

(1)

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

CRIMINAL REVISION APPLICATION NO. 356 OF 2003

Ajay s/o Waman Patil,
Age: 27 years, Occu: Student,
R/o. Chaityan Nagar, Nanded

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr A. D. Sugdare, Advocate for applicant;
Mr R. V. Dasalkar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th August, 2016

ORAL ORDER :

This revision is by the accused against the judgment of learned Chief Judicial Magistrate, Nanded, in Summary Criminal Case No. 1629 of 2000, by an order dated 01/08/2001, convicting the applicant-accused for the offence punishable under Sections 279 and 337 of the Indian Penal Code, sentencing him under Section 279 of the Indian Penal Code to suffer simple imprisonment for 15 days and pay fine of Rs. 1,000/-, in default, to suffer simple imprisonment for two months and for offence punishable under Section 337 of the Indian Penal Code, to suffer simple imprisonment for 15 days and pay fine of Rs. 500/-, in default, to suffer simple imprisonment for 15 days.

2. The said order of conviction was confirmed by the learned Sessions Judge, Nanded, in Criminal Appeal No. 59 of 2001 by the Judgment and order dated 21/07/2003. As such present criminal revision application.

(2)

3. Heard learned Counsel for the applicant and learned A.P.P. for the State.

4. Learned Counsel for the applicant would submit that, the applicant is entitled for the acquittal in the crime in question for the reason that, there is hardly any material to infer that driving of the vehicle in question was in rash and negligent manner. He would further urge that very ingredients of the Section 279 of Indian Penal Code i.e. rash driving or riding on a public way, causing hurt by endangering human life or person safety of others were not established. According to him, the prosecution has not examined the doctor in support of injuries suffered by the victim nor any of the witnesses in categorical terms have stated that the applicant was responsible for the accident in question.

5. Learned A.P.P. submits that, both the Courts below having concurrently held that the applicant is involved in the crime in question, and have ordered his conviction. Learned A.P.P. would submit that, this Court should be slow in interfering the findings, particularly in the light of scope of revisional jurisdiction. He would then submit that there is enough material on record to connect the present applicant to the crime and conviction is just and proper.

6. With the assistance of respective Counsel, I have perused original record and proceedings.

(3)

7. It is required to be noted that, the incident in question has occurred on 25/03/2000 at about 10.15 a.m. at I.T.I. Road in Nanded, when the applicant was driving motorcycle bearing registration No. MH-26-C-6035. It is claimed that, applicant hit the complainant Maroti Waghmare, when he was going for reporting his duties. The present applicant who was riding motorcycle, came from Shivaji Nagar direction in high speed and dashed him, resulting into causing grievous injuries, as such the offence being Crime No. 85 of 2000 for the offences punishable under Section 279 and 337 of the Indian Penal Code came to be registered and the Investigating Officer filed the chargesheet.

8. In support of prosecution story, the complainant Maroti Waghmare is examined as P.W.-1 at Exh. 8, P.W.-2 – Murali, Saloon owner, P.W.-3 – Sharad, chance witness, P.W.-4 – Kondiba Adhile, Investigating Officer.

9. If the evidence as is brought on record is analysed, it is required to be noted that P.W.-1 Maroti, in his examination-in-chief has stated that the applicant was riding motorcycle and gave dash to him from front side causing injuries to left eye, mouth, cheeks, shoulder and legs. According to him, he was shifted to the hospital of Dr. Rahati immediately and thereafter on 05/04/2000, he lodged the complaint. He claimed that he lodged complaint after recovery, as he was hospitalised as indoor patient for one day. In his cross-examination, he has in clear terms admitted that, he has not informed the police that present applicant was driving the vehicle in rash and negligent manner. According to him, number of the

(4)

vehicle was told to him by witness Murali, Saloon owner. He has not stated in his evidence that, he identified the applicant-accused, though he has proved his complaint - Exh. 12.

