Supreme Court of India
Usman Gani Mohammed vs State Of Maharashtra on 17 October, 1978
Equivalent citations: (1979) 3 SCC 362, 1979 (11) UJ 131 SC
Author: V Tulzapurkar
Bench: O C Reddy, V Tulzapurkar
JUDGMENT V.D. Tulzapurkar, J.

1. This appeal by special leave is directed against the conviction under Section 304A I.P.C and sentence of one year's rigorous imprisonment and a fine of Rs. 1,000/- imposed upon the appellant by the Bombay High Court in Criminal Appeal No. 873 of 1970. The appellant was acquitted by the learned Presidency Magistrate, 22nd Court, Andheri Bombay but the High Court reversed his acquittal.

2. On July 19, 1969 at about 10.00 a.m. Vasudeo Patal (P.W. 5) a domestic servant aged about 15 years was escorting two young children of his master, the deceased girl Priti aged about 7 years and her brother Pankaj aged about 9 years, to their school. All the three were walking on the eastern foot-path of Tejpal Road at Vile Parle (a suburb of Bombay) proceeding from South to North. The appellant accused was driving his lorry bearing No. MRS/5167 at that time on that road and was proceeding in the opposite direction (i.e. from North to South). Tejpal Road, admittedly, is 29.5 ft. wide having a foot path of 6 ft. width on its eastern side. While proceeding on the foot-path to the school Pankaj was walking left of Vasudeo while Preeti deceased was walking left of Pankaj, she being the nearest to the carriage-way of Tejpal Road. Though initially they were walking along the foot-path, Prili happened to stop down from the foot-path and about the same time the lorry driven by the appellant-accused came from the opposite side and knocked her down; she was run over and killed on the spot. It appears she was hit by the front bumper and then her head came under the rear left wheel of the lorry and was almost crushed with brain matter coming out. Both Pankaj and Vasudeo started crying. The lorry driven by the appellant-accused eventually halted at a distance of 73 ft. or so from the place where the girl lay dead - about 13 ft. from the eastern foot path Persons collected and at about 10.30 a.m P.S.I. Deshmukh attached to police station Vile parle visited the scene of occurrence and noticed the dead body of the girl as well as the lorry driven by the appellant accused. A Panchnama of the scene of occurrence was drawn and the dead body was taken charge of under another Panchnama and the P.S I. filed his own F I.R. in due course. The appellant-accused was tried for the offence punishable under Section 304A IPC on the allegation of his having caused the death of 7 years old Priti on the morning of July 19, 1969 by driving his lorry in a rash and negligent manner. The appellant-accused denied having knocked down the girl and could not say how the collision occured. According to him people shouted and hence he stopped the lorry but because there was no space on the eastern side he went at some distance and parked his lorry on the western side. He disputed that he had driven the lorry at a high speed or in a rash or negligent manner. The prosecution led evidence of three material witnesses, namely, Natwarsi Karansingh (PW 4), a shopkeeper, having his shop on the western side of the road, Vasudeo Patil (PW 5), the domestic servant and Pankaj (PW 6), the brother of the deceased. The learned Presidency Magistrate felt that the evidence adduced before him was not sufficient to establish the rashness or negligence on the part of the appellant-accused and holding that it was a case of pure accident acquitted the appellant of the charge leveled against him. The High Court in an appeal preferred by

the State reversed the acquittal and convicted the appellant under Section 304A IPC and sentenced him as indicated above.

3. Mr. Parekh, counsel for the appellant, contended that the High Court had erred in reversing the acquittal recorded by the Presidency Magistrate in favour of the appellant-accused. He urged that in their evidence Vasudeo (PW 5) and Pankaj (PW 6) the only two witnesses who had seen the occurrence, had given contrary versions and it was because of such contrary versions that the learned Magistrate felt that the prosecution evidence was insufficient and that it was a case of pure accident. He pointed out that whereas Vasudeo Patil (PW 5) had deposed that the lorry driven by the appellant-accused had mounted on the foot path and had struck the girl Priti whereafter she was run over by the lorry., her head coming under the left rear wheel of the lorry, the evidence of Pankaj (PW 6) was categorical that all the three of them had steped down on the carriageway after leaving foot-path and it was at that time that the girl was first hit by the front left bumper of the lorry, and thereafter she came under the left rear wheel of the lorry. He further pointed out that neither the Presidency Magistrate nor the High Court had accepted Vasudeo's story that the lorry had mounted the foot-path and knocked down the girl. According to him the evidence of Pankaj clearly suggested that the girl Priti must have suddenly gone on to the carriage-way of Tejpal Road by which time the front portion of the lorry had gone past her and thereafter she must have come under the rear wheel of the lorry and as such the incident should be regarded as pure accident for which the appellant-accused could not be held responsible. It is not possible to accept these submissions of Mr. Parekh, as in our view, even after rejecting Vasudeo's story about the lorry having mounted the footpath the High Court had correctly come to the conclusion that the appellant accused had driven his lorry in a rash and negligent manner and had thereby caused the death of 7 years old girl Priti.

