

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 45 OF 2002

Gundappa Madolappa Samangave

Age : 38 Yrs., Occ. S.T.Driver,

R/o : Railway Station Road,

Udgir, at present S.T. Depot,

Kinwat, Dist. : Nanded.

.... APPLICANT

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. H.M.Salve, Advocate for the Applicant.

Mr. V.H.Dighe, A.P.P. for the Respondent - State.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 12th JANUARY, 2015

.....

ORAL JUDGMENT :

1. The applicant, a S.T. Driver, on 02/02/1995 was driving S.T. Bus bearing registration No. MH-20/D-1744.

He was plying the said bus from Kinwat to Latur. On State High-way of Bhokar – Nanded near village Tatkawadi, accident took place. In the said accident Ashok Narayan Wagadkar succumbed to the injuries as mentioned in Exh. 31, the postmortem report.

2. The applicant – driver was prosecuted for the offences punishable u/ss 279 and 304-A of the Indian Penal Code in Crime No. 27/1995. In a criminal case bearing S.C.C. No. 171/1995, the learned J.M.F.C., Bhokar framed Charge against the present applicant. The applicant abjured his guilt and claimed for his trial. In order to bring home the guilt, the prosecution has examined in all 7 witnesses and also relied on various documents.

3. The learned J.M.F.C., Bhokar vide its Judgment and order dated 03/04/1996 recorded a finding of guilt against the applicant and sentenced him to suffer Simple Imprisonment for 3 months and also ordered to pay fine of ₹ 1,000/- [Rupees One Thousand only], in default to suffer Simple Imprisonment for 15 days for the offences punishable u/ss 279 and 304-A of the Indian Penal Code.

4. The applicant carried Appeal before the learned Sessions Judge, Nanded. The said Appeal was registered as Criminal Appeal No. 33/1996 and the learned Additional Sessions Judge, Nanded on 01/02/2002 dismissed the said Appeal and thereby confirmed the order of conviction. Hence, this Revision.

5. Heard Mr. H.M.Salve, the learned counsel for the applicant and Mr. V.H.Dighe, the learned A.P.P. for the respondent – State. With their able assistance, I have gone through the record and proceedings.

6. Undisputedly, Ashok Narayan Wagadkar died in the accident. It is also not in dispute that at the relevant time the applicant was driving the ill-fated bus. The only question that has to be answered by this court is, whether it was a pure accident and whether the accident occurred due to the rash and negligent driving on the part of the present applicant ?

7. The F.I.R. (Exh. 18) which is filed by Narayan Sitaram Wagadkar, the father of the deceased, specifically

mentions about the standing of truck on the State High-way. He also pointed out in the F.I.R. that the deceased was standing near the said truck. From the evidence of the other prosecution witnesses also, it is clear that the existence of standing of truck is not in dispute, though the same is not mentioned in the Spot Panchanama (Exh.20).

8. Important to note is that in the Spot Panchanama, there is recital about application of the brakes by the driver of said S.T. bus. This particular aspect is very lightly brushed aside by both the Courts below. We can not forget that the S.T. bus is a heavy vehicle and it is impossible to apply brakes suddenly and due to the sudden application of the brakes, the vehicle will not stop then and there only. Further it is admitted position that the accident has occurred on the State High-way. Mere speed is not the sole criteria to reach to the conclusion that the driver was driving the vehicle rashly and/or negligently. While reaching to such conclusion, the Courts are under obligation to verify the other attending circumstances. If the accident is occurred in a bazar, then the speed of 30 Km. per hour will also termed as high speed, whereas 60 Km. per hour speed on a High-way

may not be termed as high speed. High speed itself is a relative term. Bare words from the prosecution witnesses that the bus was in high speed, can not be accepted, especially when the accident has occurred on the midst of the State High-way.

9. All these aspects are not properly considered by any of the Court below. The learned counsel for the applicant has rightly pointed out to me the decision of the Apex Court reported in the case of **Mahadeo Hari Lokre Vs. The State of Maharashtra, AIR 1972 Supreme Court 221**, wherein the Apex Court has observed as under, :

“ If a person suddenly crosses the road the Bus Driver, however, slowly he may be driving, may not be in a position to save the accident. Therefore, it will not be possible to hold that the Bus Driver was negligent. ”

10. In the present case, even the recital of the F.I.R. clearly shows that the deceased was standing in front of the truck on a High-way. Further, this Court, way back in the year 1972, has ruled that there can not be any presumption

unless and until there is a cogent evidence to show that the driver was driving the vehicle negligently and rashly as observed in the case of **Tukaram Sitaram Gore Vs. The State of Maharashtra, AIR 1971 Bombay 164.**

11. In the present case, except the bare words of 2 witnesses, who are interested witnesses, that the bus was in high speed, there is no evidence to show that the bus was driven rashly and negligently by the applicant. The Courts below ought to have extended benefit of doubt to the applicant. Accordingly, the said benefit is extended in favour of the applicant and the Judgment and the Order of conviction dated 03/04/1996 passed by the learned J.M.F.C., Bhokar in S.C.C. No. 171/1995 together with the Judgment and the Order of conviction dated 01/02/2002 passed by the learned Additional Sessions Judge, Nanded in Criminal Appeal 33/1996 are hereby quashed and set aside.

12. The present Criminal Revision application is allowed. The applicant Gundappa S/o Madolappa Samangave is acquitted for the offences punishable u/ss 279 and 304-A of the Indian Penal Code. The applicant is on bail. His bail

bonds stand cancelled.

[V.M.DESHPANDE, J.]

KNP/Cr. Revn.Apln. 45.2002 - [J]