



Received on	18/09/2018
Registered on	18/09/2018
Decided on	22/02/2021
Duration	02Ys 05Ms 04Ds.

Jud.Below Exh.30

State of Maharashtra

V/s.

Nilesh Rohidas Tambe

J U D G M E N T

(Delivered on 22nd February, 2021)

1) Considering the facts and circumstances of the case, following points arise for my determination and I record my findings against them for the reasons stated herein after :-

<u>No.</u>	<u>POINTS.</u>	<u>FINDINGS.</u>
[1]	Does the prosecution prove that, on 13/05/2018 at 02.00 p. m. on Pune Nashik highway, at Peth, Tal. Ambegaon, accused drove Cruzer No. MH/14/E/9139 on public road in a rash and negligent manner as to endanger human life and likely to cause hurt to any other person ?	...In the negative.
[2]	Does the prosecution prove that, accused on the above day, date, time and place caused death of Dasharath and Smt. Manda Gavade by driving the above vehicle in rash and negligent manner not amounting to culpable homicide ?	...In the negative.

[3]	Does the prosecution prove that, accused on the above day, date, time and place caused grievous and simple hurt to Dasharath and Manda Gavade and himself by driving above vehicle in rash and negligent manner ?	...In the negative.
[4]	Does the prosecution prove that, accused on the above day, date, time and place caused grievous and simple hurt to Dasharath and Manda Gavade by driving above vehicle in rash and negligent manner ?	...In the negative.
[5]	Does the prosecution prove that, accused on the above day, date, time and place drove above vehicle at a speed and in a manner dangerous to the public ?	...In the negative.
[6]	Does the prosecution prove that, accused on the above day, date, time and place drove the above vehicle without following traffic rules ?	...In the negative.
[7]	What order ?	The accused is acquitted

: R E A S O N S :-

2) In order to prove the offence, prosecution has examined P.W.1 Avinash Dasharath Dhumal at Exh. 13, P.W. 2 Dhanesh Erande at Exh. 15, P.W. 3 Arjun Shinde at Exh. 22. Prosecution has also relied upon complaint Exh.16. The defence has admitted advance death certificate at Exh .17 and 19 inquest panchanama at Exh.19 postmortem report at Exh.20 and 21.

As to point Nos. 1 to .6 :-

3) P. W. 1. Avinash Dhumal, has deposed that on 13.05.2018

police called him on the spot. One cruiser vehicle was standing at road side and two wheeler was lying in damaged condition. Police prepared panchanama Exh.14.

4) In cross-examination he has admitted that near to the spot of incident there was no speed breaker.

5) From evidence of this witness it appears that condition on the spot after happening of incident came on record but from mere spot no conclusion can be drawn against accused.

6) P. W. 2 Dhanesh has deposed that, incident took place on 13.05.18 when he was working in garage received phone that, his relatives met with an accident. Hence he went there and saw his mother and father in-law in injured condition hence he took them in the hospital. Doctor declared them as dead. Then he came to know about accident and lodged the complaint at Exh.16.

7) In cross-examination he has admitted that he did not see incident personally.

8) This witness is examined as complainant but he went to the spot after happening of incident and does not know actual happening of incident.

9) P. W. 3 Arjun Shinde, Investigating officer has deposed that initially he went to spot prepared panchanama Exh.14, recorded statement of witness, got examined the vehicle from R. T. O., issued notice to the accused Exh.23, arrested accused and submitted charge-sheet. It revealed that, accused drove his vehicle in rash and negligent manner and caused death two persons.

10) In cross-examination he has admitted that unauthorized road was prepared by villagers by breaking the road dividers. He did not get eye witness on the incident.

11) This witness is investigation officer but failed to bring on record that under circumstance from which it can be concluded that accused drove his vehicle in rash and negligent manner and caused death of two persons.

12) If above evidence is viewed at glance it appears that, P. W.1 has proved condition on the spot after happening of incident which is not so much in dispute. P. W. 2 mere complainant and does not know anything about incident personally. P. W.3 has just completed procedural aspect. The defence has admitted advance death certificate at Exh .17 and 19, inquest panchanama at Exh.18 postmortem report at Exh.20 and 21 but these documents are quite insufficient to prove that accused drove his vehicle in rash and negligent manner.

13) In accidental cases prosecution has to establish that, act of the accused was responsible for resulting in accident and such act was rash or negligent. Proof of rashness and negligence is essential. The mere fact that, an accident has taken place and persons are injured or died cannot lead to the conclusion of rash and negligent act. There can be no presumption of negligence from mere fact that, somebody is died or injured. There must be evidence of rashness and negligence acceptable to the Court. From the available evidence, the manner of rash and negligent before the incident is not on record. Hence I answer all the points in the negative and proceed to pass following order :-

ORDER

1.	Accused Nilesh Rohidas Tambe, Age : 27 yrs, R/at: Avasari Khurd, Tal. Ambegaon, Dist. Pune is hereby acquitted for the offence punishable under Section 279, 304(A), 337, 338, 427 of Indian Penal Code and under Section 184 of Motor Vehicles Act vide section 255 (1) of Cr.P.C.
2.	His bail bonds stand canceled.
3.	The accused has complied the provisions of section 437-A of Criminal Procedure Code.

Place- Ghodegaon.
Date :- 22/02/2021.

(Sanjay A. Mulik)
Judicial Magistrate First Class,
Ghodegaon.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Gaurav A. Bobade
Name of Court : S. A. Mulik Saheb,
Judicial Magistrate First Class,
Court Ghodegaon.
Date of Order : 22.02.2021.
Date PO Signed : 22.02.2021.
Date of PDF : 24.02.2021.
Date of PDF Uploading : 24.02.2021.