

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

Criminal Revision Application No. 108 of 2002

Shaikh Gous s/o. Shaikh Chand,
Age : 50 years,
Occupation : Driver,
R/o. Hingoli Gate,
Farooque Nagar, Nanded,
Taluka & District : Nanded.

.. Revision Applicant
(Original accused)

versus

The State of Maharashtra,
Through Police Station,
Jintur.

.. Respondent.

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Mr. Zia-Ul-Mustafa, Advocate, for the revision applicant.

*Mr. U.S. Mote, Additional Public Prosecutor, for the
respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 30TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. Zia-Ul-Mustafa for the revision applicant, and
learned APP Mr. U.S. Mote for the respondent - State.

2. The applicant herein was accused in Regular Criminal Case No. 67/1996. The applicant was tried for the offences punishable under Sections 279, 337, 338, 304A of the Indian Penal Code, and Section 66(1) read with Section 192 of the Motor Vehicles Act, 1988. By judgment and order dated 26th July 1999, the learned Judicial Magistrate (F.C.), Jintur, was pleased to convict the applicant for the offence punishable under Section 337 of the IPC and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs. 500/-, in default of payment of fine, to suffer rigorous imprisonment for seven days. He was also convicted for the offence punishable under Section 304A of the IPC and sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs. 2,500/-, in default of payment of fine, to suffer rigorous imprisonment for 15 days. He was also convicted for the offence punishable under Section 279 of the IPC, but no separate sentence was awarded thereof. He was also convicted for the offence punishable under Section 66(1) / 192 of the Motor Vehicles Act and sentenced to pay fine of Rs. 2,000/-, in default of payment of fine, to suffer simple imprisonment for ten days. The substantive sentences were directed to run concurrently.

3. Being aggrieved by the judgment and order dated 26th July 1999, the applicant had filed Criminal Appeal No. 42/1999. By judgment and order dated 8th April 2002, the learned 3rd Additional Sessions Judge, Parbhani, was pleased to dismiss the appeal.

4. The applicant has been in jail for a total period of 25 days during the pendency of the enquiry / trial / appeal and the revision.

5. Such of the facts, necessary for the decision of this Revision Application are as follows :

That, on 26th May 1993, one Abdul Sattar s/o. Abdul Rajjak lodged a report at Jintur Police Station, alleging therein that he is serving as a driver on truck bearing No. MTR/3722. On the day of the incident, he was carrying some passengers in the said truck. He had parked the said truck by the side of the road at Devgaon Phata as he wanted to have lunch. At about 1.00 p.m., another truck bearing registration No. MTB/7912 came in high speed. The said truck gave a dash to his truck which was parked by the side of the road. That, two passengers who were travelling in his truck, had expired in the said accident. He then came to Jintur Police Station and lodged a report. On the basis of his report, Crime No. 87/1993 was registered against the present applicant for the offences punishable under Sections 279, 337, 338, 304A and 427 of the Indian Penal Code. After completion of investigation, charge sheet was filed. The case was registered as Regular Criminal Case No. 67/1996. The prosecution examined 11 witnesses to bring home the guilt of the accused.

6. PW 6 Abdul Sattar s/o. Abdul Razzak happens to be the original complainant. It is elicited in the cross examination, that the accused had given signal by showing lights of the truck. He had heard noise from inside the truck, that breaks of the said truck had failed. At the time, when the truck driven by the applicant had dashed the truck of the complainant, the speed was 30 to 40 kilometres per hour. The complainant has further admitted that initially to save the dash with S.T. Bus which was coming from Selu, the accused had taken his truck by the side of the road

and at the time when he diverted the truck, it was at a distance of 25 to 30 feet from the truck owned by the complainant. The complainant has fairly admitted that the accident had taken place due to fault of the driver of the S.T. Bus.

7. The learned Counsel for the applicant submits that this substantive evidence would be sufficient to hold that, in fact, there was a mechanical fault with the driver and that the breaks had failed and, therefore, accused - applicant cannot be held guilty for the said offence.

8. As against this, the learned Additional Public Prosecutor submits that the maintenance of the truck in a proper condition is incumbent upon driver of the truck and failure of breaks cannot be an excuse. It is further submitted that the court cannot be oblivious of the fact, that two persons have died in the said accident. That, the learned Magistrate had rightly convicted the accused for the alleged offences. Although it is true, that in order to avoid an accident with the S.T. Bus, the applicant herein had diverted the wheels of the truck, however, he could not have ignored the standing truck which was parked by the side of the road. The dash was of such a magnitude, that two persons had died in the said accident.

9. The incident has occurred on 26th May 1993. The revision application is being heard practically after 12 years after dismissal of the appeal. At the time of filing of the revision application, the applicant was about 50 years old. The applicant has undergone 25 days in custody during the pendency of the proceedings and, therefore, it would not be

appropriate to remand the applicant to jail after a lapse of more than 12 years, after dismissal of the appeal. The learned Counsel for the applicant rightly submits that the sword of Damocles was hanging on the head of the applicant since May 1993 and, therefore, it would not be in the fitness of circumstances to remand him to custody.

10. The learned Judicial Magistrate (F.C.) has assigned justifiable reasons for convicting the applicant and the learned Additional Sessions Judge has appreciated the evidence in its proper perspective and, therefore, the judgment and order passed by both the courts does not warrant any interference as far as conviction is concerned. However, taking into consideration the fact that the revision application is pending for the last 12 years, and that the date of incident is as old as of the year 1993, this Court is inclined to modify the substantive sentence and award the substantive sentence for the period already undergone. The sentence of fine is maintained.

11. In the result, the Revision Application is partly allowed.

(A) The conviction of the applicant, for the offences punishable under Sections 337, 304A, 279 of the Indian Penal Code, and under Section 66(1) / 192 of the Motor Vehicles Act, is upheld.

(B) However, the substantive sentence imposed upon the applicant is reduced to the period which he has already gone. Bail bonds of the applicant stand cancelled.

(6)

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(C) The sentence of fine awarded for the aforesaid offences is maintained.

12. Rule is made absolute in the aforesaid terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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