

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

CRIMINAL REVISION APPLICATION NO. 62 OF 2002

Vithal s/o Shivram Shrigire,
age 50 years, occ. Driver,
r/o Bus Depot, Nanded 2

...Applicant
[Orig. Accused]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri G.N.Chincholkar, advocate h/f
Smt. S.G.Chincholkar, advocate for applicant
Shri V.P.Kadam, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 15th January, 2015

ORAL JUDGMENT : -

1] The applicant, who was convicted by the learned Judicial Magistrate, First Class, Nanded on 6.3.1997 in Summary Criminal Case No. 3727 of 1996 for the offence punishable under Section 304(A) of the Indian Penal Code and was directed to suffer simple imprisonment for one month and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for two months, together with the judgment and order of dismissal of his appeal passed by the Additional

Sessions Judge, Nanded, dated 15.2.2002 in Criminal Appeal No. 17 of 1997, is before this court in the present Revision to challenge the said verdicts.

2] I have heard learned counsel Shri G.N.Chincholkar for the applicant and Shri V.R.Kadam, learned Additional Public Prosecutor for respondent/State. With their able assistance, I have gone through the record and proceedings.

3] Shankarrao Dukre (PW 1) is the first informant. He lodged the first information report on 18.5.1996. Since the report was disclosing cognizable offence, police station, Limbgaon registered the offence punishable under Section 304 (A) of the Indian Penal Code.

4] The first information report discloses that on 18.5.1996 the first informant, his wife with their children were standing in the morning at about 10.30 on a bus stop at village Korda Pimpalgaon. When they were so standing, a bus from Nanded to Pimpalgaon reached there. Passengers from the said bus were alighted. Thereafter while turning the said bus, the bus driver negligently drove the said bus due to which his son Sushil got a dash. He was taken to the Government Hospital at Nanded, however, he died. In the first information report he has stated that he is not aware about the bus driver.

5] Though in the first information report he did not state that he has seen the applicant as a driver of the said killer bus, he, from his witness box, has identified that it is the applicant who was driving the said bus. Thus, the applicant, who was unknown to the first informant, for the first time, has identified the applicant as a driver. In absence of any test identification parade by the investigating officer and in absence of non-mentioning of the fact that he was knowing the bus driver, it will be risky to place reliance on identification at the instance of PW 1 Shankarrao unless it is duly corroborated by other evidence.

6] PW 3 is one Dnyaneshwar Dukre. He is one of the close relative of the first informant. He claims that he has seen the incident, not only that, he has given the bus number in his evidence. The incident has taken place on 18.5.1996; whereas the evidence of this witness was recorded in the court on 16.1.1997. Therefore, in absence of the test identification parade, it is hard to believe that this witness was able to recognize the applicant as a driver after a lapse of near about six months.

7] Further the investigating officer is PW 5 Dhondiba Kolhe. From his evidence, It is clear that he did not receive information from PW 3 Dnyaneshwar Dukre that State

Transport Bus No. 7933 is a killer bus and/or the applicant was his driver. What he has stated in the evidence is that he obtained information from State Transport Department in respect of the driver of the Bus No. 7933. Therefore, prime evidence to show that the applicant was driver of bus No. 7933 was gathered by investigating officer from the State Transport Department. No official from the State Transport Department is examined in the present case. Further, the investigating officer has also not obtained any letter from the S.T. Department to show that it is the applicant who was the driver at the relevant time. In that view of the matter, the prosecution has not proved the fact beyond reasonable doubt that on the date of incident Bus No. 7933 driven by applicant was involved in the incident.

8] Further, the applicant was not prosecuted for the offence punishable under Section 279 of the Indian Penal Code for rash and negligent driving. Thus applicant is entitled for the benefit of doubt which has to be extended in his favour. Resultantly, I pass the following order.

ORDER

- (i) The Revision Application is allowed.
- (ii) The judgment and order of conviction, dated 6.3.1997, passed by the learned IInd Joint

Judicial Magistrate, First Class, Nanded in Summary Criminal Case No. 3727 of 1996, together with the judgment and order, dated 15.2.2002, passed by the Additional Sessions Judge, Nanded, in Criminal Appeal No. 17 of 1997 convicting the applicant for the offence punishable under Section 304 (A) of the Indian Penal Code are hereby set aside.

(iii) The applicant is acquitted for the offence punishable under Section 304 (A) of the Indian Penal Code.

(iv) The bail bonds of the applicant shall stand cancelled.

(v) Fine amount, if paid by the applicant, shall be refunded to him.

(vi) Rule made absolute accordingly.

[V.M.DESHPANDE, J.]