4. After going through the evidence of all the three witnesses, namely Natwarai Karansingh (PW 4), Vasudeo Patil, (PW 5) and Pankaj Jayantilal (PW 6) it seems to us that the evidence of P.W. 4 would not be material because according to him while he sitting in his shop on the western side of the road he heard commotion and shots of "Ben, Ben" and when he saw in the direction from where the shouts came he saw the body of the girl crushed under the lorry and that the lorry had gone away at a distance of about 50 ft. He has, however, stated that the lorry was proceeding at a moderate speed. It is obvious that he is not a witness to the actual occurrence but his attention was drawn after the girl was hit and had come under the left rear wheel of the lorry. The story of Vasudoe Patil (PW 5) that the lorry had mounted at the foot-path has to be rejected and was rightly rejected, in our view, by both the Courts. But his evidence is material on the point that while he was escorting the two children along the eastern footpath on the Tajpal Road from south to north he stated that he was able to see the lorry coming in the opposite direction from a distance of 50 ft. which would suggest that the appellant-accused who was coming from the opposite direction was also in a position to see the pedestrians walking on the carriage-way of the road, but the appellant's version at the trial has been that he did not notice how the impact took place and how the girl came under his lorry and only after people shouted he stopped his lorry by taking it to the western side. This would clearly show that he was inattentive and had not kept a proper look-out for the persons who were walking on the eastern side of the carriage-way of Tejpal Road. The evidence of Pankaj (PW 6) is categorical that while they were proceeding from south to north along the eastern foot path his sister Priti stopped down and was walking on the carriage-way at a distance of about 2 to 4 ft. from the eastern

edge of the road and it was at that time that the front bumper of the lorry hit Priti and she fell down and then the left wheel of that lorry went over her head. The sketch at Ex. C shows that the girl after being hit was carried to the middle of the road where her body was found lying at the time of Panchnama. In cross-examination Pankaj stated that it happened so suddenly that he could not notice which part of the lorry hit Priti but he definitely saw a wheel passing over the head of Priti but could not say whether it was the right or the left wheel which went over her head but he asserted that Priti was at a distance of 3 or 4 ft, from the edge of the foot-path at that time. Relying on this part of the cross-examination of Pankaj counsel contended that it lent support to the appellant's version that it was a case of pure accident, the girl having suddenly gone over the carriage-way. It is not possible to accept this contention. All that Pankaj has stated in cross-examination is that the whole thing happened so suddenly that he could not say which part of the lorry hit Priti first which is not the same thing as saying that Priti had suddenly gone on to the carriage-way as is being made out by counsel for the appellant. In our view, two facts clearly emerge from the evidence of the prosecution witnesses first, that the impact occurred inspite of the fact that persons who were making use of the carriage-way ahead of him could be easily seen by the appellant while coming from north to south. These facts clearly show that the appellant had not maintained a proper look out while he was driving his lorry and was not attentive to the persons who were using the carriage-way, though he was in a position to see those persons from quite-a-distance and this would establish negligence on his part while driving the lorry. Furthermore, it is clear from the evidence on record that there were no tyre marks on the road (vide Panchnama of scene Ex. E) which means that the appellant never made any attempt to apply brakes and the further fact that the lorry stopped about 73 ft. ahead after collision is indicative of the speed at which he was driving the lorry. Having regard to the above aspect which emerge on record we are clearly of the view that the incident could not be regarded as pur accident and the High Court was justified in coming to the conclusion that the prosecution had established that the appellant accused had caused the death of girl Pnti by his rash and negligent driving.

5. In the result the appeal fails and is dismissed.

6. As regards sentence counsel for the appellant has contended that the incident in question has occurred on July 19, 1969, and as many as 9 years have elapsed and even after the conviction was recorded by the High Court against the appellant nearly five years have elapsed and as such the appellant who had already suffered imprisonment for a period of over two and a half months need not be sent back to jail. Having regard to the long period that has elapsed since the occurrence we feel that the sentence of imprisonment imposed upon the appellant-accused should be reduced to the period already undergone by him. We accordingly do so but maintain the fine of Rs. 1000/- imposed upon him.