

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 211 OF 2002

Shaikh Sameer s/o. Shaikh Gulam
(Gulab) Age 30 years, Occu. Driver,
R/o. Chistiya Colony, Lucky Juice
Centre, N-6, CIDCO, Aurangabad,
at Aurangabad.

**....Petitioner.
(Ori. Accused/convict)**

Versus

The State of Maharashtra
Through CIDCO Police Station,
Aurangabad.

**....Respondent.
(Ori. Complainant)**

Mr. Hemant Survey, Advocate for petitioner.

Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 24th June, 2015.

JUDGMENT :

1) The revision is filed to challenge the judgment and order of SCC No. 3454/1999, which was pending in the Court of Judicial Magistrate, First Class, Aurangabad and also the judgment and order of Criminal Appeal No. 58/2000, which was pending in the Court of Additional Sessions Judge, Aurangabad. The petitioner is convicted and sentenced for offences punishable under sections 279 and 304-A of Indian Penal Code. Both the sides are heard.

2) The accident took place on 29.6.1999 in MHADA

Colony, CIDCO, Aurangabad and at about 11.30 a.m to 12.00 noon. Deceased Pranav was the grand son of complainant Ramesh. At the relevant time, Ramesh and his wife were present in the shop and Pranav, aged about one and half year was present in front of the shop. At that time, truck bearing No. MWY/5016 which was loaded with sand came in fast speed from Ambedkar Nagar side and gave dash to Pranav. Pranav came under driver side wheel of front side and also back wheel of the truck and he was virtually crushed. The dead body was dragged up to the distance of 10 ft. The driver of the truck, the petitioner abandoned the truck and he ran away. The report came to be given on the same day and crime at C.R. No. 102/1999 came to be registered in CIDCO Police Station, Aurangabad for aforesaid offences.

3) Police prepared spot panchanama, drew enquest panchanama and referred the dead body for P.M. examination. The death took place as head and chest portion was virtually crushed. Statements of eye witnesses, the persons who were doing the business in the vicinity and who were residing there, were recorded and chargesheet came to be filed against the petitioner. Before J.M.F.C., complainant and eye witnesses are examined. The spot panchanama is proved and other record like

P.M. report, enquest panchanama is not disputed. The petitioner took the defence of total denial and he denied that he was on driver's seat at the relevant time. The Trial Court believed the eye witnesses and convicted the petitioner. The Appellate Court has confirmed the decision of the J.M.F.C.

4) In the petition, it was mainly argued that deceased was aged about one and half years and there is possibility that he ran across the road all of a sudden and due to that, accident took place. This Court has carefully gone through the evidence, the evidence of Ramesh (PW 1) who gave F.I.R., Parasram (PW 3) PSI who made investigation and who prepared the spot panchanama, Hanmant (PW 2) panch witness of spot panchanama and Dilip (PW 4) another eye witness.

5) The evidence of eye witnesses show that they identified the petitioner in the Court. They have given evidence that the truck was being driven with excessive speed and accident took place due to fault of the petitioner. During investigation, police collected the record like driving licence of the petitioner and petitioner was blamed on the basis of information collected by the police. It needs to be noted here that the report as required under section 134 of the Motor

Vehicle Act, 1988 was not given by the truck driver or the owner of the truck. This circumstance needs to be used against the petitioner. Though he has denied that he was on driver's side at the relevant time, there is no reason to disbelieve all the eye witnesses. The spot panchanama shows that the road had the width of around 20 ft. and there was side-patti of 5 ft. width. The accident took place in a broad day light. On one side of the road, there are shops and houses. Though there is divider on the other side, beyond that there is also thickly populated locality. In view of these circumstances, it was necessary for the driver of the truck to take proper care. It was necessary for him to reduce speed at this point and it was not open to the driver to say that a boy all of a sudden ran across the road. Considering the age of boy which was around one and half years, there is no such probability also. The driver has taken the defence of total denial. From the aforesaid circumstances, inference is possible that the driver was not paying attention to the traffic on the road or the boys who are likely to be there as he was taking the truck through thickly populated area. The spot panchanama further shows that after giving the dash from driver side to the boy, the truck driver did not stop the truck. The dead body came under the rear wheel of the truck and when the truck was stopped, the dead body was lying at a quite some distance from the rear

wheel of the truck from driver's side. There were pieces of brain and there was blood on the front wheel of driver's side and blood was also there on the rear wheel of the truck of driver's side. After giving dash, the truck had virtually left the road and the front side had gone towards the left side and the front side was not on the tar road. It was necessary for the driver to explain these things, but he has taken the defence of total denial. This Court has no hesitation to hold that the accident took place due to rash driving and there was also negligence on the part of driver.

6) The Trial Court has given sentence of two years imprisonment. In view of the aforesaid circumstances and particularly, the circumstance that the driver did not stop there, he ran away and he did not give report to police and he has taken the defence of aforesaid nature, this Court holds that imprisonment for two years is just and proper in the present case. This Court sees no reason to interfere in the decisions given by the J.M.F.C. and Sessions Court.

7) In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/