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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 122 OF 2004

Ramakant s/o Divakarrao Kulkarni,
Age: 35 years, Occu: Service,
R/o: Kanchannagar, Nakshatrawadi,
Aurangabad

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Sk. Irfan s/o Sk. Nawab,
Age: 23 years, Occu: Driver,
R/o: Nathcahap Zopadpatti,
Malegaon, Dist. Nasik

..RESPONDENTS

Mr R. S. Shinde, Advocate for applicant;
Mr N. T. Bhagat, Addl. Public Prosecutor for respondent No. 1;
Mr A. A. Khan, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 28th September, 2016

ORAL ORDER :

Heard learned Counsel appearing on behalf of the applicant at length.

2. In Summary Criminal Case No.2434 of 2002, the learned Judicial Magistrate First Class, Aurangabad, ordered acquittal of the respondent no.2-accused for offences punishable under sections 304-A, 279, 338, 337 of the Indian Penal Code and under section 134 of the Motor Vehicles Act. The present revision is preferred by the original complainant questioning

(2)

the acquittal, with a prayer for remand.

3. The facts, as are necessary for decision of the present revision, are as under :-

On 13th March, 2002 deceased Shashikant was proceeding towards his poultry farm at Babalgaon in his loading rickshaw bearing registration No.MH 20-W-7359 along with four occupants. Respondent – accused was driving his truck bearing registration No.MH-19-263 and it was claimed that the said truck had given dash to the auto-rickshaw, resulting into auto-rickshaw suffering severe damages and Shashikant suffering injuries resulting into his death.

4. P.W.1 complainant Ramakant had lodged complaint with the police station, which is proved at Exh.12. In his supplementary statement, he had stated that after the complaint came to be lodged with the police station, when the police arrived at the spot had drawn panchnama, the vehicle i.e. truck in question was not identified till then. It is at the time of drawing of the spot panchnama and the map of the spot, a number plate was noticed, which was assumed to be of the truck in question and upon further investigation, the offence came to be registered against the respondent-accused after the information about him was furnished by the truck owner.

5. Learned Magistrate, after considering the evidence, particularly that of P.W.1 complainant Ramakant at Exh.12, P.W.2 Nanasaheb at Exh.34,

(3)

P.W.3 Surendra at Exh.21, P.W.4 Rajiv at Exh.23, P.W.5 Vaijnath at Exh.24, P.W.6 P.S.I. Shivaji at Exh. at Exh.28, the Investigating Officer and also other documentary evidence, viz. post mortem reports at Exhs.15/16, accident report Exh.17, another accident report Exh.18, inquest panchnama at Exh.25 and injury certificates at Exhs.32, 33 and 34, acquitted the respondent-accused.

6. The learned Magistrate, though evaluated the evidence of all the witnesses, still noted that the truck driver was not identified. It is then noted that there were in all five persons including deceased Shashikant, who were travelling in the auto-rickshaw, which was meant for carrying goods and said auto-rickshaw hit the truck on its cleaner's side i.e. on wrong side of the road. The learned Magistrate then noted that the prosecution has not proved the case beyond reasonable doubt and ordered acquittal of the accused.

7. While trying to make out a case for remand, learned Counsel appearing on behalf of the complainant would urge that, *prima facie* it could be inferred from detecting the number plate of the truck in question on the spot and the fact that the truck had also suffered damage, according to him, it is a case of hit and run, which angle is not at all investigated into. He would then urge that there is confirmation *qua* the accident in question, particularly about involvement of the truck, as the truck had also suffered damage in the said accident. He would then submit that the matter as such, needs to be remanded to the learned court below for fresh

(4)

appreciation.

8. Learned Addl. Public Prosecutor supported the claim.

9. With the assistance of respective Counsel, I have perused the original record. The incident in question took place on 13th March, 2002 and offence came to be registered vide C.R. No.48 of 2002 for offences punishable under sections 304-A, 279, 337, 338 and 427 of the Indian Penal Code.

10. P.W.1 Ramakant, the complainant, though proved the complaint Exh.13 and his supplementary statement was recorded, in his cross-examination had stated that his brother was driving loading rickshaw and one Santosh was sitting along with him on the front seat. He has not stated about the vehicle number, the number plate and identification of the Driver of the truck in question. P.W.2 Nanasaheb in his evidence stated that he went to the spot along with the Investigating Officer. In cross-examination, he has admitted that before coming to the court, in the morning he had consumed liquor. He claimed to be the neighbour of deceased Shashikant. He was unable to narrate the number of the auto-rickshaw and has also not stated about the truck in question.

11. P.W.3 Surendra, a panch witness, has proved the panchnama Exh.22 and has also identified the number plate, which was bearing No.263.

(5)

12. P.W.4 Raju is also a witness to the panchnama, who has proved the same. P.W.5 Vaijnath, who was working with deceased Shashikant stated about the incident in question and further claimed that the truck had given dash to the auto-rickshaw. He has admitted that along with Shashikant one Sathe was occupying front seat. The Investigating Officer Shivaji, who is examined at Exh.28, has stated that he had traced the truck in question, based on the number plate and stated that he had noticed that the truck was driven at a high speed.

13. Taking cumulative effect of the evidence as is brought on record, there is hardly any material to infer that the applicant is the person who was driving the truck at the relevant time, which met with an accident. Rather, there is no concluding evidence, so as to infer that the truck in question had given dash as the same was identified only based on the track of number plate of the truck and not actually the vehicle.

14. Assuming that the truck in question had caused the accident, still the fact remains that the auto-rickshaw driven by deceased Shashikant had hit the truck from its cleaner's side and as such, it has to be inferred that the auto-rickshaw was being driven on wrong side of the road, apart from the fact that there was a passenger on the driver's seat along with driver Shashikant.

(6)

15. The evidence of the other witnesses has not proved beyond reasonable doubt that it was the applicant-accused, who was driving the truck in question in a rash and negligent manner.

16. In view of above, the acquittal as is recorded by the learned Magistrate, in my opinion, does not call for interference in revisional jurisdiction. Criminal Revision Application as such fails and stands rejected.

(N.W. SAMBRE, J.)

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