

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

Criminal Revision Application No. 174 of 2003

Madhukar s/o. Raghunath Tondchire,

Age : 29 years,

Occupation : Truck Driver,

R/o. Hadoli (Jahagir),

Taluka : Kandhar,

District : Nanded.

.. Revision Applicant
(Original accused)

versus

The State of Maharashtra,

through Police Station, Sonkhed,

Taluka : Loha, District : Nanded.

.. Respondent
(Original complainant)

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Mr. G.N. Chincholkar, Advocate, for the revision applicant.

*Mr. S.D. Kaldate, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 27TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. G.N. Chincholkar for the revision applicant,
and the learned APP Mr. S.D. Kaldate for the respondent - State.

2. The applicant herein is convicted for the offences punishable

under Sections 304-A, 338 and 337 of the Indian Penal Code, by the learned Judicial Magistrate (F.C.), Loha, vide judgment and order dated 9th May 2001, in Summary Criminal Case No. 37/1999. The applicant is sentenced to undergo rigorous imprisonment for one year and to fine of Rs. 1,000/-, in default of payment of fine, to undergo rigorous imprisonment for three months, for the offence punishable under Section 304-A of the Indian Penal Code. He is sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 500/-, in default of payment of fine, to undergo rigorous imprisonment for two months, for the offence punishable under Section 338 of the IPC. He is also sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 500/-, in default of payment of fine, to undergo rigorous imprisonment for two months, for the offence punishable under Section 337 of the IPC. The substantive sentences were directed to run concurrently.

3. Being aggrieved by the said judgment and order, the applicant had filed Criminal Appeal No. 40/2001 before the Sessions Judge, Nanded. The learned Sessions Judge, Nanded, by judgment and order dated 3rd May 2003, has been pleased to dismiss the appeal. Hence, this Revision Application.

4. It is the case of the prosecution, that on 26th May 1995, Sayaji s/o. Sambhaji Imadshetewar lodged a report at the Police Station, Sonkhed [Taluka : Loha, District : Nanded], alleging therein that at about 10.00 p.m., he had proceeded in a Tempo bearing No. MH22/160, from Nanded to Sonkhed, carrying grocery and other material. Just before he could reach Sonkhed, the Tempo driver Satish Aarmulwar and the cleaner Dayanand Swami opened the bonnet of the Tempo by halting the said

Tempo at the side of the road. They were trying to find out the cause for failure of the Tempo. At that juncture, one truck bearing registration No. MWZ-5126, which was carrying passengers, came in a high speed and dashed the Tempo from back side. At that time, present applicant was driving the said truck. The truck was carrying passengers for attending a marriage. The truck driver and the cleaner sustained injuries. They were taken to Civil Hospital at Nanded. The cleaner of the said truck succumbed to the injuries. The driver was seriously injured. Similarly, other persons were also injured. On the basis of the said report, Crime No. 29/1995 was registered at Sonkhed Police Station, against the driver for the offences punishable under Sections 279, 304-A, 337, 338 and 427 of the Indian Penal Code. After completion of investigation, charge sheet was filed on 28-7-1995 and the case was registered as Summary Criminal Case No. 37/1999.

5. Upon perusal of the evidence adduced by the prosecution, it is apparent on the face of record, that the driver was negligent. He was driving the truck without the head light and, therefore, he could not see the stationary Tempo on the road. One life had been lost. The prosecution has adduced evidence to prove the guilt of the accused and the guilt of the accused has been proved. The incident is of the year 1995 and this Court is hearing the revision application practically after 20 years of the alleged incident.

6. The learned Additional Public Prosecutor submits that the applicant has been sentenced to imprisonment for one year. However, he has undergone only 26 days of substantive sentence and, therefore, the learned Additional Public Prosecutor prays that the judgment and order

passed by both the courts do not call for any interference.

7. As against this, the learned Counsel for the applicant submits that the punishment contemplated for the offence punishable under Section 337 of the IPC, is imprisonment for a term which may extend to 6 months or with fine which may extend to 500/- Rupees, or with both. The sentence contemplated for the offence punishable under Section 338 of the IPC, is imprisonment which may extend to 2 years or with fine which may extend to 1000/- Rupees, or with both. That, a sentence of fine would meet the ends of justice since the revision application is being heard practically after 20 years of the alleged incident. The conviction of the applicant for all the offences needs to be upheld and the sentence of fine for the offences punishable under Sections 337 and 338 of the IPC, as awarded by the Judicial Magistrate (F.C.), Loha, is also upheld. Section 304-A of the IPC contemplates imprisonment for a term which may extend to 2 years or with fine, or with both. There is no limitation for awarding fine under Section 304-A of the IPC. The alternative sentence is a sentence of fine. The learned Judicial Magistrate (F.C.) has awarded fine of Rs. 1,000/- under Section 304-A of the IPC. This Court is of the opinion that it would meet the ends of justice if the fine for offence punishable under Section 304A of IPC is enhanced and the substantive sentence is reduced to the period already undergone by the applicant. Hence, this Court is inclined to enhance the fine awarded under Section 304-A of the IPC. The fine is enhanced to Rs. 7,000/-, to be deposited in the court of Judicial Magistrate (F.C.), Loha, within eight weeks from today.

8. In the result, the Revision Application is partly allowed.

(A) The conviction of the applicant for the offences punishable under Sections 304-A, 337 and 338 of the Indian Penal Code, is hereby confirmed.

(B) However, the substantive sentence for the offences punishable under Sections 304-A, 337 and 338 of the Indian Penal Code, is reduced to the period already undergone by the applicant.

(C) The sentence of fine awarded by the learned Judicial Magistrate (F.C.), Loha, in S.C.C. No. 37/1999, is confirmed and maintained. However, for the offence punishable under Section 304-A of the Indian Penal Code, the applicant is sentenced to pay a fine of Rs. 7,000/- [Rupees seven thousand], to be deposited in the court of Judicial Magistrate (F.C.), Loha, within a period of eight weeks from today.

(D) Bail bonds of the applicant stand cancelled, after payment of fine as aforesaid.

9. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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