

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 217 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY
and
HONOURABLE MR.JUSTICE D. M. VYAS

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Approved for Reporting	Yes	No

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STATE OF GUJARAT

Versus

BHIKHUBHAI KANABHAI MIYATRA

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Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1

MR TUSHAR L SHETH(3920) for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE CHEEKATI
MANAVENDRANATH ROY**
and
HONOURABLE MR.JUSTICE D. M. VYAS

Date : 03/07/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH
ROY)

1. The respondent is the sole accused in Sessions Case No.27 of 2012 on the file of the Additional Sessions Judge, Gondal of Rajkot District. He was prosecuted for the offences punishable under Sections 279, 304, 304(A) and 337 of the Indian Penal Code and under Sections 177, 184 and 134 of the

Motor Vehicles Act. Eventually, he was acquitted of the said offences as per the judgment rendered by the trial court on 30/11/2012.

2. Feeling aggrieved by the said judgment of acquittal, the State has preferred the present appeal challenging the legality and validity of the impugned judgment of acquittal.

3. Concise statement of facts relating to the prosecution case is as follows:

3.1. The accused is a driver by profession. He was working as a driver of an auto-rickshaw bearing registration no.GJ-23-T-3504. The persons who were travelled in the said auto-rickshaw are all labourers and they have been travelling in the said auto-rickshaw for the last one year prior to the date of the accident to attend their labour work from their respective villages. While so, on 07/01/2011, after completion of the labour work, about seven persons were travelling in the said auto-rickshaw to reach their home. The accused was the driver of the said auto-rickshaw at that time. When the said auto-rickshaw was travelling on a highway road, at about 8:30

p.m. to 9:00 p.m. in the night time, the auto-rickshaw dashed against the tractor-cum-trolley which was parked and stationed on the said highway road during the said night time. The auto-rickshaw turned turtle after dashing the said tractor-cum-trolley. The passengers who were travelling in the said auto-rickshaw as well as the accused who is the driver of the said auto-rickshaw sustained injuries in the said incident. Two persons who were travelling in the said auto-rickshaw died on account of the injuries sustained by them in the said accident. Other persons sustained only simple injuries along with the accused.

3.2. Postmortem was held over the dead body of the two deceased persons. It was opined that they died on account of injuries sustained by them in the said accident.

4. PW-3 who is one of the passengers in the said auto-rickshaw lodged report with the police. The said report was registered as a case for the offences punishable under Sections 279, 304, 304(A), 337 of the Indian Penal Code and Sections 177, 184 and 134 of the Motor Vehicles Act. The case was investigated. After completion of the investigation,

charge sheet was filed by the police against the accused for the aforesaid offences.

5. As the offence under Section 304 of the Indian Penal Code was exclusively triable by the court of sessions, the committal court has committed the said case to the sessions division for trial. Thereafter it was made over to the Additional Sessions Judge, Gondal of Rajkot District for trial. The trial court framed charges under Sections 279, 304 and 337 of the Indian Penal Code and Sections 177, 184 and 134 of the Motor Vehicles Act against the accused. The accused denied to the said charges and claimed to be tried.

6. During the course of the trial, the prosecution got examined PW-1 to PW-10 witnesses and got marked seven exhibits to substantiate its case against the accused.

7. After completion of the trial, upon considering the oral and documentary evidence on record and on appreciation of the same, the learned trial court found the accused not guilty for the charges levelled against him and acquitted him of the said charges.

8. As noticed supra, feeling aggrieved by the said judgment of acquittal, the State has preferred the present appeal challenging the said judgment of acquittal.

9. When the appeal came up for hearing, we have heard learned APP Mr. Bhargav Pandya for the State and learned counsel Mr. Tushar Sheth for the respondent-accused.

10. The fact that the accused is a driver by profession and that he was the driver of the auto-rickshaw that was involved in the accident is not seriously in dispute. In fact the accused himself was injured in the said accident and his wound certificate that is on record proves that he has sustained simple injuries in the said accident. Therefore, it is evident that he was the driver of the auto-rickshaw involved in the accident at the relevant time.

11. Now, the question is whether he has driven the auto-rickshaw in a rash and negligent manner or whether the accident took place on account of rash and negligent driving of the auto-rickshaw which resulted into death of two

passengers travelling in the said auto-rickshaw or not. While dealing with the said material fact, to ascertain whether the accused was driving the auto-rickshaw in a rash or negligent manner to hold him guilty for the offences punishable under Sections 304 and 337 of the Indian Penal Code, it is significant to note that the trolley-cum-tractor against which the auto-rickshaw dashed and over turned was parked on a highway road without any parking lights or signal lights or reflectors to indicate that the said vehicle was parked and stationed on a highway road during the night time. Admittedly, the accident took place during night time between 8:30 p.m. and 9:00 p.m. and it was dark at that time. Further, the vehicle was parked and stationed on a highway road. It is emanating from the record that the said road where the said vehicle was stationed is a narrow road. Therefore, when a tractor-cum-trolley vehicle was parked and stationed on a narrow highway road, during night time, without any parking lights, signals or reflectors to enable the drivers of the other vehicles passing through the said highway road to notice that the said tractor-cum-trolley was parked and stationed on the highway road, no negligence can be attributed to the driver of the auto-rickshaw which dashed the said stationed vehicle

without any signal lights and reflectors.

