

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO. 256 OF 2001

Aimul Hasan Maqbool Hasan Khan
aged 40 years, Occ. Bus Driver
resident of Room No.3, Galli No.3,
Katinagar Hutments, II Rabodi, Thane

... Applicant.
(Org. Accused)

V/s.

The State of Maharashtra

... Respondent.

Mr. M.H.Solkar, Advocate for the Applicant.
Mr. Ajay Patil, APP for the State.

CORAM : M.L.TAHALIYANI, J.
DATE : 05 JANUARY, 2015

ORAL ORDER :

1 The Applicant, original accused, felt aggrieved by the judgment and order passed by the Additional Sessions Judge, Mumbai in Appeal No. 20 of 2000, whereby the Appeal of the Applicant against the order of the Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai, was dismissed.

2 The Applicant was prosecuted for the offence punishable under section 304-A and 279 of the Indian Penal Code, registered at Pant Nagar Police Station. Trial was held

before the Magistrate. Three witnesses were examined during the course of the trial. After the conclusion of the evidence and statement of the Applicant recorded under section 313, the Applicant was found guilty of the offence punishable under sections 279 and 338 of the IPC.

3 The incident in question had occurred on 12th July, 1992. The complainant (PW-1) was traveling along with his father - Dattatray Dhonduram Karanjkar in a BEST Bus on route no. 353 from Tagore Nagar at around 5 p.m.. PW-1 and his father were to get down at Rajawadi Hospital bus stop. Both of them got down from the front door of the double decker bus. PW-1 got down before his father could get down from the Bus. It was alleged that as soon as the father of PW-1 was getting down from the bus, the Applicant, who was driving the Bus, started the bus. The father of PW-1, therefore, could not get down from the bus. He was in the process of getting down and the bus started suddenly. Since the father of the applicant was holding handle of the bus to get down and as he continued to do so, he could not get down and he was dragged by the bus upto the distance of 20 to 25 feet. Due to which, the father of PW-1 sustained various injuries on his body and he was taken to the hospital. He was admitted for treatment. He, however, died after about three weeks. Cause of death is the injuries sustained by the deceased father of PW-1 during the course of the above described incident. After completion

of the investigation, a charge-sheet was filed against the Applicant for the offence punishable under sections 304-A, 279 of the IPC. As already stated, the Applicant has been convicted for the lesser offence i.e. offences punishable under sections 279 and 338 of the Indian Penal Code.

4 The judgment of the learned trial Magistrate was based on the evidence of PW-1 only. PW-1 was the only eye witness to the incident. PW-2 has specifically stated in his evidence that he did not see as to how the father of the PW-1 had sustained injuries.

5 Learned Advocate Mr. Momin Solkar appearing for the Applicant has submitted that this is not a genuinely one witness case. It is submitted that there might be many others who might have witnessed the incident in question. He, therefore, contended that the court may draw an adverse inference that the prosecution had not examined other eye witness. In ordinary course, this could have been a good argument. However, as everybody knows, in the city of Bombay it is very difficult to get witness, even though the investigating officer knows that there were other eye witnesses. The passersby and the passengers in the bus may have left the bus by the time the police arrived on the spot. Therefore, in my opinion, this failure on the part of the police officer to record

statements of other eye witnesses cannot be a reason for drawing adverse inference in this case.

6 PW-1 in his evidence has supported the prosecution case and has stated that his father sustained injuries while getting down from the bus. He has specifically stated that the driver/applicant had driven the bus while the deceased was getting down from the bus. Question, therefore, before the trial court and the appellate court was as to whether the evidence of PW-1, the only eye witness, should be relied upon or not.

7 I have gone through the evidence of PW-1. He has described the incident as per the prosecution case. However, in his cross-examination he has stated that he did not remember whether he has stated before the police that his father had sustained injuries while getting down from the bus and that his father had been dragged by the bus upto a distance of about 20 feet. I have gone through the evidence of investigating officer also. In fact this could have been an omission had it been proved by the defence during the course of the cross-examination. It appears that the statement of the PW-1 and his supplementary statement dated 31st July, 1992 were not recorded by the investigating officer-PW-3. It further appears from the record that the witness, who had recorded

the statement of PW-1, had not been examined by the prosecution. To my mind the prosecution should have examined the witness who had recorded the statement of the prime eye witness. It has also come in the evidence that the deceased was holding handle despite the fact that the bus had started. In this regard, it may be noted here that under the normal practice of BEST Bus drivers, the driver starts the bus as soon as the last passenger gets down from the bus. In my opinion, this could be a misjudgment on the part of the present Applicant. It is possible that the Applicant might have thought that since the father of the PW-1 had alighted from the bus, he would not continue to hold the handle of the bus. Under such situation, it appears that it is a matter of 4 to 5 seconds or may be less than that when mis-judgment had taken place which resulted in serious injuries to the father of PW-1. From the evidence given by the PW-1, it is very difficult to say as to whether, the Applicant was rash and negligent in driving the bus or it was a mistake on the part of the deceased to keep on holding the handle of the bus for a longer time than usual time while alighting the bus. Since such a doubt has been created in the mind of the court, the benefit of the such doubt must go in favour of the Applicant. This particular issue has not been examined either by the trial court or by the appellate court. Hence, I have no hesitation to come to the conclusion that both the orders need to be set aside and the revision application needs to be granted.

8 In the result, the Revision Application is allowed. The conviction of the Appellant for the offences punishable under sections 279 and 338 is set aside. The Applicant is acquitted of the said offences. His bail bond shall stand cancelled. Fine, if any, paid by the Applicant shall be returned to him.

(JUDGE)

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