

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

CRIMINAL REVISION APPLICATION NO. 377 OF 2003

Walmik s/o Dattatraya Hargude,
Age: 38 years, Occ: Driver,
R/o. Kesband, Tal. Haveli,
Dist. Pune.

...Applicant

versus

State of Maharashtra.

...Respondent

.....
Mr. S.V. Natu, Advocate h/f Mr. S.R. Choukidar, Advocate for
applicant
Ms. R.P. Gour, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 2nd MAY, 2016

ORAL ORDER :

Present applicant, an accused alleged to have caused an accident on 14/10/1996 resulting into death of two children, one boy and a girl and also injured the complainant while driving heavy motor vehicle i.e. truck bearing Registration No. MTO-5565. The accused was charge sheeted for an offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code vide Summary Case No. 878 of 1997 before 9th Judicial Magistrate, First Class, Aurangabad. The present applicant was convicted by the judgment and order dated 01/03/2000 for an offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code and

directed to undergo an order of rigorous imprisonment for one year and fine of Rs.200/- in default, to suffer rigorous imprisonment for two months.

2. Feeling aggrieved, Criminal Appeal No. 24 of 2000 came to be partly allowed at the behest of the present appellant, acquitting the present applicant-accused for an offence punishable under Section 337 of the Indian Penal Code, however conviction for an offence punishable under Sections 279 and 304-A of the Indian Penal Code came to be maintained. Punishment was modified from one year to six months i.e. maximum provided for an offence punishable under Sections 279 and 304-A of the Indian Penal Code with fine.

3. Conviction for an offence punishable under Sections 279 and 304-A of the Indian Penal Code is questioned in the present criminal revision application.

4. Mr. Natu, learned Counsel for the applicant-accused, while trying to make out a case for acquittal, would urge that the incident occurred at around 8-30 p.m. and vehicle was immediately stopped at the distance of 20 feet from the point of accident. He would submit that the inference that could be drawn is, the applicant was driving vehicle in careful manner and charge of rash and

negligent driving could be attributed to him. He would then submit that the applicant though left spot of incident, but surrender speaks of his having respect to law.

5. Learned A.P.P. opposed the submissions made by learned Counsel for the applicant-accused and while relying upon the evidence of the complainant, would submit for dismissal of the revision.

6. With the assistance, I have perused original record.

7. It is required to be noted that the complaint came to lodged by one Ashok Bodke, who is examined at Exhibit-26 deposed that, while his son Nandkishor, who was working at a tea stall, he went there alongwith his daughter by crossing the road. While going back to the home alongwith his children i.e. Nandkishor and daughter Sangita, truck in question driven by present applicant in rash and negligent manner hit all of them, resulting into death of his daughter Sangita the moment she was reached to hospital, and son Nandkumar was declared dead on next day early morning and complainant Ashok was also claimed to be unconscious. It has come on record in the evidence that the applicant was driving vehicle at high speed and in a rash and negligent manner. The other witness

who is examined is Vijay Waghmare at Exhibit-20, who claimed to be an eye witness to the incident and has also stated that the present applicant was driving the vehicle in question and accident caused because of driving at high speed. In his cross examination, it is brought on the record that the vehicle in question was stopped at 15 to 20 feet away from the spot of incident. It is also brought on record that the present applicant immediately went to the police station.

8. The evidence of PW-2 Sk. Yasin at Exhibit-21 was discarded in the light of incorrect narrations given by him, particularly about time of the incident. PW-3 Praful Nikde at Exhibit-22 has stated about rash and negligent driving of the present applicant.

9. Upon appreciation of evidence and the spot panchnama, learned trial Court has convicted the accused, which was modified in the appeal.

10. It is then required to be noted that the incident has occurred on the busy road in the city of Aurangabad and the complainant and his children were no strangers to the said road at point on which the accident in question has occurred. It is then required to be noted that even if presuming that stopping of truck at the distance of about 15 to 20 feet from the spot of accident, it could

be inferred that vehicle was driven at high speed so that he stopped the said vehicle after 15 feet and not immediately.

11. Apart from above, it is to be noted that the accident took place on too busy road, that too when there was heavy traffic at about 8-30 p.m. infers about speedy driving by the applicant.

12. Based on the evidence of the witnesses narrated herein above, in my opinion, learned Magistrate and learned Sessions Judge were right in convicting the present applicant for an offence punishable under Sections 279 and 304-A of the Indian Penal Code.

13. At this stage, it is brought to my notice that the applicant has already undergone two months imprisonment and this Court should take lenient view in view of the fact that the accident in question has occurred some 20 years back.

14. It is also brought to my notice by Mr. Natu, learned Counsel for the applicant that earlier to the said accident and thereafter, there is no such history as against the present applicant.

15. In view thereof, in my opinion, as is rightly claimed by Mr. Natu, learned Counsel for the applicant, the applicant is entitled

to be released on probation, in view of the law laid down by the Apex Court in the matter of **State Through Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla & anr.** reported in **(2015) 13 SCC 444**. As such, the applicant be released on probation, upon executing the bond of good behaviour with the Probation Officer of relevant place within four weeks from today.

16. As such, present criminal revision application stands disposed of in above terms.

[**N.W. SAMBRE, J.**]