

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

CRIMINAL REVISION APPLICATION NO. 106 OF 2003

Deepak S/o Digambarrao Sisode

Age : 37 Yrs., Occ. : Agriculture,

R/o : At & Post : Dhakephal,

Tq. Paithan, Dist. Aurangabad.

..... **APPLICANT**

V E R S U S

1. Rupchand S/o Harichand Gavane

Age : 24 Yrs., Occ. Driver,

R/o : Kaharwada, Paithan,

Tq. Paithan, Dist. Aurangabad.

..... **RESPONDENT/**

[ORIGINAL ACCUSED]

2. The State of Maharashtra

..... **RESPONDENT/**

[ORIGINAL COMPLAINANT]

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Mr. V.R.Dhorde h/f Mr. H.D.Deshmukh,

Advocate for Applicant.

Mr. S.A.Ambad, A.P.P. for R – 2 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 3rd MARCH, 2015

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ORAL JUDGMENT :

1. The present Revision Application is directed against the Judgment and Order of acquittal dated 17/02/2003 passed by the learned Judicial Magistrate First Class, Paithan in S.C.C. No. 916/1996, whereby the learned Magistrate acquitted respondent No. 1 for the offence punishable u/s 304-A and 279 of the Indian Penal Code.

2. Heard Mr. V.R.Dhorde holding for Mr. H.D.Deshmukh, the learned counsel for the applicant and Mr. S.A.Ambad, the learned A.P.P. for respondent No. 2 – State. Nobody appeared for respondent No. 1 though he was duly served. With the able assistance of the learned counsel, I have gone through the record and proceedings which was called.

Mr. Dhorde, the learned counsel for the applicant submitted that the Court below has committed error in acquitting respondent No. 1 in spite of the fact that the reliable evidence is available on record. He has relied upon following two cases :

- (1) Gulab Tarasaheb Atar Vs.
State of Maharashtra.
1998 Bom.C.R.(Cri.) 351.
- (2) Ravi Kumar Vs.
State of Rajasthan
(2012) 9 Supreme Court Cases 284.

3. Though it was State prosecution, the State chose not to file Appeal challenging the acquittal of respondent No.

1. It is the applicant, who is the father of deceased Mayur, has preferred the present Revision Application.

4. Exh. 17 to 20 are admitted documents, those are Spot Panchanama, Inquest Panchanama, Postmortem report and the R.T.O. Report.

5. The prosecution has examined Ashok Babasaheb Dhas [P.W.1], Ashok Gopinath Sirwath [P.W.2], Narsing Harishchandra Sisode [P.W.3], Namdeo Waman Gawali [P.W.4] and Bhikaji Rajaram Pandit [P.W.5]. Prosecution witnesses No. 1 to 3 were examined by the prosecution as eye witnesses, whereas Namdeo Gawali [P.W.4] was P.S.I. attached to police station Paithan, has lodged report and who is the first informant and Bhikaji Pandit [P.W.5] has reduced

into writing the information given by respondent No. 1 Rupchand Harichand Gavane.

6. Ashok Dhas [P.W.1] and Narsing Sisode [P.W.3] are the close relatives of the deceased, whereas Ashok Sirwath [P.W.2] is driver of Commandar jeep, which was standing near Dr. Chakurkar's hospital, the spot of incidence.

7. Though it is claimed by Ashok Dhas [P.W.1] that he has seen the occurrence, he has not lodged the report. In fact, he has admitted that he did not went to the police station to lodge the complaint. He has also admitted that his statement was also not recorded by police. If really this witness was the witness to the occurrence, being the maternal uncle of deceased Mayur, natural reaction on his part would have been to lodge report in respect of the incident, which has occurred in his presence.

8. Evidence of Ashok Sirwath [P.W.2] shows that he was standing near Dr. Chakurkar's hospital with Commandar Jeep at the time of incident, is an improved version, coupled with the fact that he has admitted that he

came to the Court along with Ashok Dhas [P.W.1] and he is having thick relation with Ashok Dhas since long.

Narsing Sisode [P.W.3] claims that at the time of incident, he was going to his college from Yeshwant Nagar and that time he has seen the occurrence. However, he has admitted in his cross examination that when his police statement was recorded and though he has stated the said fact, he can not assign any reason as to why those are not finding place in his police statement.

9. Evidence of Namdeo Gawali [P.W.4] would reveal that he has recorded statement of the witnesses from the locality. However, none of the independent witnesses are examined by the prosecution.

10. The learned counsel for the applicant has pointed out from the Spot Panchanama [Exh. 17] that there are recitals about application of brake up to about 100 ft.. He submitted that this fact clearly shows that the vehicle was in high speed.

11. The incident has occurred on Paithan –

Aurangabad road. High speed itself is not a criteria to fix the negligence. Further, there is no reliable evidence in that behalf. According to the prosecution case, deceased Mayur aged about 5 years was trying to cross the road and that time the dash was given by the vehicle bearing No. MH-20/A-1334 driven by respondent No. 1.

12. If the prosecution case is evaluated in the light of Spot Panchanama [Exh.17], it is clear that when respondent No. 1 was driving the vehicle, he must have seen little boy crossing the road and that time he has applied brakes as found in the spot panchanama. Thus, it is clear that due care and caution was taken by the driver while driving the vehicle on Paithan – Aurangabd road. Thus, the possibility of mere accident is not completely ruled out.

13. Mr. V.R.Dhorde, the learned counsel for the applicant rightly pointed out that the observations made by the learned Judge of the trial Court while acquitting the accused on the point of identification are erroneous. The learned counsel is right in his submission that merely because in absence of test identification parade during the

course of investigation, the identification of the accused during trial in the Court does not lose its importance.

14. Since in absence of any positive evidence on record to show that at the relevant time, respondent No. 1 was driving the vehicle recklessly, negligently and in rash manner, it would not be safe to jump to the conclusion on the basis of the evidence of prosecution witnesses, whose presence itself is in doubt.

15. The scope of the Revision against acquittal is limited. On perusal of the impugned Judgment, the view taken by the learned Magistrate is permissible.

16. In that view of the matter, present Revision Application fails and hence it is dismissed.

[V.M.DESHPANDE, J.]

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