

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 268 OF 2002

The State of Maharashtra,
through P.S.O., Shrigonda
Police Station, District
Ahmednagar

APPELLANT

VERSUS

Rohidas Ganpat Khamkar,
Age : 28 years, Occu. Driver
and Agriculture, R/o Ghargaon,
Tq. Shrigonda, Dist. Ahmednagar

RESPONDENT

Mr. R.B. Bagul, A.P.P. for the appellant/State
Mr. R.B. Bagul, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 29/01/2016

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the lesser punishment awarded to the respondent while convicting him for the offences punishable under section 304-A and 279 of the I.P. Code and under section 184 of the Motor Vehicles Act, the State has filed the present appeal.
3. The learned Judicial Magistrate First Class,

Shrigonda convicted the present respondent, vide his order dated 5th February, 2002 passed in S.T.C. No. 401/1998, finding that he has not taken proper care of the safety of the persons who were travelling by the tempo driven by him. The tempo got turtled. One of the travellers sustained the head injury and thereafter, died. The prosecution could not prove that any other passenger had suffered injury in the incident.

. While dealing with the aspect of awarding sentence to the respondent, the learned Judicial Magistrate First Class concluded that considering the age of the respondent, it would not be essential to award any substantive sentence to him. He was, therefore, directed to pay fine of Rs. 1500/-, in default to suffer simple imprisonment for two months for the offence punishable under section 304-A of the I.P. Code, by order dated 5th February, 2002. No separate sentence was ordered for the conviction of the respondent for the offence punishable under section 279 of the I.P. Code and under section 184 of the Motor Vehicles Act.

. Aggrieved by the said order of conviction and sentence, the criminal appeal No. 14 of 2002 filed by

the present respondent before the Sessions Court, Ahmednagar came to be dismissed vide judgement and order dated 24th December, 2013. Hence, the State has filed the present appeal against the order of sentence passed against the present respondent by the learned Judicial Magistrate First Class.

4. The learned A.P.P. submitted that due to the rash and negligent driving of the tempo, one life is lost. In the circumstances, the learned Judicial Magistrate First Class ought to have awarded the substantive sentence to the respondent.

5. The learned counsel for the respondent, on the other hand, submits that when the accident had occurred on 3rd July, 1998, the respondent was only 28 years old. Had he been directed to undergo any substantive sentence, his dependents would have suffered. Taking into consideration all these facts, the learned Judicial Magistrate First Class has exercised his discretion. The discretion exercised is not perverse and therefore, no interference is warranted in the order of sentence.

6. The provisions of section 304-A of the I.P. Code would show that maximum punishment that can be awarded for conviction of the accused under section 304-A of the I.P. Code is two years' rigorous imprisonment with or without fine. Taking into consideration the plea of the respondent, the learned Judicial Magistrate First Class has directed that there is no need to send the respondent to the jail and in the year 2002, he was directed to pay fine of Rs. 1500/-.

7. The imposition of punishment always remains a discretionary act unless minimum punishment is provided by the Statute. The exercise of discretion may differ from person to person and the only outlook as to whether the said discretion is exercised upon taking all the material circumstances into consideration. The learned Judicial Magistrate First Class has considered the death of one of the travellers of the tempo as well as the age of the respondent. I do not find any perversity in the exercise of the discretion by the learned Judicial Magistrate First Class, more particularly when the present appeal is being decided after about thirteen years from the date of awarding the sentence against the

respondent.

8. In the result, the appeal is dismissed. The bail bonds of the respondent, if any shall stand cancelled.

[M.T. JOSHI]
JUDGE

npj/criapl268-2002