

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

Criminal Revision Application No.168 Of 2001.

Baburao s/o Vaijanathrao Nalge
Age : 45 Years., Occ.: Service.
R/o.: Degloor, Tal. Degloor,
Dist. Nanded.

**:: Appellant.
[Ori.Accused]**

V_e_r_s_u_s

1. The State of Maharashtra.
2. Sambhaji Nagoji Bhong.
Age : 73 Years., Occ.: Agri.
R/o.: Shimbergaon, Tal. & Dist.
Nanded.

:: Respondents.

Appearance ==>

Mr. R.N. Chavhan, Advocate h/for Mr. Vijay Sharma, Advocate for the Applicant.

Mr. D.R. Kale, Addl.Public Prosecutor, for the State of Maharashtra.

Mrs. Ranjana Reddy, Adv. for Resp.No.2/original First Informant.

CORAM : V.M. Deshpande, J.

DATE : 6th January, 2015.

ORAL JUDGMENT :-

The applicant, who at the relevant time, was serving as a driver in the Maha. State Road Transport Corporation (In short, the M.S.R.T.C.) and was plying a bus bearing registration No.MH/20/D/0127 has taken an exception to the judgment and order dated 18th January, 1995 passed by the learned Judicial Magistrate, First Class, Court No.III, Nanded in Summary

Criminal Case No. 446 Of 1994 and the Judgment and Order dated 24th May, 2001 passed by the learned Sessions Judge, Nanded in Cri. Appeal No.6 Of 1995.

[2] The learned Judicial Magistrate, F.C., Nanded acquitted the applicant for the offence punishable under Section 427 of the Indian Penal Code however, the applicant was convicted for the offence punishable under Section 304(A) of the the Indian Penal Code and he was sentenced to suffer imprisonment till rising of the court and to pay fine of Rs.4000/- [Rs. Four Thousand only] and in default, to suffer simple imprisonment for six months.

[3] Feeling aggrieved by such findings of guilt, the applicant preferred Cri.Appeal before the Sessions Court, Nanded. The learned Sessions Judge, Nanded dismissed Cri.Appeal 6/1995 and confirmed the Judgment passed by the learned trial Magistrate.

[4] I have heard Mr. R.N. Chavhan, learned counsel h/for Mr. Vijay Sharma, Advocate for the Applicant, Mr. D.R. Kale, learned Addl.Public Prosecutor, for the State of Maharashtra and Mrs. Ranjana Reddy, learned counsel for Respondent No.2 / First Informant.

[5] On 9th January, 1994, P.W.No.1 Sambhaji Nagoji Bhong lodged First Information Report with Police Station, Nanded (Rural). Said F.I.R. is at Exh.No.30. By the said F.I.R., it was reported that on the said day, M.S.R.T.C. Bus bearing registration No.MH.20/D/127 gave dash to the bicycle which was plying by his son – Balaji causing his death. Since F.I.R. was disclosing commission of cognizable offence, crime was registered vide CR No.4/1994 for the offences punishable under Section.s. 279, 304(A), 427 of the Indian Penal Code.

[6] During the course of investigation, the Investigating Officer has drawn spot panchnama Exh.No.17. Inquest was done on the dead body vide inquest panchnama Exh.No.18. Dead body was sent to the hospital for autopsy. After completion of the usual investigation, the Investigating Officer was of the view that sufficient material was collected against the accused - present applicant, therefore, he filed Challan in the Court of the Judicial Magistrate, F.C., Nanded.

[7] The learned Magistrate on 21st September, 1994 framed the Charge against the present applicant for the offences punishable under Sections 279, 304(A), 427 of the Indian Penal Code. The accused / applicant abjured his guilt and claims for his trial.

[8] In order to bring home the guilt of accused/applicant, the prosecution has examined in all five witnesses. The Investigating Officer was not examined by the prosecution. Certain documents were admitted during the trial by the defence. The statement of the accused under Section 313 of the Cri.P.C. was recorded by the learned Magistrate.

[9] After appreciation of the prosecution case, vide Judgment and Order dated 18th January, 1995, the learned Magistrate, Nanded convicted the applicant for the offence punishable under Section 304(A) of the Indian Penal Code and sentence till rising of the court was imposed upon him and it was directed that the accused shall pay fine of Rs.4000/- and out of which, Rs.2000/- [Rs.Two Thousand only] to be paid to the legal representatives of deceased Balaji.

[10] It is to be noted that prosecution did not prefer either Criminal Appeal or Criminal Revision before the superior court for inadequate punishment.

[11] The conviction was questioned by the applicant by preferring Criminal Appeal No.6/95 before the Appellate Court, which was dismissed by the learned Sessions Judge, Nanded on 24th May, 2001.

[12] P.W. No.1 Sambhaji Bhong has admitted in his cross-examination that Kakandi Bus Stop is situated just 100 fts. away from the spot of incident. That fact is also admitted by PW No.2 Baburao Bhong, who claims to be an eye witness. In so far as version of eye witness is concerned, it is an omission in his evidence that the killer bus was running on the road by wrong side. Further once it is established that the bus stop was just 100 fts. away from the spot of incident, it is hard to believe that within a space of 100 fts., M.S.R.T.C. bus will accelerate such high speed as claimed by the prosecution.

[13] In this context, it is worth to note is the evidence of P.W.No.5 Vyankatrao Bhosale, who was the Conductor of said bus. His evidence would reveal that truck was standing on the road, thereby, causing obstructions in the smooth flow of traffic, which required the applicant / driver to take the bus on the right side of the road. PW No.5 – Vyankatrao was not declared as hospital witness by the prosecution. The learned court below has discarded his evidence only on the ground that he is the conductor of said bus. He was not declared hostile. Since Vyankatrao was examined as prosecution witness, his evidence has its own worth and merely because he is the Conductor of said Bus that by itself his evidence cannot be discarded. In this context, evidence of Vyankatrao, non examination of the Investigating Officer on the part of the prosecution, assume importance because non examining the Investigating Officer has precluded the applicant to cross-examine the Investigating Officer in order to bring the position on record about the existence of truck.

[14] The learned Addl.Public Prosecutor argued that, there is no mention of truck in the spot panchnama. True it is that, there is no mention about the standing of truck, in the spot panchnama, however, we cannot forget one fact that spot panchnama was drawn in respect of place where accident took place and, therefore, if the evidence of prosecution witness – Vyengkatrao is considered in its true perspective, non finding of place of standing of truck in the spot panchnaam Exh.No.17, is but natural.

[15] Unfortunately, Balaji has lost his life. However, the prosecution has failed to demonstrate that at the relevant time, the applicant was driving his vehicle in rash and negligent manner therefore, he cannot be held responsible for the dash which occurred due to accident only.

[16] Consequently, Criminal Revision Application is allowed. The Judgment and order of conviction, convicting the accused/applicant for the offences punishable under Section.s. 279, 304(A) of the Indian Penal Code is hereby quashed and set aside.

Cri.Revn.Appln.allowed.

(V.M. DESHPANDE, J.)