

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Revision Application No.83 of 2020

1. Mr Gajanan Sitaram Chaudhari,
Aged – 43 Years, Occ: S.T.Driver
Adult, Indian Inhabitant
Presently residing At Kalamb,
Taluka – Ambegaon, District – Pune. ... Petitioner
(Original Accused)

V/S

1. State of Maharashtra
Through Chakan Police Station
Taluka – Khed, District – Pune.

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Mr Rahul D. Motkari, Advocate for the Applicant.
Ms MR Tidke, APP for State.

Coram : R. N. Laddha, J.

**Reserved on : 11 October 2023.
Pronounced on : 11 December 2023.**

Judgment :

The accused/revision petitioner(hereinafter referred to as ‘the accused’), has filed this revision application against the judgment and order dated 5.11.2019 passed by the learned Additional Sessions Judge, Khed, Rajgurunagar, Pune, dismissing Criminal Appeal No.119 of 2014 and confirming the judgment and order dated 7.2.2014 passed by

the Judicial Magistrate, First Class, Khed-Rajgurunagar, in SCC No.275 of 2012. By this judgment and order, the accused has been convicted for the offence punishable under Sections 279, 338 and 304-A of the Indian Penal Code (IPC).

2. On 4.5.2012, the informant Hanumant Nikam along with his wife had been to village Bhosari to attend the marriage ceremony of his relative by a motorcycle bearing registration No.MH-14-BH-8723. After attending the marriage ceremony and returning to village Chinchoshi by their motorcycle, the informant was riding the motorcycle, and his wife Rani was pillion rider. While waiting at a red light signal at Chakan-Talegaon Square, an ST bus travelling at a high speed came from behind and dashed their motorcycle. The impact caused the Hanumant's (PW1) wife, Rani, to fall off the motorcycle and the left wheel of the bus hit her head. Immediately, she was then taken to a government hospital in Chakan, where she was declared dead.

3. On being informed about the alleged accident, police proceeded to the spot of accident. Panchnama of the spot of accident came to be drawn. Hanumant Nikam (PW1), the first informant, lodged a complaint against the accused,

leading to the registration of a crime vide C.R.No.123 of 2012 for the offence punishable under Section 279, 338 and 304-A of the IPC and 184 of the Motor Vehicle Act, 1988.

4. The police made requisite investigation, interrogated witnesses and recorded their statements. During the investigation, it transpired that the accident had occurred due to rash and negligent driving of the ST bus bearing registration No.MH-12-CH -7606 by the accused. The police conducted further investigation during the course of which a post-mortem report of the deceased was obtained. After finding the complicity of the accused, a charge-sheet came to be lodged. As the accused abjured the guilt, the trial commenced.

5. During the course of the trial, the learned Magistrate recorded the evidence of Hanumant Nikam (PW1), the first informant; Shivaji Sawant (PW2), a public witness to the spot panchnama; Sanjay Koli (PW 3), an investigating officer; and Dr Vijay Sonawane (PW4), Medical Officer attached to Chakan Hospital. As the prosecution closed its evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973, as to the incriminating circumstances found in the evidence of prosecution

witnesses, but he denied them as false. The accused did not lead any evidence in his defence.

6. After appraisal of the evidence and the documents tendered for its perusal, the learned Magistrate was persuaded to return the finding of the guilt against the accused for the offence punishable under Sections 279, 338 and 304-A IPC. This verdict was upheld by the learned Additional Sessions Court, Khed-Rajgurunagar. Being aggrieved and dissatisfied with the impugned judgment, the accused has preferred this revision application.

7. Mr Rahul Motkari, the learned Counsel for the accused, submitted that the trial Court misread the prosecution evidence, failed to evaluate the evidence in a proper perspective, and was influenced by a number of assumptions that cannot be sustained on the material on record. As a result, there has been a grave miscarriage of justice. The involvement of the alleged offending vehicle and the identity of the accused as the person who was at the wheel of the offending vehicle has not been established. There is no evidence regarding rash and negligent driving, and the non-examination of the other alleged eye-witnesses dents prosecution. Additionally, no panchnama of the vehicle

involved in the accident was drawn, and there was a delay in lodging the FIR.

8. Ms MR Tidke, the learned Additional Public Prosecutor appearing on behalf of the respondent/State, has argued that the evidence on record unequivocally points to the accused's rash and negligent driving as the sole and proximate cause of the death of the deceased. The situation at the spot, as borne out by the evidence, establishes the guilt of the accused beyond a shadow of doubt. According to the learned APP, the non-examination of other eye-witnesses is of little consequence as the cross-examination of the first informant (PW 1) revealed that due to the dash of the offending bus, his wife fell in front of the bus and the motorcycle was also damaged.

9. After examining the record of the case, it is revealed that Hanumant Nikam (PW 1) was the husband of the deceased Rani. They were returning to their village on a motorcycle after attending a marriage at Bhosari. Hanumant (PW 1) was driving the motorcycle while his wife Rani was riding the pillion. They stopped at Chakan Talegaon Square due to a red light signal. The offending bus bearing registration No. MH-12-CH-7606 came from behind and

knocked down to their motorcycle, causing Rani/the deceased to fall off the motorcycle and sustain a head injury from the wheel of the bus.

10. In the cross-examination of Hanumant Nikam (PW1), surprisingly, it was brought on record by the defence that all road lights were on. There was heavy traffic at Chakan Talegaon Square, and several vehicles were stopped there due to a red light signal. Traffic police were also present at the scene. The deceased fell on the road in front of the bus due to the impact of the bus, and his motorcycle was also damaged.

11. The learned Counsel for the accused invited the attention of this Court to the evidence of Shivaji Sawant (PW2), a public witness at the scene of the incident, and submitted that while preparing the spot panchnama, the offending vehicle and the motorcycle of the first informant were not found at the spot. Although he acknowledged that both vehicles were not present at the actual spot of incident, he stated that the incident occurred on the highway. Keeping both vehicles at the spot of the incident until the panchanama was drawn would have caused unnecessary obstruction to the general public and traffic. Regarding the

delay in lodging FIR, it is unlikely that the husband/first informant would be able to file the report immediately after the incident.

12. Mr Rahul Motkari, the learned Counsel for the accused, argued that the investigation in the present case was highly defective since no sketches or photographs of the incident spot were taken during the course of investigation. However, it is well established legal principle that a defective investigation cannot be the sole ground for acquittal. The Court has a obligation to examine the prosecution evidence carefully to determine its reality and whether any lapses affected the truth finding objectives. The probity of investigation alone cannot determine the outcome of the trial.

13. The incident occurred on a road with heavy traffic where several vehicles, including the informant's motorcycle had come to a stop due to a red light signal. Despite the circumstances, the accused drove his vehicle recklessly and negligently, causing the death of the wife of the informant. It is evident that a prudent person would not drive a bus in such a manner as to collide with a motorcycle that had stopped due to red light signal. This act is certainly negligent

and reckless, and demonstrates a lack of due care and attention.

14. Therefore, no infirmity can be found in conviction of the accused for the offences punishable under Sections 279, 338 and 304-A IPC. As a result, the revision application stands dismissed.

[R. N. Laddha, J.]