

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

Criminal Revision Application No.291 Of 2002.

Ganesh Rakaji Dugane.

Age.: 38 Years., Occ.: Driver.

R/o.: Takali (kd), Tal. Biloli,

Dist. Nanded.

:: **Applicant.**

Versus.

The State of Maharashtra.

:: **Non-Applicant.**

Appearance =>

Mr. Nikhil Tekaley, Advocate for the Applicant.

Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 12th FEBRUARY, 2015.

J U D G M E N T :-

The learned Judicial Magistrate, F.C., Biloli, Dist. Nanded vide his Judgment and Order dated 2nd April, 1998 passed in S.C.C.No.50 Of 1996 convicted the applicant (original accused No.2) for the offence punishable under Section 279 of the Indian Penal Code and he was directed to suffer rigorous imprisonment for two months and to pay fine of Rs.500/- and in default of payment of fine amount to suffer rigorous imprisonment for 15 days. The applicant was also convicted for the offence punishable under Section 337 of the Indian Penal Code and was directed to pay fine of Rs.500/- and in default of payment of fine amount to suffer rigorous imprisonment for 7 days. He was also convicted for the offence punishable

under Section 338 of the Indian Penal Code and was directed to pay fine of Rs.500/- and in default of payment of fine amount to suffer rigorous imprisonment for 15 days. He was also convicted for the offence punishable under Section 304-A of the Indian Penal Code and was directed to suffer rigorous imprisonment for three months and to pay fine of Rs.1000/- and in default of payment of fine amount to suffer Rigorous Imprisonment for one month.

[2] Being aggrieved by the said Judgment and Order dated 2nd April, 1998 passed in S.C.C.No.50 Of 1996, the applicant has preferred Criminal Appeal No.11 Of 1998 in the Sessions Court, Biloli, Dist. Nanded. The learned Additional Sessions Judge Biloli, Dist. Nanded vide his Judgment and Order dated 17th October, 2002 partly allowed the Criminal Appeal and acquitted the applicant from the charge of offences punishable under Section.s. 337 and 338 of the Indian Penal Code however, his conviction for the offences punishable under Section.s. 279, 304-A of the Indian Penal Code was maintained. Against this, present Criminal Revision Application is filed.

[3] Prosecution case in short is as under :-

Jeep bearing registration No.MH/21/A/8732 which was proceedings towards Khatgaon from Narsi was driven by the present applicant. Bhagwan Tukaram Tate was one of the passenger of said jeep. In the vicinity of village Hipparga, one S.T. Bus bearing registration No.MH/20/D/0946 which was driven by Syed Muneer Abbasmiya collided with jeep; resulting into death of Bhagwan Bapurao Tate. Some other passengers in the jeep were also suffered injuries. Injured persons were taken to the hospital at Naygaon on the very same day. Cousin of Bhagwan Bapurao Tate by name Bhagwan Tukaram Tate lodged First Information Report with Police Station, Shankar-Nagar, Ramtirtha, Nanded.

[4] First Information Report (Exhibit - 27) specifically states that S.T. Bus driver - Syed Muneer Abbasmiya gave dash of his S.T. Bus to the jeep. On the basis of report lodged with Police, offence was registered against the present applicant and also against Syed Muneer Abbasmiya (S.T. Bus driver) and they were prosecuted before the learned Judicial Magistrate, F.C., Biloli in S.C.C.No.50/1996.

[5] Both, the present applicant and Syed Muneer Abbasmiya were convicted by the learned Magistrate for the offences punishable under Section/s 279, 337, 338, 304-A of the Indian Penal Code.

[6] Present applicant – Ganesh and original accused No.1 - Syed Muneer Abbasmiya preferred two different Criminal Appeal/s before the Sessions Court, Biloli, Dist. Nanded. Appeal preferred by present applicant was bearing No.11/1998; where-as Criminal Appeal preferred by Syed Muneer Abbasmiya was registered as Criminal Appeal No.14/1998.

[7] Hearing of both these Appeals were taken simultaneously by the learned Additional Sessions Judge and both the Criminal Appeals were disposed of by common judgment. The learned Additional Sessions Judge, Biloli by his Judgment and Order dated 17th October, 2002 allowed Criminal Appeal No.14/1998 preferred by Syed Muneer Abbasmiya however, partly allowed the Criminal Appeal No.11/1998 preferred by present applicant as observed in preceding paragraphs.

[8] Heard Mr. Nikhil Tekaley, learned counsel for the Applicant – original accused No.2 and Mr. S.A. Ambad, learned Additional Public Prosecutor for the State of Maharashtra. With their able assistance, I have gone through the entire record of both the courts below.

[9] PW No.1 Bhujang Digambar Jadhav and PW No.2 Ananda Pandharinath Chate were examined as eye witnesses. At the relevant time, these two witnesses were proceeding towards their field on foot. According to PW No.1 Bhujang incident took place near his field. According to this witness, incident took place on a bridge and the road at the place was narrow. In the cross examination, PW No.1 Bhujang has admitted that when he saw, at that time jeep was on the bridge whereas, S.T. Bus was at a distance of about 15 Fts. From the bridge. He has stated that there was no dash between the jeep and S.T. Bus.

[10] PW No.2 Ananda Ambar Dakhore did not support the prosecution. Evidence of PW No.3 Bhagwan Tate (first informant) is hear-say and is of no use. PW No.4 Kumari Manik d/o Maruti Nallapalle was one of the passenger of the jeep.

[11] PW No.6 P.S.I. Dnyanoba Narhari Mundhe is the Investigating Officer. He has specifically admitted that during his investigation, it was revealed to him that both the drivers were at fault and place of incident is dilapidated bridge. Evidence of PW No.4 Ku.Manik Nallapalle clearly reveals and corroborate the evidence of PW No.1 Bhujang to the extent that jeep entered on the bridge firstly and thereafter the S.T. Bus entered on the said bridge from the opposite side. From the prosecution case and available evidence on record, it is clear that there was no dash in between these two vehicles.

[12] In the light of the aforesaid evidence, when the jeep driven by the applicant entered firstly on the dilapidated bridge and thereafter the S.T. Bus entered on the said bridge from the opposite direction, the explanation given by the applicant in his statement recorded under Section 313 of the Code of

Criminal Procedure appears to be possible one and it is case of pure accident. The learned lower appellate court on the very same piece of evidence acquitted the S.T. Bus driver. In that view of the matter, I proceed to pass the following order :-

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) Judgment and Order dated 17th October, 2002 passed by the learned Additional Sessions Judge Biloli, Dist. Nanded in Criminal Appeal No.11 Of 1998 thereby maintaining the conviction and sentence of applicant - original accused No.2 for the offences punishable under Section/s 279, 304-A of the Indian Penal Code is set aside.
- (iii) Applicant - Ganesh Rakaji Dugane is acquitted from the charge of offences punishable under Section/s 279, 304-A of the Indian Penal Code.
- (iv) His bail bonds shall stand cancelled.
- (v) Fine amount paid by the applicant be refunded to him.
- (vi) Rule made absolute.

(V.M. DESHPANDE, J.)