

Narayan Baburao Bade ... **Applicant**
Age 55 years, Occu: Service
R/o Phule Nagar, Pathardi
Taluka Pathardi, Dist. Ahmednagar.

VERSUS

State of Maharashtra ... Respondents

Mr. K. D. Bade Patil, Advocate for the applicant
Mrs. R. K. Ladda, APP for the State.

CORAM : T. V. NALAWADE J.

DATE : 16th July, 2015

JUDGMENT:

1. The revision application is filed to challenge the judgment and order of Criminal Appeal No. 43/2000 which was pending in the Court of Additional Sessions Judge, Ahmednagar and also judgment and order in Criminal Case No. 330 of 1999 which was pending in the Court of Judicial Magistrate, First Class, Pathardi. The applicant is convicted for the offences punishable under sections 279 and 304 of the Indian Penal Code and sentenced to simple imprisonment till rising of the court. Total amount of fine is Rs.1500/- and in default some sentence is given.
2. Both sides are heard.
3. The petitioner was working as Driver with Maharashtra State

Road Transport Corporation. On the day of the incident i.e. on 14.03.1999, he was attached to the bus which was to ply between Nagar and Pathardi. Accident took place in village Karanji situated on this road at about 6 p.m. Deceased was a boy of about 13 years age. He came under rear wheel of the bus on conductor side.

4. Before the JMFC, the prosecution examined eye witnesses. Record of inquest panchanama, spot panchanama, postmortem report was not disputed. Learned JMFC believed the witnesses and the spot panchanama for giving conviction.

5. The witnesses like Dilip Mali (PW1), Shakuntala Gaikwad (PW-2 (mother of deceased), Sharad Mali (PW-3) and other eye witnesses are examined to give evidence on the accident. Raghunath Kushalkar (PW-4) is examined to prove the spot panchanama. One Pandurang Gaikwad (PW-5) has not supported the prosecution. Ashok Dinkar (PW 6) ASI who made the investigation is also examined.

6. Eye witnesses have given evidence that the ST bus bearing No. MH-12-2644 gave dash to the deceased and incident took place due to fault of the driver of the bus. The bus was proceeding towards Ahmednagar side from Pathardi side. The Road is east-west. Evidence of witnesses and spot panchanama show that tar road had width of 12 feet and on both sides of tar road, there were strips of

kaccha road. Evidence is given that even after giving dash to the deceased, bus was not stopped and witness shouted and virtually gave chase for stopping the bus.

The record and evidence show that the present applicant had given report to the police. The evidence on spot panchanama shows that the bus was found on the south side of the road. Though south side was the correct side for the bus, the deceased had come under the rear wheel of cleaner side of the bus and this wheel was at the distance of six feet from the edge of the tar road. Similarly the driver side wheel of front side was on the edge of the road of south side. Thus the bus had gone totally towards Kaccha portion of the road and it was not present on the tar road. Blood of the deceased was lying on the back side of rear wheel of the bus on cleaner side. Bus was not standing in straight direction and it was virtually towards west south direction when it was to proceed towards west direction. The spot panchanama shows that the condition of the road was not good. The evidence is given that the driver was driving bus in speed, he was rash in driving. As the bus was found on Kaccha portion of the road even though there was tar road of aforesaid width, it was necessary for the bus driver to explain this circumstance. No explanation at all is given.

Due to the circumstances described in spot panchanama, the

inference is possible that the bus had gone towards extreme left side, towards portion which was not meant for vehicle.

7. One witness has given evidence that the deceased wanted to cross the road as he was proceeding to answer the nature call. However, the circumstance that he came under the rear wheel of the bus from cleaner side shows that he was not ahead of the bus and he was not crossing the bus which was coming from eastern side. The circumstance that the deceased came under the rear wheel of the conductor side, when deceased was present on Kaccha proton of the road at a distance of 6 feet from south edge of the tar road, shows that the driver was negligent and he had gone to the extreme left side of the road which was not meant for vehicles.

8. As there is direct evidence, and there are aforesaid circumstances, this Court holds that the Learned JMFC and Sessions Court have not committed error in holding the driver guilty of the offences punishable under sections 279 and 304(A) IPC. Insofar as sentence is concerned, it can be said that already lenient view is taken by the trial Court.

9. In the result, the criminal revision application stands dismissed.

(T. V. NALAWADE, J.)

JPC