

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL REVISION APPLICATION NO.490 OF 2010

Manohar Rajaram Chavan

...Applicant

Versus

The State of Maharashtra & Anr.

.... Respondents

Mr. Schindra B. Shetye for the Applicant

Mr. A.R. Patil, APP, for the Respondent No.1-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : -23/02/2015

PC

Heard. Learned counsel for the Applicant has moved this Court against the order of Appellate Court dismissing his appeal against the order passed by the learned Magistrate convicting the Applicant for the offence punishable under sections 279, 304A and 338 of the IPC and sections 184 and 177 of the Motor Vehicles Act. The incident in question had occurred on 27-1-2007 within the jurisdiction of city police station, Ratnagiri. The Applicant was driving motor cycle No.MH-09-AM-8838 in front of Petrol Pump on Ratnagiri-Hatkhamba road situated at Kuwarbav locality. Sunilkumar Sohanlal Tiwari and his son Rushikesh Sunilkumar Tiwari were crossing the road. It is alleged that the motor cycle of the Applicant hit

Rushikesh Tiwari and he sustained a severe injury. Matter was reported to police. FIR under sections 279, 337, 338 and 427 of the IPC and sections 184 and 177 of the Motor Vehicles Act was registered at city police station Ratnagiri. Rushikesh Tiwari died due to accidental injuries on 31-9-2007. After completion of investigation chargesheet was filed in the Court of Magistrate. The Magistrate after recording of evidence of witnesses and particularly evidence of father of the deceased Rushikesh came to conclusion that the incident had occurred due to negligence and rashness on the part of the Applicant. Though the Applicant had valid driving license he could not produce the same before the police.

2. I have heard Mr. Sachindra Shetye, learned advocate for the Applicant and Mr. Rajiv Patil, learned APP, for the State. I have gone through the evidence of witnesses and more particularly the evidence of father of the deceased. It is in fact not described in the evidence as to how the incident had occurred. Moreover, it is admitted in the cross examination that the deceased and his father (PW4) were crossing the road when the incident had occurred. As such prosecution has failed to prove as to what kind of rashness or negligence on the part of the Applicant was involved. In my opinion the conviction of the Applicant for the offences

punishable under sections 279, 304A and 338 cannot be sustained. The conviction of the Applicant for the offence under section 184 of the Motor Vehicles Act also cannot be sustained in as much as there is no evidence as to how the Applicant could be said to have driven the vehicle dangerously. In my opinion the Applicant could have been convicted only for the offence under section 177 of the Motor Vehicles Act for not producing the license on demand by police. Hence, I pass the following order :

3. Revision Application is partly allowed. The conviction of the Applicant for the offences under sections 279, 338, 304A of the IPC and sections 184 and 3 r/w section 181 of the Motor Vehicles Act is set aside. He is acquitted of the said offences. His conviction for the offence punishable under section 177 of the Motor Vehicles Act and the sentence imposed by the learned Magistrate is maintained.

4. Fine, if any, for the offences for which he is acquitted, paid by him shall be refunded to him.

5. The application stands disposed of accordingly.

(JUDGE)