P. Ms. S. Sardinha for the respondent.

J U D G M E N T

(Delivered on this the 10th day of the month of October of the year 2016)

This is an appeal filed by the appellant under Section 374 of the Cr.P.C., 1973, challenging the judgment dated 18.11.2015 and sentences dated 23.11.2015, passed by the Learned JMFC at Quepem, in Criminal Case No.37/S/2013/A.

2. The appellant was the accused in the Criminal Case filed by the State against him for the offences under Sections 279 and 304-A IPC in respect of the motor vehicular accident which had taken place on 31.12.2012 at 23.50 hours at Paddi, Quepem on the National Highway 17.

3. Under the impugned judgment and order, the appellant has been convicted for the offences under Sections 279 and 304-A IPC. Under Section 304-A IPC, he has been sentenced to undergo rigorous imprisonment for one year and to pay fine of `10,000/- and in default to undergo imprisonment for 6 months. So also for the offence under Section 279 IPC, he has been sentenced to undergo 3 months rigorous imprisonment and fine of `1,000/- and in default to undergo imprisonment for 3 months.

4. Aggrieved by the impugned judgment and sentence, the appellant has preferred this appeal, on the several grounds set out in the memo of appeal such as that the findings given by the Learned JMFC are incorrect and not warranted by the facts on record; that the Learned JMFC failed to observe that there was absolutely no evidence on record to prove beyond reasonable doubt that the accused/appellant had committed the offences; that the impugned judgment is

illegal, unwarranted by the facts on record and contrary to the evidence on record; that the Learned JMFC failed to appreciate that the respondent failed to prove the guilt of the accused beyond reasonable doubt; that the Learned JMFC failed to marshal and appreciate the evidence in its proper perspective; that the approach of the Learned JMFC is contrary to the settled principles governing appreciation of evidence in criminal trials; that the Learned JMFC failed to appreciate that the respondents have failed to prove that the accused was the driver of the vehicle at the time of the accident and that the Learned JMFC failed to appreciate that the possibility of the accident being caused due to sudden burst of tyre cannot be ruled out.

5. I heard Learned Advocate Shri A. Prabhudessai for the appellant and he submitted that the defence of the appellant/accused before the Learned JMFC was two folds, firstly that the accused was not the driver of the car at the time of the accident and secondly that the accident took place as the front right tyre of the car had burst. Taking me through the deposition of PW1, Tulshidas Naik who has been examined as a pancha witness and as an eyewitness, he submitted that his deposition does not prove that he could have seen that it was the accused who was driving the car when the accident took place.

6. So also in respect of the deposition of the other eyewitness examined PW3, Anant Naik, he submitted that this witness also could not have seen who was driving the car at the time of the accident as he reached the spot subsequently.

7. Referring to the deposition of PW6, the RTO Inspector Sohan Prakash Naik that the front right tyre of the car was found deflated, the Learned Advocate for the appellant submitted that a doubt arises whether the accident took place due to this and as such it cannot be said that the accused was rash and negligent. He prayed for quashing of the impugned judgment and order and for the acquittal of the accused.

8. On the other hand, Learned P.P. Ms. S. Sardinha on taking me through the depositions of the nine witnesses examined on behalf of the prosecution and the deposition of the accused as DW1, submitted that the Learned JMFC has given a well reasoned judgment which calls for no interference. She submitted that the Learned JMFC rightly held that the prosecution had proved that the accused was the driver of the car at the time of the accident.

9. The Learned P.P. also argued that the defence of the accused that he was not driving the car but it was driven by one Sandesh, was not suggested to PW1 and PW3 and shows that it is an afterthought taken by the accused at the time of his 313 Cr.P.C. Statement and his defence evidence.

10. The Learned P.P. also submitted that there is no evidence that the tyre of the car had burst prior to the accident. She referred to the deposition of the complainant PW8, ASI Premanand Dessai and

submitted that it brings out that when the Scene of Accident Panchanama was drawn, the tyre of the car was seen to be normal.

11. In this respect the Learned P.P. submitted that the RTO had inspected the vehicle after 8 days and the front tyre could have deflated on its own and this does not prove that it had burst prior to or at the time of the accident. She prayed that the appeal be rejected.

