

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

CRIMINAL APPLICATION NO. 3290 OF 2016

The State of Maharashtra

...APPLICANT

versus

Raju Bhausahab Walke

...RESPONDENT

.....
Mr. B.A. Shinde, APP for applicant

Mr. S.L. Bhapkar, Advocate for Respondent - Sole

.....

CORAM : K.K. SONAWANE, J.

DATED : 17th JULY, 2017.

Order :-

1. Heard learned counsel for the parties.
2. The prosecution is intending to prefer an appeal against the judgment and order of acquittal of respondent-accused under sections 304-A, 279, 338 of the Indian Penal Code (for short "IPC") passed by the learned trial Court in STC No. 537 of 2009 dated 10-03-2016 *inter-alia*, prosecution seeks leave under section 378(1)(b) of the Criminal Procedure Code (for short "Cr.P.C.") to present the appeal.
3. It has been alleged that respondent - accused had driven his vehicle Commander Jeep bearing registration No. MH-04/Q-4310 in rash and negligent manner and gave dash to the motorcycle of deceased Chandrakant, while he was coming from

opposite direction on Ahmednagar to Daund road. In the mishap, Chandrakant sustained serious injuries to his head and while en-route to hospital for medical treatment, he succumbed to injuries. The information about the accident was given to the Police of Shrigonda Police Station. Police rushed to the spot and drawn the *panchnama* of scene of occurrence. The pillion rider, son of deceased Chandrakant filed the First Information Report for penal action against the perpetrator. Pursuant to FIR, crime No. 229 of 2009 came to be registered for the offence punishable under sections 304-A, 279, 338 and 427 of the IPC and under sections 133 and 184 read with section 137 of the Motor Vehicles Act. Investigating Officer apprehended the respondent/accused for the sake of investigation. Offending vehicle Commander Jeep was impounded for further action. Investigating Officer collected relevant documents and after completion of investigation filed the charge-sheet against respondent/accused before the learned Magistrate, Shrigonda, District Ahmednagar.

4. In order to bring home guilt of the respondent-accused prosecution examined in all six witnesses in this case. The defence of the accused is that of total denial in nature. During the cross-examination of the prosecution witness, it was suggested that the victim Chandrakant while driving the motorbike he himself fallen on the ground in the attempt to avoid

the ditches of the road and sustained head injury. It has been asserted that the respondent and his vehicle has no concerned with alleged mishap occurred resulting into death of victim Chandrakant. The learned trial Court appreciated the oral and circumstantial evidence adduced on record and arrived at the conclusion that prosecution failed to prove the charges pitted against respondent-accused beyond all reasonable doubt. In the result, learned trial Court acquitted the respondent-accused and passed the impugned judgment and order, against which prosecution is intending to prefer an appeal by availing remedy under section 378 of the Cr.P.C.

5. The learned APP vehemently submitted that the prosecution has proved the guilt of the respondent - accused beyond all reasonable doubt. The conclusion drawn by the learned trial Court appears erroneous, imperfect and not consistent with facts and circumstances on record. The findings of learned trial Court are perverse and contrary to the provisions of law. Therefore, re-appreciation of evidence of prosecution witnesses is essential by filing the appeal. Hence, learned APP prayed for grant of leave to present appeal.

6. The learned counsel appearing for respondent - accused raised objection to the contentions putforth on behalf of prosecution and submitted that the learned trial Court has

appreciated the entire circumstances on record in its proper perspective. There was no error in the findings expressed by the learned trial Court. In view of attending circumstances, almost possible view about innocence of accused was taken by the learned trial Court. There are material discrepancies in the evidence of prosecution witness. The Medical Officer was not examined to prove the nature of injuries in this case. There were no signs of accident on the offending vehicle – Commander Jeep to prove its involvement in the alleged accident. The learned counsel upheld the findings of the learned trial Court and prayed not to accord sanction in favour of prosecution to present the appeal.

7. I have given anxious consideration to the arguments advanced on behalf of both sides. Admittedly, the prosecution has examined in all six witnesses to prove the charges against accused. P.W. 2 Shivprasad Chandrakant Ghalme, is the son of victim Chandrakant. He was one of the eye witness of the alleged incident, being pillion rider. Prosecution has examined P.W.3 Dr. Balasaheb Khendke, who stated about circumstances of sustaining injuries to the victim Chandrakant on the spot of incident. In view of attending circumstances on record, it is evident that the deceased Chandrakant was driving the vehicle motorcycle at the relevant time and his son Shivprasad was

pillion rider. They were returning to Isapur Phata from Ahmednagar. It is also not put in controversy that there was mishap occurred with deceased Chandrakant, while driving the motorcycle. It was also revealed that victim Chandrakant had fallen on the road side and sustained injuries on the vital part of his head. It is not denied that the deceased Chandrakant while en-route to hospital, succumbed to injuries. The crucial issue remained to be determined in the appeal is as to, '*whether offending vehicle, which was driven by respondent-accused at the relevant time has an involvement in present crime and responsible for death of victim Chandrakant by rash and negligent driving?*'

8. Considering the factual aspect of the matter, I am of the opinion that this issue is required to be dealt with elaborately at the time of hearing of the appeal. There are controversial issues arguable in nature. Therefore, it is imperative to grant leave to the prosecution to present the appeal for redressal of grievance about the responsibility of the mishap. In case, leave is not granted, it would cause injustice and prejudice to the prosecution. I am of the opinion that reasonable opportunity is required to be given to the prosecution to ventilate grievance in the Appellate Forum for redressal. Therefore, application seeking leave under section 378(1)(b) of the Cr.P.C. to present appeal

against the impugned judgment and order of acquittal of respondent-accused is hereby granted. The application stands allowed and disposed of accordingly. Registry to take requisite steps for further process and after compliance of all procedural formalities, list the appeal for hearing on merits in due course.

[K. K. SONAWANE]
JUDGE

MTK