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

CRIMINAL REVISION APPLICATION NO.399 OF 2003

Fazal Sher Mohmmad Pathan,
Age 24 years, Occ. Driver,
r/o Bembli, at present
Khorl Galll, Latur,
Tq. & Dist. Latur

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through the M.I.D.C. Police
Station, Latur

2. Baban Rambahu Pandhavle,
Age 28 years, Occu. Nil,
R/o India Nagar, Latur

..RESPONDENTS

Mr S.S. Choudhari, Advocate for applicant;
Mr A.R. Kale, Addl. Public Prosecutor for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 4th May, 2016

ORAL JUDGMENT :

This revision is against conviction of the applicant - accused in Criminal Case No.10479 of 2000 (a warrant case), convicting the applicant for offences punishable under sections 279 and 304-A of the Indian Penal Code and sentencing him to undergo simple imprisonment for three months and pay fine of Rs.300/- for offence punishable under section 304-A of the Indian Penal Code and simple imprisonment till rising of court and fine of Rs.500/- for offence punishable under section 279 of the Indian Penal Code, by judgment and order dated 27th September, 2001, by the

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Judicial Magistrate First Class, Latur. The applicant has already deposited the amount of fine of Rs.800/- on 27th September, 2001.

2. Feeling aggrieved by the aforesaid order of conviction, the applicant preferred an appeal before the learned Sessions Judge, being Criminal Appeal No.36 of 2001, which came to be dismissed by the learned Sessions Judge, by judgment and order dated 3rd December, 2003. Thus, present revision.

3. Facts as are necessary for deciding the present revision are as under :-

4. On 6th June, 2000, at about 3.00 p.m., the applicant-accused was driving tempo bearing registration No. MH 21 A 8035. It is claimed that complainant Baban Pandhavale approached the police station on 6th June, 2000, at about 5.30 p.m. stating that his daughter Archana was dashed by the tempo in question. The complaint Exh.13 as such was reduced in writing. The offence bearing C.R. No.82 of 2000 came to be registered for offences punishable under sections 279 and 304-A of the Indian Penal Code. The spot panchnama Exh.15 came to be drawn and the statement of mother of the deceased came to be recorded along with the other witnesses who were present on the spot. The applicant-accused was arrested, as during investigation it revealed that he was driving the vehicle in question in rash and negligent manner, causing death of the daughter of the complainant. The charge-sheet came to be filed in the Court on 30th July, 2000.

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5. The matter was investigated by P.W.6 Rambhau Budruke, who is examined at Exh.24.

6. The charge came to be framed against the accused vide Exh.10 on 6th December, 2000 for the offences in question. The accused pleaded not guilty and claimed to be tried. It appears from the record that his defence is that, Archana had sustained injury because of fall on stone.

7. P.W.1 complainant Baban was examined at Exh.12. He claimed that he got information about the accident on phone and as such he reached to the spot. According to him, his daughter Archana, aged 4-1/2 years, who was carried to the hospital by her mother and the accused in an auto-rickshaw, however, she succumbed to the injuries suffered in the accident. P.W.2 Madhavrao is examined at Exh.14, who claims to be the neighbour of the complainant. He is a witness to the spot panchnama. P.W.3 Baburao examined at Exh.16 has stated that when he was enjoying pan (beetle-leaf) near Shalimar tailoring shop, he witnessed the incident as the tempo in question had come from north towards south direction in high speed and dashed the girl. According to him, the girl was thrown at about 4 to 5 ft. height due to dash. He claimed that the tempo in question gave dash to the girl from the driver side. He then stated that the driver along with mother of the girl took the girl to the hospital.

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8. P.W.4 Meerabai is examined at Exh.21, who is also an eye-witness and mother of deceased Archana. She has narrated in her examination-in-chief that she had taken her daughter Archana for answering nature's call and made her sit on the border of road. She then claimed that the vehicle – tempo came from north and proceeded towards south and gave dash to her daughter. According to her, her daughter suffered injuries on chest, parietal region and head. She claimed that her daughter came under the driver side wheel. In her cross-examination, though in English version she had stated that her daughter ran away after seeing the tempo, however, in Marathi version she had denied the said statement.

9. P.W.5 Sirajkhan is examined at Exh.22. According to him, he was taking lunch at his house and after having heard noise, he ran towards the road and saw deceased Archana lying down on the road on the side of the wheel of the vehicle from driver side. He then stated that the road in question is 20 ft. in width, however from his evidence it cannot be inferred that he is witness to the driving of the vehicle by the accused.

10. In over all evidence of the prosecution, it is noted that deceased Archana, who was aged about 4-1/2 years went along with her mother for answering nature's call and was releasing on the border of the road, width of which was 20 ft. It has also come on record that the vehicle in question was running from north to south direction and deceased Archana who was hit from the driver side was occupying east side of the road. It is then noted that P.W.3 Meerabai, the mother of deceased Archana has claimed

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that she was accompanying her minor daughter. The fact remains that how the vehicle, which was on its correct side hit Archana is not established either in the investigation or the evidence brought before the Court. It is required to be noted that once it is brought on record that the vehicle was on its correct side, the mother accompanying the daughter perhaps was not in a position to control the movement of the daughter, who might have panicked noticing the vehicle in question, which has caused the accident in question. The over-all re-appreciation of evidence in this revision prompts this Court to infer that the applicant – accused cannot be held responsible for an offence punishable under section 304-A of the Indian Penal Code, so as to state that he has caused death of Archana by driving the vehicle in rash and negligent manner. It is required to be noted that P.W.4 Meerabai, the mother of deceased, has not stated that the applicant was driving the vehicle at high speed in rash and negligent manner. It is from the evidence of P.W.3 Baburao, who also claims to be an eye-witness, has stated that the vehicle was driven at a high speed.

11. It is then brought on record that, once it is admitted by P.W.4 Meerabai that her daughter was answering nature's call on the border of the road, speaks of the negligent approach on the part of Meerabai of permitting her daughter to occupy the road for answering nature's call, though she was knowing that the road in question was busy road. It is then to be noted that deceased Archana being a child of 4-1/2 years was hardly aware of the traffic rules and movement of traffic. The above

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observations are supported by the conduct of P.W.4 Meerabai, mother of deceased Archana, as she for the purpose of safety had accompanied her. It was the duty of P.W.4 Meerabai to properly look after, control and regulate the movement of deceased being a child. Rather, it appears that Archana might have got panic because of the movement of the vehicle in question and out of the same ran towards the vehicle, resulting into causing the accident in question. Prima facie, I am of the view that it could be inferred from the investigation papers and the evidence brought on record and discussed herein above, that the incident is a simplicitor accident and applicant-accused cannot be blamed for negligent driving.

12. In that view of the matter, present Criminal Revision deserves to be allowed. Thus, I pass the following order :-

The judgment and order dated 27th September, 2001, passed by learned Judicial Magistrate First Class (IInd Court), Latur, in Criminal Case No.10479 of 2000) and the judgment and order dated 3rd December, 2003, passed by learned Sessions Judge, Latur, in Criminal Appeal No.36 of 2001, are set aside.

The applicant – accused is acquitted of offences punishable under sections 379 and 304-A of the Indian Penal Code. His bail bonds stand cancelled.

Fine paid by the applicant – accused be refunded to him.

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Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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