12. The points for determination and my findings thereon are as under:

<u>POINTS</u>		<u>FINDINGS</u>
1. Had the Learned JMFC erred in holding that the accused was the driver of the Ford Figo car at the time of the accident?		Negative.
2. Had the Learned JMFC erred in holding that the tyre of the car had not burst prior to the accident?		Negative.
3. Had the Learned JMFC erred in holding that the accident had taken place due to the rash and negligent driving of the accused?		Negative.
4. Had the Learned JMFC erred in convicting the accused under Sections 279 and 304-A IPC and sentencing him accordingly?		Negative.

REASONS

13. POINT NO.1: In respect of this accident which had taken place on 31.12.2012 at 23.50 hours at Paddi, Quepem, on the National Highway 17, the chargesheet had been filed against the accused.

14. The Substance of accusation was framed and explained to the accused that he had driven the Ford Figo car bearing no.GA-09 A-5033, in a rash and negligent manner on a public way while proceeding from Cuncolim towards Canacona, endangering human life and personal safety of others and thereby committed the offence punishable under Section 279 of the IPC.

15. Secondly, the charge was that on the said date, time and place on account of his rash and negligent driving, on reaching at Paddi, Quepem, he dashed against the tree existing on the left hand side of the road as a result of which the occupant, Shri Ravindra Mapari was flung out of the car and died on the spot instantly and so also the two other occupants, Shri Saiesh Fadte and Shri Sandesh Naik were seriously injured and succumbed to the injuries on the way to the CHC, Canacona and thereby he was charged under Section 304-A of the IPC.

16. The accused had pleaded not guilty to the charge framed and claimed to be tried.

17. At the stage of trial, the prosecution had examined nine witnesses and produced their documents.

18. The statement under Section 313 Cr.P.C. of the accused was recorded. The accused had also examined himself as DW1 and closed his case.

19. On hearing the arguments of the Learned APP and of the Learned Advocate for the accused and on considering the oral and documentary evidence on record, the impugned judgment and sentence came to be passed by the Learned JMFC.

20. The first question is whether the prosecution had proved that the accused was the driver of the Ford Figo car involved in the accident.

21. PW1, Tulshidas Naik was examined both as a panch witness for the Scene of Accident Panchanama and as an eyewitness in respect of this accident.

22. He has deposed on page 3 that on 31.12.2012, he alongwith eight other persons had gone to the Hill View Bar and Restaurant at Xeldem at about 9.30 p.m. in two cars and after having dinner, they had left to proceed to Canacona at about 10.30 to 10.45 p.m. He deposed that some of the persons had consumed alcohol. Here he deposed that he, Videsh Phadte and Tushar Kudchadkar set in the car driven by Vishal.

23. Further on page 3, PW1 has deposed that Ravindra Mapari, Saiesh Phadte and Sandesh Naik sat in the car bearing no.GA-09 A-5033 driven by Sanket Naik i.e. the accused.

24. The Learned Advocate for the appellant submitted that at the most it proves that the accused was driving the car when they had left

Quepem and subsequently the evidence indicates that they had stopped at Balli and as deposed by DW1 he had given the car to Sandesh for driving, on request of Sandesh. He submitted that PW1 cannot be believed that the accused was driving the car.

25. On going through the deposition of PW1 on page 3, I find that he deposed that Sanket Naik proceeded ahead with his car and he saw the car after crossing Balli junction and they had stopped to answer nature's call. Here he deposed that they also had stopped their car and after sometime they all i.e. the accused and the others sat in the car of the accused and left and upon reaching Paddi they saw that the car of the accused had met with an accident.

26. **Further on page 4, PW1 has deposed that Sanket was driving his car while proceeding to Canacona and even at the time when they had stopped at Balli and left Balli to proceed to Canacona.**

27. The Learned Advocate for the appellant referred to the cross examination of PW1 on page 7, where he deposed that the car of the accused had already left when they reached Balli and submitted that as such PW1 could not have known who was driving the car.

