

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

Criminal Revision Application No.58 Of 2002.

Hari s/o Maroti Narhare.

Age.: 30 Years., Occ.: Driver.

R/o. : Latur Road, Dist. Latur.

:: **Applicant.**
[Ori.Accused]

Versus

The State of Maharashtra.

:: **Respondent.**

Appearance =>

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

Mr. V.D. Godbharle, Additional Public Prosecutor for the State.

CORAM : V.M. DESHPANDE, J.

DATE : 19th JANUARY, 2015.

ORAL JUDGMENT :-

The learned Judicial Magistrate, First Class, Shilu, Dist. Parbhani by his Judgment and Order dated 21st July, 1998 passed in S.C.C. No. 49 Of 1996 convicted the applicant – accused for the offence punishable under Section 304-A of the Indian Penal Code and he was directed to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- and, in default, to suffer rigorous imprisonment for further one month. He was also convicted by the learned Magistrate for the offence punishable under Section 337 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three months. The learned Magistrate directed that both the sentences shall run concurrently.

[2] Feeling aggrieved thereby, the present applicant preferred an Appeal before the learned Sessions Judge, Parbhani. It was registered as Criminal Appeal No.31/1988. Case was made over to the file of the learned Additional Sessions Judge, Parbhani. The learned Additional Sessions Judge, Parbhani on 13th February, 2002 dismissed the Criminal Appeal preferred on behalf of the present applicant. Against the concurrent findings of courts below, present Criminal Revision Application is filed by the applicant to question the correctness of his conviction.

[3] I have heard Mr. Ravi Chavhan, learned counsel for the applicant and Mr. V.D. Godbharle, learned Additional Public Prosecutor for the State of Maharashtra. With their assistance, I have gone through the Record & Proceedings.

[4] The learned Magistrate on 2nd July, 1997 framed the Charge that the accused on 21st December, 1995 at 12.30 a.m. (midnight) at Sailu on Pathri road, caused the death of Shaikh Rauf s/o Shaikh Wali by driving the jeep bearing No.MH/24/739 which was rash and negligent act not amounting to culpable homicide and, thereby, committed an offence punishable under Section 304-A of the Indian Penal Code.

Further charge was also framed that by driving jeep so rashly and negligently as to endanger human life and, thereby committed an offence punishable under Section 337 of the Indian Penal Code

[5] The First Information Report is at Exhibit No.26. It was lodged by Rehana Begum Ayyub Shaikh (PW No.2). She was also one of the passenger of the said jeep. F.I.R. would reveals that the applicant was driving the jeep in a most negligent manner and even on curve [“S” type], the applicant-accused did not slow down the jeep. First Information Report

specifically points out that, first informant prior to the accident has requested the applicant to drive the jeep slowly however, he did not pay any heed to the request, resultantly, on the curve, the applicant lost his control over the jeep and, thereby, jeep was turtled causing death of Rauf.

[6] P.W. No.1 Pandurang Sudhakar Kavale is the panch witness, who has proved the spot panchanama Exh.No..No.19. In the cross-examination, it is brought on record that there is 'S' type curve on the road. Further, suggestion was given to him that on both the side-wings of the road, on the spot, there was digging however, same is stoutly denied by the panch.

[7] P.W. No.2 Rehana, first informant, who was travelling in the jeep alongwith her brother and others. She is very specific in her evidence that the applicant was driving the jeep in a high speed. She warned the applicant to drove the jeep in a normal speed however, he did not listen. Repeatedly, it was pleaded by her to the applicant that he should not drove the jeep in a speed however, the applicant did not pay any heed to the said request. Her evidence further shows that, there was curve on the road and the applicant, who was driving the jeep, lost his control and that time, he suddenly applied the brakes of jeep and because of high speed, jeep turtle down from the rear side and as such, accident caused. There is nothing in her cross-examination by which it could be said that her evidence is shattered.

[8] On the contrary in the cross-examination of Rehana (P.W.No.2) following is brought on record :

“Rauf as well as Rashid also ask the driver to move the jeep in normal speed.

Thus, it is clear that everyone travelling in the jeep were pleading the applicant that he should driving the jeep cautiously and slowly however, the applicant did not positively respond to their request.

[9] The applicant has admitted in his statement recorded under Section 313 of the Code of Criminal Procedure that he was driving the jeep, therefore, there is no dispute that at the relevant time, the applicant was driving the jeep. Further Rehana has asked the applicant after the accident to extend the help however, that time, applicant – accused ran away from the spot. Though the learned counsel for the applicant tried to submit that this is omission however, this fact was not put to the Investigating Officer when the Investigating Officer was available for cross examination. Therefore, the applicant cannot take any advantage from the same. Fact remains that inspite of the fact that after the accident request was made, applicant ran away from the spot.

[10] Both the courts below concurrently recorded the findings of fact that the death of Rauf was caused due to negligent act on the part of the applicant. Speed may not be a criteria for negligent act however, at the same time, there was curve to the road thus, in that situation and circumstances, it was expected from the driver to drove the vehicle cautiously. If the driver was found not driving his vehicle at the particular time cautiously but with speed then surely he can be held responsible for the death, which is admittedly occurred in the accident.

[11] In that view of the matter, there is no merit in the Criminal Revision Application. Criminal Revision Application is dismissed. The learned trial court is directed to take necessary steps to secure the presence of the applicant – accused for serving out the jail sentence.

(V.M. DESHPANDE, J.)