

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.458 of 2014

The State of Maharashtra .. Appellant

Versus

Sanjay Shamji Lakhum .. Respondent

Ms.S.S.Kaushik, APP for the appellant State.

Sanjay.S. Lakhum, respondent in person person.

CORAM : ABHAY M. THIPSAY, J.

DATED : 2nd MARCH, 2015

P.C. :

1 The respondent was prosecuted on the allegation of having committed offences punishable under sections 279 IPC, 338 IPC and 304-A of the IPC. The Addl. Chief Metropolitan Magistrate, 30th Court, Ballard Pier, after holding a trial found the appellant guilty of an offence punishable under section 304A of the IPC, and sentenced him to suffer RI for three months, and to pay a fine of Rs.1,000/- in default to suffer SI for 15 days. The State of Maharashtra is not satisfied with the finding of conviction as recorded by the learned Magistrate and the sentence imposed by him upon the respondent, as according to the State, the sentence awarded to the respondent is inadequate. It is therefore, that the State has filed the present Appeal for the enhancement of

the sentence as contemplated under section 377 of the Code of Criminal Procedure.

2 Before proceeding further, it may be observed that the respondent has already filed an Appeal in the Court of Sessions, challenging the order of his conviction and the sentence imposed upon him. It was suggested to the learned APP that the question of enhancement of the sentence could be raised by the State in the said Appeal itself which could be decided by the Sessions Judge after giving a notice to the respondent herein (applicant before the Court of Sessions), but the learned APP had no instructions on whether such a course should be permitted to be adopted. I have, therefore, heard the present Appeal which is being decided on merits. It may, however, be observed that the question that has been considered is only with respect to the adequacy of sentence assuming that the charge against the respondent had been proved, and no observations in this Appeal should be construed as endorsing the correctness of the conviction recorded by the trial court.

3 It is obvious that the correctness of the conviction will have to be gone into by the Court of Sessions in the Appeal that has been filed by the respondent herein.

4 The respondent is alleged to have driven his motorcycle in a rash and negligent manner, and caused the death of one Vikesh.

5 The question is whether the sentence as imposed by the learned Magistrate is inadequate.

6 Section 304 A of the IPC provides for a maximum punishment for Imprisonment for a period of two years. The section also gives an option to the Court to impose a sentence only of fine.

7 I have gone through the Appeal Memo, and I find no basis for the claim that the sentence imposed by the Magistrate on the respondent, is inadequate. It is mentioned in the Memo of Appeal that the learned Magistrate ought to have imposed the maximum punishment that is provided for the offence, but no grounds as to why the maximum punishment provided for the offence which would be applicable even in cases of multiple deaths, should have been awarded in this case.

8 Admittedly, it is nobody's case that the respondent was drunk at the time of the incident. There is also nothing reflected in the judgment showing that the degree of rashness or negligence on the part of the appellant was of such an extreme nature so as to warrant a severe punishment.

9 The only submission that is made before me in support of the Appeal is that 'a life of a young person has been lost'. Loss of life is an ingredient of an offence punishable under section 304A of the IPC, but still, the legislature has kept an option of imposing a sentence of fine alone in case of an offender who is proved to have committed the said offence.

10 There is absolutely no substance in the Appeal.

11 The Appeal is dismissed.

12 It is clarified that no observations made in this order shall be construed as this Court having opined the finding of conviction as recorded by the trial court to be proper. It is further made clear that this aspect of the matter will have to be decided by the Court of Sessions in accordance with law in the Appeal that has been filed by the respondent which is said to be pending before the Court of Sessions.

(ABHAY M.THIPSAY, J)