12. PW-3 to PW-6 are the passengers who were travelling in the said auto-rickshaw. They did not say in specific terms in their evidence that the driver has driven the auto-rickshaw in a rash or negligent manner. They only stated that he has driven the vehicle in high speed and dashed the stationed vehicle on the road.

13. It is settled law that mere driving the vehicle in a high speed by itself cannot be construed as an act of rash or negligent driving. In order to hold a person liable for the offence punishable under Section 304(A) of the Indian Penal Code, for driving the vehicle in a rash and negligent manner, the fact that he has driven the vehicle in a rash or negligent manner is to be invariably established with legal evidence. There is no evidence on record forthcoming from the testimony of any of the witnesses examined in the case that the accused has driven the auto-rickshaw in a rash or negligent manner and thereby dashed the said tractor-cum-trolley. It has come in the evidence that the auto-rickshaw has dashed the said trolley on its side way. It is not the case

where it directly went and dashed the stationed vehicle. So, it shows that when he suddenly noticed the stationed vehicle on the road, he tried to avert dashing it and in the said process, he dashed on the side of the stationed tractor-cum-trolley and in the said process the auto-rickshaw over turned and the passengers sustained injuries in the said process. Therefore, the fact of driving the vehicle in a rash or negligent manner is not established in this case.

14. In the judgment relied upon by the learned counsel for the respondent, of this Court, rendered in the case of **Saudagarsingh Chhajusing and ors. vs. Jashodaben and another and Ranjitsingh reported in 1986 ACJ 107** which is a case relating to a motor vehicle accident claim, at para-9 of the judgment, this Court held as follows:

“9. From the above discussion it is proved that at dark night time on a national highway where there was no other light and which was open to fast moving traffic the truck and trailer of 72.1/2 feet length and 8.1/2 feet width was parked without any parking light and with no reflectors and the to that the accident had occurred. Even assuming that the motor-cyclist was driving his vehicle slightly fast, yet it cannot be said that there was contributory negligence on his part because on a national highway and that too at night time it cannot be expected that the vehicle should be driven at a slow

speed. Further it cannot be expected that the driver of a vehicle should visualize that there might be some stationary vehicle which could not be seen from a distance of few paces and therefore he should drive the vehicle slowly. Under Section 81 of the Motor Vehicles Act it is provided that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road. In the present case the vehicle was parked on a national highway as stated above without any signal to indicate the presence of vehicles. Therefore, in our opinion, parking of such vehicle on a dark night without light in rear or reflectors and without putting any signal to indicate presence of the parked vehicle, is the sole cause of the accident. Hence the view of the Tribunal that the accident occurred as a result of the sole negligence on the part of opponent No. 1 is just and legal.”

15. The Hon’ble Supreme Court also, in the similar circumstances, very recently in the case of **Sushma vs. Nitin Ganapati Rangole and others in Civil Appeal No.10648 of 2024 and others**, held at para-40 as follows:

“40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle,

travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is ex-facie perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts."

16. Thus, from the conspectus of law, as enunciated in the aforesaid cited judgments, the legal position is very clear that driving the vehicle with certain speed is permissible on a highway road and when a vehicle was stationed and parked on the highway road without parking lights or indicators and when any vehicle dashed against the said stationed vehicle and that too during night time, no negligence or rashness can be attributed to the driver of the said vehicle.

17. It is settled law that the burden of proving that the driver has driven the vehicle in a rash and negligent manner is always on the prosecution and the prosecution has to prove

the said fact with legal evidence. Rash and negligent driving cannot be presumed on the basis of *res ipsa loquitor*.

18. The Hon'ble Supreme Court, in the case of **State of Karnataka vs. Satish reported in 1998 (8) SCC 493**, held that mere driving the vehicle at a "high speed" will not lead to the inference that there is negligent or rash driving of the vehicle and that the accident resulted into a death of a person and injuries to number of persons. It is also held in the said judgment that the act of rash and negligent driving cannot be presumed on the basis of *res ipsa loquitor* and thereby the Apex Court did not interfere with the judgment of acquittal in the said case.

19. The upshot of the above discussion is that the accident occurred on account of parking the stationed vehicle which is a huge vehicle, a tractor-cum-trolley negligently on the highway road during night time without any parking lights or signals or indicators and in the said circumstances, no act of rash or negligent driving can be attributed to the accused in the instant case.

20. The facts of the case do not constitute any offence under Section 304 of the Indian Penal Code. Therefore, the very framing of charge under Section 304 of the Indian Penal Code is clearly misconceived. Although it is the case of the prosecution that the respondent has driven the auto-rickshaw hands free, absolutely there is not even a semblance of evidence on record to prove that the accused has driven the vehicle hands free. PW-3 to PW-6 who are passengers in the said vehicle did not depose in their evidence that the accused has driven the auto-rickshaw hands free.

21. The trial court, after appreciating of the evidence on record, has rightly acquitted the accused. We do not find any patent illegality or manifest error of law in the impugned judgment of acquittal so as to interfere with the said judgment of acquittal. Therefore, we do not find any ground to interfere with the impugned judgment of trial court. It is perfectly sustainable in law. Therefore, the appeal fails and is liable to be dismissed.

22. Resultantly, the appeal is dismissed confirming the impugned judgment of the trial court. Bail bond of the

accused, if any, shall stand discharged.

23. Record and proceedings be sent back forthwith to the concerned court.

(CHEEKATI MANAVENDRANATH ROY, J)

(D. M. VYAS, J)

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