

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

Criminal Revision Application No. 181 of 2003

Salam Abdul Bin Chause,
Age : 25 years,
Occupation : Driver,
R/o. Khultabad,
Taluka : Khultabad,
District : Aurangabad.

.. Revision Applicant
(Original accused)

versus

The State of Maharashtra.

.. Respondent.

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*Mr. H.F. Pawar, Advocate, holding for
Mr. A.H. Kapadia and Mr. V.N. Damle, Advocates,
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 : 26TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. H.F. Pawar h/f. Advs. Mr. A.H. Kapadia and Mr. V.N. Damle, for the revision applicant, and the learned APP Mr. S.D. Kaldate for the respondent - State.

2. The applicant herein is convicted for the offence punishable under Sections 279 and 337 of the Indian Penal Code, and is sentenced to suffer rigorous imprisonment for 3 months, on each count, and to pay fine of Rs. 500/-, on each count, in default of payment of fine, to undergo simple imprisonment for one month, by the 6th Judicial Magistrate (F.C.), Aurangabad, in Summary Criminal Case No. 68/1999, vide judgment and order dated 12th May 2000. Being aggrieved by the said judgment and order, the applicant herein had filed Criminal Appeal No. 31/2000 before the Court of Sessions at Aurangabad. The learned 1st Ad hoc Additional Sessions Judge, Aurangabad, vide judgment and order dated 17th May 2003, has been pleased to dismiss the appeal. Hence, this revision application.

3. The learned Counsel for the applicant has drawn attention of this court, to the substantive evidence of PW 1 Sudhir More, who happens to be the complainant. On 25-8-1998, PW 1 Sudhir More had lodged report at Chawani Police Station, Aurangabad, alleging therein that on 25-8-1998, he was going as a pillion rider on the bicycle of his friend Vijay @ Guddu Nikalje. When they were proceeding from Mitmita to Aurangabad road and had reached near Raja Petrol Pump near Padegaon, a Town & Country Taxi (5 + 1 capacity) [**For short, "Taxi"**] bearing No. MH-20/Q-239 had dashed them from behind. His friend was riding the bicycle. They had fallen on the road. They had sustained injuries. On the basis of his report, Crime No. 168/98 was registered at Chawani Police Station, against the driver of the Taxi, for offences punishable under Sections 279 and 337 of the Indian Penal Code.

4. Upon perusal of the FIR, it appears that the name of the present applicant is not reflected in the FIR. The complainant i.e. PW 1 Sudhir More has deposed before the court, that he was driving as a pillion rider. The Taxi had dashed them from behind. That, he had sustained fracture to his waist and left leg. He had undergone an abdominal operation. PW 4 Vijay Nikalje had sustained fracture to his thigh. He has proved the First Information Report which is marked as Exhibit 15. It is elicited in the cross examination, that he had not known the identity of the driver of the said Taxi till the day of recording of his substantive evidence. He was informed in the court, that the present applicant was the driver of the vehicle at the relevant time. The material omissions elicited in the cross examination are to the effect that he has not stated in his statement under Section 161 of the Cr.P.C., that the incident had occurred in front of Raja Petrol Pump and that he was driving as a pillion rider. The learned Magistrate has allowed the said omission to go on record, without verifying the contents in the FIR wherein the complainant has specifically stated that the incident had occurred in front of Raja Petrol Pump. Therefore, the marking of the said omission is unwarranted. Upon perusal of the FIR, it appears that the registration number of the Taxi has been written subsequently which would simply indicate that the registration number of the Taxi was not known at the time of recording the FIR.

5. The learned Counsel for the applicant submits that there is no substantive evidence in respect of identification of the accused / applicant and, therefore, he deserves to be granted benefit of doubt. In fact, in the cross examination, the first informant has specifically stated that the driver and the passengers of the said Taxi had taken him to the hospital. In view

of this, it was incumbent upon the first informant to identify the driver of the said Taxi. Evidence before the court, in respect of identification, would be a substantive evidence. However, it is clear from the deposition of PW 1 Sudhir More, that he has not identified the applicant in the court / before the court as the person who was driving the said vehicle at the relevant time.

6. The learned Judicial Magistrate (F.C.) has proceeded to place reliance upon evidence of PW 4 Vijay Nikalje who was also a victim of the said incident. He has deposed before the court, that at the relevant time, he was driving bicycle and that, the first informant was driving as a pillion rider. That, a Town & Country Taxi had dashed them from behind. They had fallen down and had sustained injuries. He has identified the applicant before the court. He has further deposed before the court, that he was taken in the same Taxi to the hospital. In the cross examination, he has admitted that the name of the present applicant was disclosed to him by the Police. He has further deposed that it was same person who had taken him and the first informant to Ghati Hospital. That, the Military personnel had stopped the said vehicle because they were trying to flee from the spot.

7. There is variance in the statement of PW 1 Sudhir More and PW 4 Vijay Nikalje. It is not stated either in the FIR or in the deposition of both the witnesses, that after witnesses had fallen on the ground, the Taxi driver had attempted to flee from the spot. In fact, it is categorically admitted, that the Taxi had stopped and that the applicant and the co-passengers have taken the witnesses to Ghati Hospital. The conduct of the

accused needs to be appreciated under Section 8 of the Indian Evidence Act. While recording statement under Section 313 of the Cr.P.C., no question was put to the accused / applicant, as to whether they had attempted to flee from the spot of incident and they were apprehended by the Military personnel. The said conduct, at the relevant time, would go to the root of the matter, that the same would cause a serious prejudice to the accused. The factum of obstructing the Taxi subsequently by the Military personnel is not proved by the prosecution. In the present case, it prima facie appears that it was a plain accident and that there is no negligence on the part of either the driver or the injured persons. In the statement under Section 313 of the Cr.P.C., the applicant had stated before the court, that in fact, before he reached the spot, PW 1 Sudhir More and PW 4 Vijay Nikalje were lying on the spot in injured condition and in order to substantiate the claim before the Motor Accident Claims Tribunal, the Police had instigated PW 1 Sudhir More and PW 4 Vijay Nikalje to lodge a report against him. The answer to Question No.10 also needs to be taken into consideration.

8. For the reasons stated herein above, the Revision Application deserves to be allowed.

9. In the result, the Revision Application is allowed.

(A) The judgment and order passed by the learned 6th Judicial Magistrate (F.C.), Aurangabad, dated 12th May 2000, in Summary Criminal Case No. 68/1999, is hereby quashed and set aside. Consequently, the judgment and order of dismissal dated 17th May 2003,

(6)

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passed by the learned 1st Ad hoc Additional Sessions Judge, Aurangabad, in Criminal Appeal No. 31/2000, is also quashed and set aside.

(B) The applicant is acquitted of all the charges levelled against him.

(C) Amount of fine, if paid, be refunded to the applicant. Bail bonds of the applicant stand cancelled.

10. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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