28. **But as rightly submitted by the Learned P.P., PW1 deposed on page 7 that when the car left from Hill View Bar and Restaurant, he had seen the accused driving the car.** On behalf of the accused it was suggested to PW1 that his statement that

Sanket was driving his car while proceeding to Canacona and even at the time when they had stopped at Balli and left Balli to proceed to Canacona is a false statement. Again as rightly pointed by the Learned P.P., there was no suggestion put to PW1 as to who was driving the car from Balli onwards and that Sandesh was driving the said car.

29. The other material witness examined in this case is Anant Naik, PW3, who was also admittedly the occupant of the other car driven by Vishal and in which PW1 had also travelled.

30. On page 1, PW3 has deposed that Vishal was driving his car and Sanket was driving his car. He deposed that they had dropped their friend at Hodar and had proceeded to Palolem and they met the others at Balli after crossing the four road junction on the road leading to Canacona. Here he deposed on page 1 that they had stopped to answer nature's call and that they i.e. accused and the others had also stopped to answer nature's call. He further deposed that the car of the accused went first and they followed after about one minute.

31. On page 2, PW3 further deposed that when they reached Padi, they saw that there was an accident to the car of Sanket and Rohit and Saiesh had fallen on the road and Sandesh had fallen beyond the tar road. **Here he deposed that at that time Sanket i.e. the appellant was driving the car.**

32. Though the Learned Advocate for the appellant submitted that the deposition of PW3 is not believable, on going through the entire

deposition he does emerge as a truthful witness. **On page 3, PW3 deposed that Rohit was sitting on the front seat, Sandesh was sitting behind Rohit and on the other side of the rear seat Saiesh was sitting.** Though he deposed here that it is true that when they reached Balli to answer nature's call, the car of Sanket was leaving, he denied the suggestion that his statement that Sanket was driving the car after answering nature's call at Balli is false.

33. On going through the impugned judgment, I find that the Learned JMFC has taken into account the depositions of PW1 & Pw3. DW1, the accused had deposed that on the way Sandesh had stated that he will drive the car upon reaching Balli and accordingly DW1 had given the car to Sandesh and sat behind the driver when they left Balli to go to Palolem. **I find that the Learned JMFC at para 29 has rightly held that the accused had not put any suggestion to the witnesses to state that Sandesh was driving the car at the time of the accident.** I find that the Learned JMFC also rightly held in para 35 that the case of the prosecution that the accused was driving the car at the relevant time is supported by circumstantial evidence produced on record by the doctor and the witnesses and also by DW1 and the possibility of the accused having sustained the injuries by hitting on the dashboard or gear shifter or seat belt locks or steering wheel, cannot be ruled out considering the evidence on record.

34. In para 34 of the impugned judgment, the Learned JMFC rightly held that if at all Sandesh was driving the car, as is the case of the accused, Sandesh would not have been flung out of the car from

the front left side door, in view of the obstruction between the driver's seat and the co-driver's seat and Sandesh would not have sustained multiple fractures as diagrammatically shown by PW4 in his postmortem report examination showing injuries to his lower limbs, front temporal parietal bones, right cheek, etc.

35. From the depositions of PW1 and PW3, it is on record that the accident took place as the car of the appellant went and dashed against the tree on the left hand side of the road and then went ahead over a distance of 8.60 metres. As seen from the evidence of PW1 and the Spot of Accident Panchanama and the Sketch, there are skid marks of 25.50 metres from the left edge of the road over the katcha portion of the road upto the tree and then the vehicle went over a distance of 8.60 metres.

36. So also it is seen from the Scene of Accident Panchanama and the Sketch that the car had suffered damages to the entire left side portion and the front windscreen was broken. The Photograph under Exhibit 11 shows that the left doors of the car had fallen off. As a result Ravindra Mapari who was sitting on the front left side, next to the driver was flung out and died at the spot and the other two i.e. Saiesh Phadte and Sandesh Naik were also flung out of the car and sustained injuries and died on the way to the hospital.

37. PW8 is retired ASI Premanand Dessai, who was on duty on 31.12.2012 and who had reached the accident spot soon after the accident. He deposed that he had filed the complaint under Exhibit 53

on behalf of the State against the accused for driving the car in a rash and negligent manner and for causing the death of three persons.

38. The Learned Advocate for the appellant again is right that in his cross examination, PW8 has deposed on page 2 that he had not seen who was driving the car at the relevant time. There was no suggestion put to him as to who was driving or that the accused was not driving the car as deposed by him.

