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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 146 OF 2004**

Shri Bhimrao Ananta Chavan ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. A.P. Kulkarni for the applicant.

Ms. G.P. Mulekar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 20, 2015**

P.C.

Heard learned counsel for the applicant and learned A.P.P. for the State.

2. The applicant had been convicted for the offence punishable under section 304A of Indian Penal Code for having caused death of one Nivrutti Jamdade by driving his vehicle No. MCA 2878 in rash and negligent manner and sentenced to suffer SI for six months and fine of Rs.1,000/-. Criminal Appeal has been partly allowed by the Sessions Court and sentence has been reduced to three months from six months. As such, the conviction is maintained.

3. The whole case of the prosecution before the trial court was based on the evidence of P.W. No. 1 Balu who had seen the incident. He has stated that the deceased was going by the left side of Nira Baramati road

within the jurisdiction of Wadgaon police station. The tempo which was driven by the applicant gave dash to the deceased and deceased died on the spot. He has not given any evidence as to in what manner the tempo was being driven so that the court can examine whether it amounted to negligence or rashness. At the same time, it is to be noted that this witness stated that Neera Baramati road goes on East to West and that the deceased was proceeding by South side of the road. It is not stated as to how much he was away from the road and as to whether the tempo went on the footpath or left the area of the road. As such, it was very difficult for the trial court to ascertain whether the applicant was rash or negligent. The conclusion of the court can not be based on the opinion of the witness. The witness was supposed to give details of the facts and the court could have decided whether it amounted to rashness or negligence. In the circumstances, in my view, learned trial court has wrongly convicted the applicant for the offence punishable under section 304A of Indian Penal Code.

4. In the result, revision succeeds. The order passed by the Judicial Magistrate, First Class, Baramati in Criminal Case No. 1962 of 1994 and the order passed by the Additional Sessions Judge, Baramati in Criminal Appeal No. 30 of 1997 are set aside. The applicant is acquitted of the offences punishable under section 304A of Indian Penal Code. His bail bonds, if any shall stand cancelled.

(JUDGE)