

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.130 OF 2014

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

BIRDEV RAHGU DONE)...RESPONDENT

Mrs.S.V.Gajare, APP for the Applicant – State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 13th FEBRUARY, 2015.

P.C. :

1 By this application, the State of Maharashtra is seeking leave to appeal from the judgment and order delivered by the Judicial Magistrate First Class on 10th April, 2014, in S.C.C. No.127 of 2011, acquitting the respondent, who was the accused in the said case, of the offences punishable under Sections 304A, 379, 338, 184 of Indian Penal Code (IPC).

2 I have heard Mrs.S.V.Gajare, the learned APP for the State. I have gone through the application and the copy of the impugned judgment that is annexed thereto. With the assistance of the learned APP, I have gone through the notes of evidence that was recorded during the trial, which was made available to me.

3 The prosecution case was that, the Truck No.MH-09-Q-5591 had dashed against a motorcycle, and that, as a result of this impact, the pillion rider on the motorcycle sustained injuries resulting in his death. The person who was driving the motorcycle was also injured in the accident. The case of the prosecution was that, the respondent was driving the said truck, at the material time.

4 The Magistrate observed that, that the accident had taken place due to rash or negligent driving of the truck driver, had not been established. He also observed that there was no evidence to show that the respondent was driving the truck in question, at the material time.

5 It is not necessary to go into the question, as to, whether the Magistrate's findings, about rash and negligent driving having not been proved, are proper or legal. It is because, it is absolutely clear that, there was no evidence to show that the respondent was driving the truck in question, at the material time. The respondent was not apprehended on the spot after the accident. Not only that, there is nobody, who says that the respondent was driving the said truck at the material time, but interestingly, the Investigating Officer admitted in his cross-examination that the truck was being driven by someone else. The respondent appears to have been prosecuted because he happens to be the owner of the truck in question.

6 Since there was nothing to show that the respondent was driving the truck in question at the material time, the order of acquittal as recorded by the Magistrate cannot be faulted.

7 There is no substance in the application.

- 8 Leave refused.
- 9 The application is rejected.

(ABHAY M. THIPSAY, J.)