

5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

MANAJI K BHIL  
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Appearance:

1. Criminal Appeal No. 305 of 1995

MR. BHUKARI, LD.PUBLIC PROSECUTOR for Petitioner

MR VASANT S SHAH for Respondent No. 1

2. Criminal Revision Application No 23 of 1995

MR YS MANKAD for Petitioner

MR. BHUKARI, LD.PUBLIC PROSECUTOR for Respondent No. 1  
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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 29/03/96

#### ORAL JUDGEMENT

Present orders shall govern the disposal of the Appeal and the Revision as indicated hereinafter.

Manaji Khetaji Bhil, the Respondent in both the matters came to be tried for the alleged commission of the offences punishable under Section 279, 337, 378 and 304(A) of I.P.Code, and under Section 177, 184 and 13 of the Motor Vehicles Act 1988. The accusation was that the respondent was driving motor truck no. GJ-1-4530 rashly and negligently on December 11, 1991, and while doing so he had dashed his vehicle with the Maruti Car No. GJ-1-2576, as a result of which the inmates of the Maruti car had sustained grave injuries and later on two ladies had lost their lives. It was alleged that the Maruti car was also badly damaged. The respondent accused had run away after leaving the vehicle on the spot. On the basis of the FIR the offence was registered and the respondent driver was chargesheeted.

When the matter had reached the stage of recording evidence, two panch witnesses, namely Jagdish, exhibit-11 and Daud Gulmahmed, exhibit-13 came to be examined. They happened to be the panch witnesses. They had not supported the case of the prosecution. Various other witnesses were cited in the chargesheet and some of them were injured witnesses. Nonetheless the Court by the judgment dated December 17, 1994, had come to the conclusion that, enough opportunity was given to the prosecution but that they have failed to procure the presence of the witnesses, and that, therefore, there was

no reason for the Court to wait for the said witnesses. The Court has considered the evidence tendered by the aforementioned two panch witnesses and has come to the conclusion that the case is not established. The respondent accused therefore came to be acquitted by learned Trial Magistrate under the orders dated December 17, 1994. Being aggrieved and dissatisfied with the above said orders of acquittal that the Criminal Appeal No. 305 of 1995 has been filed by the State. The Criminal Revision Application No. 23 of 1995 has been filed by one Smt. Jiviben Patel, original complainant and the injured.

Upon hearing learned Government counsel Mr. Bukhari, learned counsel Mr. Y.S.Mankad for the petitioner, and Mr. V.S.Shah, learned counsel for the respondent in the appeal, it appears that both the Appeal and the Revision require to be allowed.

It should not be overlooked that because of the motor vehicular accident which had occurred on December 11, 1991, two ladies had lost their lives and other inmates in the car came to be seriously injured. It might be true that other witnesses were not present before the learned Trial Magistrate and that, therefore the Court could record the evidence of panch witnesses Jagdish, exhibit-11 and Daud Gulmohmed, exhibit-13. But the Court appears to be absolutely unjustified in saying that, though the summonses have been served the prosecution has not been able to procure presence of the other witnesses. The offence was committed allegedly by the accused on December 11, 1991. The judgment of acquittal came to be pronounced of late, that is on December 17, 1994. But even in this fact situation the Court could have waited for some time for procuring presence of the witnesses, out of which some were the injured witnesses. The Court was also not helpless in the situation because if the summonses were served and the witnesses had not remain present before the Court,ailable witness warrants could have been issued against the witnesses. This has not been done and a serious criminal case has been put to an abrupt end by saying that the presence of the witnesses has not been procured by the prosecution. The provisions contained in the Code of Criminal Procedure, 1973 would go to show that a joint venture is permissible under which by the efforts of the prosecuting agency and the Court presence of the witness could always be procured. Merely because the case was getting delayed it was not correct on the part of learned Trial Magistrate to acquit the accused of the serious charges without waiting for the witnesses, out of which

some ladies had sustained serious injuries during the incident and whose evidence could have thrown light on the question in issue before the Court. For all these reasons it appears that, both the Appeal and the Revision required to be allowed and they are hereby accordingly allowed. In the Revision rule is made absolute. The orders of acquittal dated 17-12-1994 are hereby quashed and set aside and the matter is hereby remanded to learned Trial Magistrate with a direction to decide it, after having the efforts to procure the presence of the witnesses.

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