

SALMAN SALIM KHAN V. STATE OF MAHARASHTRA

APPEAL (CR.) 572 OF 2015

JHALAK SHAH¹ AND SHANTANU PACHAURI²

1. MATERIAL FACTS

- ❖ It is the case of prosecution that on the night of 27.9.2002 at about 9:30 p.m. the appellant was accompanied by his friend one Kamal Khan and his police bodyguard one Ravindra Himmatrao Patil (since deceased) in his Toyota Land Cruiser.
- ❖ The appellant was driving the said car from his house at Galaxy Apartments Bandra and firstly visited Rain Bar.
- ❖ At the Rain Bar various eatables and drinks were served to the appellant and his friend and others. This service was given by one waiter by name Malay Bag, who was then on duty at Rain Bar.
- ❖ After consuming the food and drinks which included alcohol (Bacardi), a White Rum and some cocktails, the appellant and his friend left Rain Bar and then visited hotel JW Marriott.
- ❖ The appellant was driving the said car and his bodyguard sat by the side of driver's seat in the front and the friend Kamal Khan sat at the rear seat.
- ❖ They started coming back to the house of the appellant via St. Andrews Road and Hill Road. At that time the appellant was under the influence of alcohol and was driving the car at very high speed of about 90 to 100 km. per hour.
- ❖ Ravindra Patil, the bodyguard, cautioned him to lower down the speed but the appellant did not pay any heed. Consequently, the appellant lost his control over the car while negotiating the right turn at the junction of St. Andrews Road and Hill Road.

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The appellant dashed the said car on the shutters of American Laundry which is situated at the junction.

- ❖ The impact resulted in the death of one person named Nurulla and injuries to four persons. They were sleeping on the platform in front of American Laundry.
- ❖ Due to the impact there was a loud noise and there was a sort of commotion that followed. Many people gathered on the spot after hearing the noise and they saw the appellant coming out from the car. They also saw that few persons were below the car and apparently under the tyre. They noticed that one person was seriously injured and he subsequently died and four persons sustained injuries.
- ❖ Ravindra Patil sensing the seriousness of the situation showed his police identity card and proclaimed that he was a police officer. As such, he pacified the people who had gathered there who were angry and aggressive.
- ❖ The appellant and his friend Kamal Khan ran away from the spot without giving any help to the persons involved in the incident. In the meantime, intimation was given to Bandra Police and within few minutes the police persons arrived at the spot and took charge of the situation.

2. BACKGROUND

When the case was first tried, the main offence against the present appellant/accused was punishable under Section 304A of Indian Penal Code (“I.P.C.”). It so happened that initially on lodging of the FIR the main charge was for the offence under Section 304A of I.P.C. However various subsequent events occurred and there was application of applying section 304 Part II of I.P.C. When the matter was thus committed to the Court of Sessions, following charges including under Section 304 Part II of I.P.C. were framed against the accused:

- **Judgement of the Lower Court**

The Sessions Court at Bombay ordered Accused Salman Salim Khan to be convicted for the offence punishable under Sections 304 II, 338, 337 of the I.P.C. and under Sections 185, 134 read with Section 187 and Sections 3(1), 181 of the Motor Vehicles Act, 1988

1. ISSUES

The following broad issues were framed by the High Court:

1. Whether the appellant was driving the vehicle?
2. Whether he was drunk and was under the influence of alcohol at the time of incident?
3. Whether it was pure and simple accident as left side front tyre of the car burst thus the car was beyond the control of the driver and met with an accident?
4. Whether the death of Nurulla was on account of the incident or whether it was by falling of a car when being lifted with the help of a crane.

2. ARGUMENTS

• Arguments by the Appellant

1. Learned Senior Counsel for the appellant submitted that the seat arrangement as stated by the witness suggest that the appellant/accused was sitting on the left side of the front seat i.e. towards the left side of the driver's seat as Kamal Khan was sitting behind him in the back portion on the left side.
2. Learned Senior Counsel for the appellant vehemently submitted that always it cannot be conclusively presumed that every person visiting the bar necessarily consumes alcohol. He submitted that it was definitely an attempt on the part of the investigating agency to fabricate the bills and to get them before the Court to support their case of consumption of alcohol by the appellant. Definitely collecting any material like the bills in the present matter during investigation and creating any document, are two different things.
3. There were 10 to 12 speed breakers on St Andrews Road in front of Holy Family Hospital at the relevant time. At the relevant time road repairs in front of American Bakery and rubbles were lying in front of American Bakery. As such, in this situation the defence comes up that the car was not at the high speed, or if at all in high speed, had not come from the St. Andrews Road. The defence of the accused is that the car came on Hill Road from 'Michael Gonsalvez Road'.
4. He submitted on behalf of the appellant that there was manipulation in the blood sample and what was extracted at Sir JJ Hospital had not reached the CA office.