10. P.W.-2 Murali, in his examination-in-chief has stated about the alleged incident and stated that the present applicant was driving the vehicle in rash and negligent manner. He then narrates that after the complainant sustained injuries, he was alongwith the applicant-accused to hospitalise the complainant went to Dr.Rahati's Hospital. In his cross-examination, he stated that the road in question, where the accident took place, is having heavy traffic flow. He then claimed that he reached the spot first. He then stated that he has not informed police that accused was driving in a rash and negligent manner. P.W.-3 Sharad, chance witness stated that, he was enjoying *Pan* (betel leaf) at Pan Shop from where, he witnessed the accident in question. He then stated that, accused was present on the spot. He has not stated that present applicant was driving the vehicle in a rash and negligent manner.

11. From evaluation of the evidence as is brought on record, it is required to be noted that, none of the eye witnesses have come out with the case that they have stated the Investigating Officer that the applicant was driving vehicle in a rash and negligent manner. In the evidence of complainant P.W.-1, he has neither stated about identifying the accused nor stated about rash and negligent driving. What is stated is that, accused was driving at high speed.

(5)

12. It is then required to be noted that, for satisfying the ingredients of Section 279 of the Indian Penal Code, what is required to be satisfied that life of a person is to be endanger or likely to cause hurt or injury to any person. The ingredients of Section 337 of the Indian Penal Code with which the applicant was charged, speaks of causing hurt by the act of endangering life or personal safety of others.

13. Though the complainant has claimed that he was hospitalised in Dr. Rahati's Hospital and he suffered injuries, injury certificate is placed on record which is marked as Exh. 13. However, it is required to be taken note of the fact that the said injury certificate issued by the Medical Officer, Shri Guru Govind Singh Memorial Hospital, Nanded in favour of complainant Maroti. The said injury certificate is neither proved by examining the author of the same or such other witness, who could have proved the same from the record of hospital. Apart from above, Dr. Rahati, with whom the complainant was hospitalised for a day, he was not also not examined.

14. Apart from above, it is required to be noted that, P.W. 4, the Investigating Officer has investigated the Crime No. 85 of 2000. According to him, he has drawn spot panchnama and recorded the statement of the witnesses, the injury certificate is exhibited at Exh. 13 though doctor in support thereof was not examined. It is then required to be noted that neither vehicle involved in the accident was seized nor he has inquired with the R.T.O., Nanded regarding the ownership of vehicle.

(6)

15. It is then brought to my notice that, once the injury certificate is not proved, the question of attracting provisions of Section 337 of the Indian Penal code, no more arises as the very ingredients of Section 337 of the Indian Penal Code are causing hurt by an act endangering human life or personal safety of others. If the injury certificate itself is not proved, so did identification of accused, in my opinion, crime for offence punishable under Section 337 of the Indian Penal Code, is not sustainable. So far as Section 279 of the Indian Penal Code is concerned, which provides for punishment for rash and negligent driving or riding on public way, causing hurt by endangering human life or person safety of others.

16. It is required to be noted that, what has been stated in the evidence of P.W.1, P.W.2 and P.W.3 is that applicant was driving at high speed, however, not in rash and negligent manner. Complainant himself has stated that applicant was not driving the vehicle in a rash and negligent manner. Apart from above, the complainant claimed that, he was hospitalised for a day and was discharged and as such, there is substantial delay of about more than one week in lodging first information report.

17. In this background, in my opinion, if the ingredients of Section 279 of the Indian Penal Code are also not satisfactory for the conviction of the present applicant.

(7)

18. In view of above, in my opinion, the revision need to be allowed. The judgment and order passed by the learned Chief Judicial Magistrate, Nanded, on 01/08/2008, in Summary Criminal Case No. 1629 of 2000 and confirming in Criminal Appeal No. 59 of 2001, by the learned Sessions Judge, Nanded on 21/07/2003, are hereby set aside. The applicant-accused is acquitted of the offence punishable under Sections 279 and 337 of the Indian Penal Code.

Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

sjk