

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 320 OF 2015

Rajgonda Basgonda @ Narasgonda
Birnale

.....Applicant

V/s.

State of Maharashtra and anr.

.....Respondents

* * * * *

Mr. Kedar J. Patil, Advocate for the applicant.

Ms. S.V. Gajare, APP for the State.

Coram :- Smt. R.P. SondurBaldota, J.

1st March, 2016.

P.C. :-

1). This Revision Application challenges the concurrent findings of conviction of the applicant for the offences punishable under Sections 304A, 337, 338 Indian Penal Code and 184 of the Motor Vehicles Act. He is sentenced to suffer imprisonment for a period of 2 years and pay fine of Rs.3,000/- for the offence punishable under Section 304(a) IPC. For the offence punishable under Section 337 IPC, he is sentenced to suffer simple imprisonment for 6 months, pay fine of Rs.500/-. For the offence punishable under Section 338 IPC, he is sentenced to suffer simple imprisonment for 6 months and pay fine of Rs.1,000/-. For the offence punishable under Section 184 of the Motor Vehicles Act, he is to pay fine of Rs.500/-. Out of the total fine amount of

Rs.8,000/- , the legal heirs of the deceased were directed to be paid a sum of Rs.6,000/- and the balance amount of Rs.2,000/- was to be paid to the injured.

2). The Revision Applicant had preferred an appeal against his conviction being Criminal Appeal No. 120 of 2012 to the Sessions Court, Sangli. By its judgment and order dated 13th July, 2015 the Sessions Court dismissed the appeal and confirmed the order of the trial Court.

3). The brief case of the prosecution was that, on the date of the incident i.e. on 28th June, 2008 at about 13.30 hrs, the applicant was driving his truck bearing registration number MH-04-BG-1458 on Miraj Pandharpur road and ahead of Tasgaon Phata. He was driving the truck at a high speed and in a rash and negligent manner. While overtaking, he gave a dash to the motorcycle i.e. Hero Honda motorcycle bearing registration number MH-10-AH-8506 and dragged it for about 40 ft before stopping. P.W.2 was riding the motorcycle and deceased, Laxman was sitting on the pillion seat. In the accident, both the riders of the motorcycle suffered injuries. Laxman died on the spot and P.W.2 was taken to the hospital. The applicant ran away from the place. The prosecution examined in all four witnesses i.e. panch for spot panchanama, P.W.2 the injured person, P.W.3 an eye witness and P.W.4 the Investigation Officer. P.W.2 and P.W.3 narrated the details of the accident. Their depositions support each other. Both have stated that the applicant was driving the truck in a rash and negligent manner. The Courts below have accepted the evidence of the prosecution witnesses and convicted the applicant for the sentences awarded to him.

4). Mr. Patil, the learned Advocate appearing for the applicant submits that the evidence of identification of the applicant before the Court was not sufficient and therefore the applicant could not have been

convicted by the Courts below. He points out that, the applicant had been arrested two days after the incident and there was no identification parade held. Even if that is so, there is nothing brought on record in the cross-examination of P.W.2 and P.W.3 so as to suspect identification of the applicant by them. The second argument of Mr. Patil is that, P.W.2 who was driving the motorcycle did not hold a valid license and as such there was serious doubt as regards the manner in which he was driving the motorcycle. Once again in cross-examination of P.W.2, there is no material whatsoever brought on record in this regard by the applicant. Lastly, Mr. Patil submits that considering the age of the applicant, his sentence should be reduced to that already undergone by him. He is, however, unable to state the extent of the sentence undergone by the applicant. In my opinion, considering the facts and circumstances of the case, there is no scope whatsoever for reducing the sentence awarded to the applicant. The maximum sentence awarded to him is of 2 years, which is for the offence punishable under Section 304A of Indian Penal Code. All other sentences for the lesser period are 6 months to run concurrently. In the circumstances, the Revision Application is dismissed. At the request of Mr. Patil, the applicant is granted time of 15 days to surrender.

(SMT. R.P. SONDURBALDOTA, J)