

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

CRIMINAL REVISION APPLICATION NO. 13 OF 2003

Angad S/o Sangram Gutte

Age : 29 Yrs., Occ. : Nil

R/o : Malakoli, Tq. Loha,

Dist. : Nanded.

..... **APPLICANT/**

[ORIGINAL ACCUSED]

V E R S U S

The State of Maharashtra

..... **RESPONDENT**

.....

Mr. J.M.Murkute, Advocate for Applicant.

Mr.V.G.Godbharle, A.P.P. for the State.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 12th FEBRUARY, 2015

.....

JUDGMENT :

1. The present Revision Application is directed against the Judgment and Order of conviction dated

09/05/1997 passed by the learned Judicial Magistrate First Class, Kandhar in S.C.C. No. 367/1995, which was tried as Regular Criminal Case by the learned Magistrate, by which the present applicant was convicted for the offence punishable u/s 304-A of the Indian Penal Code and was directed to suffer Rigorous Imprisonment for 3 months. He was also convicted for the offence punishable u/s 279 of the Indian Penal Code and was directed to suffer Rigorous Imprisonment for 1 month. The learned Magistrate also found him guilty for the offence punishable u/s 66 and 92 of the Motor Vehicles Act and directed that he should pay fine of ₹ 500/- [Rupees Five Hundred only], in default to suffer Simple Imprisonment for 15 days. The learned Magistrate directed that substantial sentences shall run concurrently, together with the Judgment and Order dated 06/01/2003 passed by the learned Additional Sessions Judge, Nanded in Criminal Appeal No. 24/1997, whereby the Appeal filed by the applicant was dismissed.

2. The applicant was charged that on 28/03/1995, he was plying auto rickshaw bearing No. MH-26/B-1691 on Nanded – Latur public road in rash and negligent manner,

resulting into the death of the son of first informant. In order to bring home the guilt, the prosecution examined in all 5 witnesses. The First Information Report [hereinafter referred to as 'F.I.R.' for the sake of brevity] is lodged by Ganpati Raut [P.W.1], the father of deceased Ananda. The F.I.R. is at Exh. 19. It is lodged on the date of incident i.e. 28/03/1995. The sum and substance of the F.I.R. shows that when the first informant along with his son and other co-passengers were sitting in the auto rickshaw, the said rickshaw turned turtle near the 'Dhaba' of one Sardarji.

3. In view of the Inquest Panchanama [Exh. 20], the postmortem report [Exh. 24] and the other available evidence on record, it is clear that Ananda died when he was sitting along with his father in the auto rickshaw driven by the present applicant.

4. Some other co-passengers were also injured. Their injury certificates are on record from Exh. 25 to 32. Those injury certificates shows that the injuries suffered by these injured persons were of simple in nature of abrasions and lacerations.

5. The accident report form is at Exh. 23. It clearly shows that the accident did not occur due to any mechanical defect of the auto rickshaw.

6. Though P.W. 1 Ganpati has stated from the witness box that at the time of accident, auto rickshaw was in speed, the said fact was not stated by him in the F.I.R. From the evidence of P.W. 2 Purbaji Raut, who was also one of the passengers, the evidence of P.W. 3 Janabai Raut and that of P.W. 4 Kausalyabai, it is clear that 10-15 persons were sitting in the auto rickshaw. The evidence of Purbhaji shows that due to excess passengers, it was really difficult to sit in the auto rickshaw.

7. From the evidence, it is clear that the applicant is responsible for allowing more passengers to sit in the auto rickshaw than its capacity. That fact itself is a negligent act on the part of the applicant. It appears that due to excess passengers being accommodated in the auto rickshaw, the applicant was unable to control the auto rickshaw, resulting into its turtle. Therefore, there is no doubt in my mind that the accident is result of rash and negligent act on the part of

the applicant. Therefore, I confirm the Judgments holding the applicant guilty.

8. In so far as the sentence part is concerned, the applicant is convicted to suffer Rigorous Imprisonment for one year. The record shows that the applicant was arrested on 28/03/1998 and he was released on bail on 29/03/1998. The Appeal filed on behalf of the applicant was dismissed by the learned appellate Court on 06/01/2003 and on very same day, he was taken into custody. Thereafter, he preferred the present Revision. The record shows that the applicant was released on bail by this Court on 06/03/2003. Thus, it is clear that the applicant was behind the bars for 2 months.

According to me, leniency can be shown to the applicant. The applicant is only bread earning member of his family. He is auto rickshaw driver. Greed to make more money at the same cost, appears to have been reason for allowing more passengers to sit in the auto rickshaw. He is coming from lower strata of the society. The pendency of this Revision from 2003 till today with a conviction, have its own impact in the mind of the applicant. In that view of the matter, the sentence can be modified to the extent that 2

months jail, which the applicant has already undergone, will sub-serve the ends of justice.

9. Hence, I pass the following order :

(1) The present Revision Application is partly allowed.

(2) The conviction imposed upon the applicant is hereby confirmed. However, in stead of sentencing him for one year, the sentence is modified to the extent which the applicant has already undergone in jail.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 13.2003 - [J]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]

]