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

CRIMINAL REVISION APPLICATION NO. 395 OF 2003

Salim Ahmed s/o Abdul Rehman Patel,
Age : 32 yrs. Occu. Driver,
R/o Gendalal Mill, Jalgaon,
Dist. Jalgaon

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr R.S. Shinde, Advocate holding for Mr R.N. & A.R. Borulkar and Mr K.H. Dongre, Advocates for applicant;
Mr K.D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 28th September, 2016

ORAL ORDER :

On 2nd November, 2016, in the early hours, the applicant-accused was driving his truck bearing registration No.MH-19-5275, which met with an accident with jeep bearing registration No.MH-20-9514, resulting into death of the passengers in the jeep, namely, Vijay and Anna and injuries to other two passengers. As such, C.R. No.I-30 of 1996 for offences punishable under sections 279, 337, 304-A, 338 and 427 of the Indian Penal Code came to be registered.

2. After investigation, charge-sheet came to be filed and the applicant was tried in S.C.C. No.1384 of 1996 by the learned Judicial Magistrate First Class, Aurangabad. The charge came to be framed against the

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applicant vide Exh.9. The applicant pleaded not guilty and claimed to be tried.

3. In support of its case, prosecution has examined P.W.1 Shivdas at Exh.16, P.W.2 Chhaya, a co-passenger who got injured and P.W.3 Manda at Exhs. 19 and 20, respectively, P.W.4 Motising, the driver of the jeep at Exh.21, P.W.5 A.P.I. Vinayak, the Investigating Officer at Exh.23 and P.W.6 Sk. Jahoor, panch witness to the spot panchnama at Exh.26.

4. After analyzing the evidence as was brought on record, the learned Magistrate had convicted and sentenced the applicant-accused, as under :-

Offence under section	Sentence imposed
304-A IPC	R.I. for one year and fine of Rs.500/-, in default R.I. for ten days
279 IPC	R.I. for six months and fine of Rs.500/-, in default R.I. for ten days
338 IPC	R.I. for three months and fine of Rs.300/-, in default R.I. for eight days
337 IPC	R.I. for one month and fine of Rs.100/- and fine of Rs.100/-, in default R.I. for five days

5. In Criminal Appeal No.14 of 2001, learned Sessions Judge, Aurangabad, by judgment and order dated 4th December, 2003, maintained the conviction of the applicant, however, reduced the substantive sentence for offence punishable under section 304-A of the Indian Penal Code to a period of three months R.I. from one year's R.I. and no separate sentence

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for offence punishable under section 279 of the Indian Penal Code came to be awarded. As such, present revision against conviction.

6. Learned Counsel appearing on behalf of the applicant-accused would urge that the spot panchnama Exh.17 proved by P.W.5 A.P.I. Vinayak speaks of the accident in question at the place where the bridge was located. He would then submit that it is also mentioned that since construction of the road was in progress, the incident in question could be termed only as accident, as driver of the truck hit the jeep and there was no head on collision. According to the learned Counsel, apart from above, the fact remains that the applicant cannot be convicted for offences punishable under sections 279, 337 and also 304-A of the Indian Penal Code, as the vehicle of the applicant hit the jeep from its rear side. He would then invite my attention to the evidence of P.Ws. 2, 3 and 4 i.e. passengers Manda and Chhaya, respectively, who were travelling in the jeep in question by occupying the middle seat and Driver P.W.4, so as to submit that there is no evidence on record so as to conclude the guilt of the applicant-accused.

7. Per contra, Mr Bhagat, learned Addl. Public Prosecutor opposed the claim of the applicant on the ground that both the courts below have concurrently recorded finding of guilt against the applicant for offences in question. He would then submit that evidence of P.Ws.2, 3 and 4 was found to be consistent with each other and the courts below have rightly appreciated the same. He would then urge that the applicant was driving

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the truck at high speed and in rash and negligent manner, which had resulted into serious accident, as two passengers had lost their lives. Learned Addl. Public Prosecutor as such, submits that the court should dismiss the present revision.

8. With the assistance of respective Counsel, I have perused the record and proceedings. P.W.1 complainant is a police official, who has lodged the complaint. The said complaint was duly proved by the said witness. P.Ws.2 and 3 were occupying middle seat of the jeep. P.Ws.2, 3 and 4 in categorical terms have stated that the present applicant was driving the truck in question at a high speed and it was the rear side of the truck which had hit the jeep, resulting into two passengers in the jeep losing their lives. It is then to be noted that the testimonies of these three witnesses are consistent with each other and the suggestion that somebody else other than P.W.4 was driving the jeep came to be turned down by the witnesses P.Ws.2 and 3.

9. It is then to be noted that, from the spot panchnama Exh.17 it could be inferred that the truck had hit the jeep from its rear side. Visualizing the spot of the incident as narrated in Exh.17 and the fact that the truck had hit the jeep by its rear side leads to the only conclusion that the truck was driven at a high speed in a reckless manner resulting into accident in question.

10. Perusal of the judgments rendered by the courts below depicts that

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the entire evidence was duly scanned in an analytical manner and the order of conviction came to be passed against the applicant.

11. In view of above observations, in my opinion, no case for interference in exercise of revisional jurisdiction is made out. Criminal Revision as such fails and stands rejected.

12. This takes me to the next submission of the applicant that the incident in question has occurred some twenty years back and the applicant had suffered a lot as he has faced trial, appeal and revision before this Court. He would submit that looking to the nature of occurrence of the incident in question, the applicant be granted benefit under section 360 of the Code of Criminal Procedure and as such, he be ordered to be released on probation.

13. Though the aforesaid prayer is opposed by the learned Addl. Public Prosecutor, still in view of the scheme laid down by the Apex Court in such eventuality, in my opinion, the applicant is entitled for the benefit under section 360 of the Code of Criminal Procedure. In view thereof, I pass following order :-

Criminal Revision Application is dismissed.

The conviction of the applicant is maintained.

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However, instead of sentencing the applicant at once, he is ordered to be released on probation of good conduct, on following terms :-

The applicant shall execute a bond with one surety before the Probation Officer, within a period of six weeks from today, to appear and receive sentence when called upon during the period of one year from today and in the meantime shall keep the peace and be of good behaviour.

The default, if any, including that of any accident after this order, will entail the Probation Officer to submit appropriate report to this Court and upon consideration of such report, this Court will pass such order against the applicant, as is deemed fit.

(N.W. SAMBRE, J.)

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