39. PW9 is the then PI of the Sanguem Police Station, Raju Raut Dessai who deposed on page 2 that he had arrested the accused Sanket Naik and that he was released on bail and on completion of the investigations, he had filed the charge sheet. No doubt it was suggested to him that he had falsely arrested the accused and that the accused was not involved in the accident, however he had denied the same.

40. In his 313 Cr.P.C. Statement, the accused admitted that the Ford Figo car was involved in the accident on 31.12.2012 while proceeding from Balli to Canacona on the National Highway road having the width of 6 metres and that Saiesh's and Rohit's bodies were on the road.

41. Though DW1 had deposed that at the time of the accident, Sandesh was driving the car, from the fact that Sandesh had fallen out of the car, I agree with the Learned P.P. that it cannot be believed that Sandesh was driving the car, as if he was driving the car, he would

have been holding the steering wheel and after the accident, even if he was not wearing the seat belt, he would not have been flung out of the left side of the car.

42. ***The fact that the accused is the owner of the Ford Figo car and was seen by PW1 and PW3 driving the car when they left from Quepem and again from Balli to proceed towards Canacona, I find that there can be no doubt that the accused was the driver of the car at the time of the accident.***

43. The Learned JMFC also rightly held in para 36 that the fact that the car stopped at a distance of 9 metres from the tree shows that because the accused was on the driver's seat, the car could be managed to be stopped after the impact and if there was no driver on the driver's seat, then the car would have travelled more distance and would have fallen somewhere, due to the speed of the car which can be seen from the damages to the car in the photographs produced by the prosecution and the person alleged by the accused to be driving the car had got thrown out of the car after the impact.

44. Again in para 38, the Learned JMFC observed about the conduct of the accused after the accident and held that his conduct supports the case of the prosecution as a normal prudent man on account of whose fault the accident had occurred, would react in the same manner as the accused had reacted in the present case and therefore it would support the case of the prosecution that the accused was the driver.

45. In para 40, the Learned JMFC rightly held that even considering such type of accident and impact, the possibility of the driver getting flung out of the car from the left side door of the car cannot be accepted as the driver of the car holds the steering wheel and in between the driver and co-driver seat there is obstruction of gear box and gear shifter with knob, as rightly pointed out by the Learned A.P.P. Accordingly, the point no.1 is answered in the negative.

46. **POINT NO.2:** The Learned Advocate for the appellant submitted that as the tyre of the car involved in the accident was found to be deflated, it cannot be ruled out that as such the accident took place and he relied on the deposition of PW6.

47. PW6 is the Motor Vehicles Inspector, Sohan Prakash Naik who deposed that on 8.1.2013, at the request of the Cuncolim Police he had inspected the Ford Figo vehicle bearing no.GA-09 A-5033, which was in front of the Cuncolim Police Station. He had found about eight damages on the car and one of the damages was that the front right tyre of the car was deflated. He also deposed that if the front right tyre gets deflated or burst while the vehicle is in motion/speed, the vehicle will move towards the right hand side. In his cross examination he deposed that if the vehicle is in motion and the tyre bursts, the vehicle may go out of control. Accordingly, the Learned Advocate for the appellant submitted that the accused cannot be held to have been responsible for the accident.

48. But the question is whether the depositions of the witnesses bring out that the tyre of the car was found to have burst on the date of the accident on 31.12.2012.

49. PW1, as already pointed out, was the panch witness and also examined as an eyewitness. PW1 has not deposed that the front tyre of the Ford Figo car was found to be deflated on the day of the Panchanama on 1.3.2013. So also in his cross examination there was no suggestion put to him that the front right tyre of the Ford Figo car was deflated prior to or after the accident. He has deposed on page 6 that there were skid marks on the tar road.

50. PW3 had also not deposed that the front tyre of the car of Sanket had burst. In his cross examination he has deposed on page 3 that he did not notice whether the tyre had burst.

51. PW8, who is the then ASI Premanand Dessai who had conducted the Spot of Accident Panchanama and Sketch and who had filed the complaint against the accused, **has deposed on page 2 that the condition of all the tyres of the said car was good at the time of the Panchanama.** As rightly submitted by the Learned P.P., this was not denied in his cross examination nor was it suggested to him that as a result of the accident, the front right tyre of the Ford Figo car had burst.