5. There were no break marks on the spot and nothing to that or there was no evidence of any witnesses as to finding of break marks on the road or anything to suggest that the vehicle may have slowed down.

- **Arguments by the Respondent**

1. After referring to the statements made by the witnesses on the point that the accused was driving the car or came out of the car, the Respondent inferred that it was the accused that was driving the car and no other person.
2. The counsel for the Respondent referred to the witnesses on the aspect of consumption of alcohol by the accused. He emphasized on the statement given by Mannu Khan, "*Salman was so drunk that he fell down. He stood but he again fell down and again he stood and ran away from the spot.*" It was also submitted that the blood contained 0.062 per cent W/v of ethyl alcohol (Sixty-Two mg).
3. The Counsel submitted that the car was being driven at the speed of 90-100 km per hour in rash and negligent manner as mentioned by Ravindra Patil.

3. DISTINCTION BETWEEN SECTION 304A AND SECTION 304 PART II

The distinction between these two sections lies in the penal effect, in the sense for the offence under Section 304A of I.P.C. the maximum punishment is up to two years or with fine or both. As such it is a lighter offence than compared to section 304 I.P.C. Even apart from the punishment the offence under Section 304A is bailable and triable by the Magistrate of First Class whereas the offence under Section 304 Part II, as in this case, attracts the maximum punishment for imprisonment of 10 years or with fine or with both and it is a non-bailable offence. The ingredients to satisfy the respective offences are wholly different.

The Court referred the case of *State of Gujarat vs. Haidarali Kalubhai*,

*"Section 304-A by its own definition totally excludes the ingredients of Section 299 or Section 300 I.P.C. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide."*³

The Court in *Alister Anthony Pareira vs. State of Maharashtra* observed,

³ *State of Gujarat v. Haidarali Kalubhai*, (1976) 1 SCC 889

"Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder."⁴

4. JUDGEMENT

The Court concluded that the prosecution failed to bring the material on record to establish beyond reasonable doubt that the appellant accused was driving the vehicle, furthermore that he was under the influence of alcohol. The Court said that there is still a doubt created as to whether the incident has occurred due to the bursting of the tyre prior to the incident or the tyre got burst after the incident.

The Court mentioned that in every criminal trial the burden of establishing the guilt of an accused is on the prosecution and that guilt is to be proved beyond reasonable doubt. The benefit of every reasonable doubt which arises out of the evidence adduced must necessarily be given in favour of the accused.

The Court after considering various weaknesses in the case of the prosecution, various shortcomings such as non-examination of necessary and appropriate witnesses, the omissions and contradictions in the evidence of the injured witnesses which go to the root of the matter, said that a doubt has arisen as to the involvement of the appellant for the offences with which he is charged.

Therefore, the Court allowed the Criminal Appeal preferred by Salman Khan and quashed and set aside the impugned judgment passed by the Sessions Court. He was thus acquitted of all charges.

5. CONCLUSION

After carefully analysing the judgements of the sessions court at Bombay as well as of the High Court of Bombay following points can be inferred:

1. Due to the failure on the part of investigating officers, the actual facts are not yet clear and established. Who was driving the car that night is still a mystery. The learned counsel on behalf of the Appellant very cleverly submitted that it was pure and simple accident as left side front tyre of the car burst as a result the car was beyond the

⁴ *Alister Anthony Pareira v. State of Maharashtra and another*, (2012) 8 SCC 648

control of the driver and met with an accident. There were no break marks on the spot and no evidence of any witnesses as to finding of break marks on the road or anything to suggest that the vehicle may have slowed down.

2. It is a well settled principle that a Court must decide the case on the material brought on record and which can be accepted as an evidence as per the procedure laid down by law and not on the basis of any pressure from general public opinion or media. Therefore, the opinion of media has no value in a court of law.
3. Even the basic cardinal principle of Criminal Jurisprudence and the burden on the prosecution cannot be forgotten and any strong suspicion cannot be considered as a material to hold a person guilty of a particular offence. Due to the death of primary witness, Ravindra Patil there was lack of direct evidence and the Court cannot convict a person only on the basis of circumstantial evidence and that too when the Prosecution has failed to establish beyond reasonable doubt.

The State of Maharashtra has preferred an appeal in the Hon'ble Supreme Court of India. Now, it is the duty of the Apex Court to settle the matter.