52. Accordingly, I also agree with the findings of the Learned JMFC in para 43 that the contention that the accident occurred due to

mechanical defect cannot be accepted as PW8 has clearly deposed that all the tyres of the car were in good condition at the time of conducting the Panchanama and his statement is not denied by the accused. As such, I find that the deposition of DW1 on page 1 that on reaching the turn at Paddi the tyre burst and Sandesh could not control the car and the car went straight and turned and banged on the tree, has not been proved. On page 4 DW1 admitted that the Police had taken the car to the Police Station but he denied the suggestion that after the car was taken to the Police Station and when it was lying at the Police Station, the air of front right hand side tyre was not there, i.e. the tyre got deflated.

53. After the accident, when the car was lying at the Cuncolim Police Station, the front right side tyre could have deflated. But it is not proved by the accused that the tyre of the car burst prior to or consequent to the accident and as such the accident took place. The point no.2 is answered in the negative.

54. **POINT NO.3:** In ***Mrs. Shakila Khader vs. Nausher Gama and another, AIR 1975 SC 1324***, at para 6, the Supreme Court held as under:

“The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed at which the car was running but the width of the road, the density of the traffic and the attempt to overtake other vehicles resulting the car going to the wrong side of the road and causing the accident. Even if the accident took

place in the twinkling of an eye, it is not difficult for an eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road."

55. In the present case again I find that the Learned JMFC, in para 45 rightly held that in the present case the car after it went off the road, travelled a distance of 25.50 metres before giving dash to a tree and skid marks have also been shown to that extent in the Sketch and considering the severity of the impact on the tree which shows major damages to the car on the left side body of the car detaching both left side doors and major damages to both left side body pillars, which can be seen in the photographs at Exhibit 11 and Exhibit 63 cross and that all the three deceased were flung out from the car and died at the spot, indicates reckless driving at the high speed on the part of the accused.

56. I agree with the Learned P.P. that the oral and documentary evidence on record before the Learned JMFC proves that the accident took place as the accused had driven the Ford Figo car in a rash and negligent manner and at a very high speed on the National Highway, having six metres width and on the left curve of the road, he lost control of the vehicle and went and first dashed against a tree beyond the left edge of the tar road and as a result of which the car was badly damaged and three of the occupants of the car fell out and the car further travelled a

distance of 8.60 metres. ***The evidence on record proves beyond reasonable doubt that the accused had driven the car in a rash and negligent manner***, as rightly concluded by the Learned J.M.F.C. Accordingly, point no.3 is similarly answered in the negative.

57. **POINT NO.4:** Due to the rash and negligent driving of the accused, the death of three occupants of the car resulted. As such the accused was rightly convicted for the offence under Section 304-A IPC for causing death by his rash and negligent driving and sentenced accordingly.

58. The appellant who is under exemption today, is ordered to surrender before the Learned JMFC at Quepem within 15 days from today i.e. on or before 24.10.2016.

59. Accordingly, I pass the following:

ORDER

The appeal is dismissed.

The impugned judgment dated 18.11.2015 of the Learned JMFC at Quepem in Criminal Case No.37/S/2013/A, is confirmed and upheld.

The sentences awarded to the appellant/accused, under Section 304-A IPC, to undergo rigorous imprisonment for one year and pay fine of `10,000/- and in default to undergo imprisonment for 6 months and under Section 279 IPC, to undergo rigorous imprisonment

for 3 months and fine of `1,000/- and in default to undergo imprisonment for 3 months, are confirmed and upheld.

The appellant shall surrender before the Learned JMFC at Quepem on or before 24.10.2016.

The accused to furnish Bail Bonds of `10,000/-, with one surety and the Bail Bonds shall continue to remain in force for a period of six months from today, in terms of Section 437A Cr.P.C. and the accused shall have to appear before the High Court, as and when such Court issues notice in respect of any appeal or petition that may be filed against the judgment of this Court.

Margao.

Dated:10.10.2016.

(Desmond S. D'Costa)

Sessions Judge,
South Goa,
Margao.

Ca/-