

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.95 OF 2017

IN

CRIMINAL REVISION APPLICATION NO.91 OF 2017

WITH

CRIMINAL REVISION APPLICATION NO.91 OF 2017

**Mr.Vimanjan Hanumanta Devarkonda,
Aged 42 years, Occ. Service,
Residing at Room No.01, Galli No.09,
Kunchi Kurve Nagar, Near Kalina
Church, Santacruz (East),
Mubmai 400 029.**

)...APPLICANT

V/s.

**The State of Maharashtra,
At the instance of Kurla Police Station,
Mumbai.**

)...RESPONDENT

.....

Mr.Ravi L. Gurnani with Mr.Vijay Agale, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

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CORAM : A. M. BADAR, J.

DATE : 10th APRIL 2017

ORAL JUDGMENT :

1 By this revision petition, the revision petitioner/
original accused is challenging the Judgment and Order passed by

the learned Sessions Judge, Mumbai in Criminal Appeal No.882 of 2014 on 3rd January 2017 thereby dismissing his appeal challenging the Judgment and Order dated 02/09/2014 passed by the learned Metropolitan Magistrate, 51st Court, Kurla in C.C.No.356/PW/2000 convicting him of offences punishable under Sections 279, 337, 304-A of the Indian Penal Code (“IPC” for the sake of brevity) and under Section 134(a) and (b) read with Section 187 of the Motor Vehicle Act, 1988 (“M.V.Act” for the sake of brevity). The learned trial Magistrate upon conviction of the revision petitioner had sentenced him to suffer simple imprisonment for six months apart from payment of fine of Rs.1000/- in default to undergo further simple imprisonment for one month for the offence punishable under Section 279 of the IPC. For the offence punishable under Section 337 of the IPC, he is sentenced to suffer simple imprisonment for six months apart from payment of fine of Rs.500/-, in default to undergo further simple imprisonment for one month. For the offence punishable under Section 304-A of the IPC, he is sentenced to suffer simple imprisonment for one year apart from payment of fine of Rs.2000/-, in default to undergo further simple imprisonment for one month. For the offence punishable under Section 134(a) and (b) read with Section 187 of the M.V.Act, he is sentenced to suffer simple imprisonment for three months apart from payment of fine of Rs.500/-, in default to undergo further simple imprisonment for fifteen days.

2 It is the case of prosecution that on 29/03/2000, the revision petitioner/accused had driven a Maruti van bearing No.MH-02-JA-228 in a rash and negligent manner and gave dash of that vehicle to Sugrabi and her son Abdul Rafiq. The incident, according to the prosecution case, took place near Halav bridge of Kurla in front of Kudiya Badlu Chawl. The FIR (Exh.5) of the crime in question came to be lodged by P.W.No.1 Yasmin Abdul Khalid on 29/03/2000 itself. Accordingly Crime Registration No.72 of 2000 for the offence punishable under Sections 279, 337, 304-A of the IPC and under Sections 134(a) and (b) read with Section 187 of the M.V.Act came to be registered. The revision petitioner/accused came to be arrested on 30/03/2000. Spot was inspected and spot panchanama came to be drawn. On completion of routine investigation, charge-sheet came to be filed and after due trial conviction came to be recorded in C.C.No.356/PW/2000 by the learned Metropolitan Magistrate, Kurla on 02/09/2014. The accused came to be sentenced as indicated in the opening paragraph of this judgment. Feeling aggrieved by this conviction and sentence, the revision petitioner/accused filed an appeal bearing No.882 of 2014 which came to be dismissed on 03/01/2017 by the learned Additional Sessions Judge, Mumbai by the impugned Judgment and Order.

3 I heard the learned Advocate appearing for the

revision petitioner/original accused. He argued that according to the prosecution case, the incident in question took place on 29/03/2000 at about 11.30 p.m. There is no evidence regarding availability of light on the spot of incident. There were in all five persons in the vehicle. It is the case of prosecution that nobody was apprehended on the spot of the incident. Hence, in submission of the learned Advocate for the revision petitioner, evidence regarding identification of the revision petitioner is highly doubtful. He further argued that prosecution witnesses were not knowing the accused and no test identification parade was conducted by the prosecution. Hence, offence is not proved. It is further argued that there is no evidence to come to the conclusion that the revision petitioner was under influence of the liquor as stated by the witnesses for the prosecution. It is further argued that the prosecution has examined P.W.No.6 Raju – owner of the Maruti van in question. But there is no evidence to show that to whom the vehicle was entrusted by Raju Jadhav. All witnesses examined by the prosecution, in submission of the learned Advocate for the revision petitioner, are interested witnesses and, therefore, their evidence is not reliable. With this, it is argued that for want of sufficient evidence, the revision petitioner/accused is certainly entitled for benefit of doubt.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction.

5 I have carefully considered the rival submissions and also perused Record and Proceedings called from the Court below. Section 279 of the IPC deals with rash and negligent driving endangering human life. Section 304-A of the IPC deals with causing death by negligence. Causing of death of a person by doing any rash and negligent act not amounting to culpable homicide is made punishable by this Section of the IPC. Section 337 of the IPC deals with causing hurt to any person by doing any rash and negligent act endangering human life or the personal safety of others. Section 134(a) and (b) of the M.V.Act deals with lapses on the part of driver of the motor vehicle. In the case in hand, the revision petitioner/accused is convicted for causing death of Sugrabai by his rash and negligent driving of the Maruti van and injuring her son P.W.No.3 Abdul Rafiq by dashing the Maruti van. As such, one will have to determine whether the revision petitioner was driving the Maruti van involved in the incident and whether driving was rash and negligent. Negligence is a breach of duty or lack of proper care in doing something. Negligence reflects want of attention and doing of something which a prudent man would not do. Criminal negligence defined in Section 304-A of the IPC means gross and culpable negligence or failure to exercise the reasonable and proper care which it was imperative duty of the accused to have exercised. For making out such offence punishable under Sections 279, 304-A and 337 of the

IPC, there must be proof that rash and negligent act of the accused was a proximate cause of a death of a person or hurt to a person. Direct nexus between death or hurt and rash and negligent act is required to be proved by the prosecution for making out offences punishable under Sections 279, 337 and 304-A of the IPC.

6 Similarly, one will also have to keep in mind that the revision petitioner has invoked revisional jurisdiction of this Court in challenging concurrent findings of facts arrived at by both Courts below holding that offences punishable under Sections 279, 337, 304-A of the IPC and under Sections 134(a) and (b) read with Section 187 of the M.V.Act are proved against him. The revisional jurisdiction is required to be exercised sparingly when there is glaring error of law resulting in miscarriage of justice or when there is procedural irregularity resulting in failure of justice. While exercising the revisional jurisdiction, evidence cannot be appreciated and finding of fact recorded by Court below cannot be interfered with unless it is shown to be perverse. Sufficiency of evidence to hold the fact as proved cannot be gone into albeit, want of evidence to hold a fact to be proved can certainly be looked into. Keeping in mind these parameters in exercising revisional jurisdiction, let us consider whether Courts below have committed error of law or procedural irregularity while recording conviction against the revision petitioner warranting interference

in revisional jurisdiction of this Court.

7 In the case in hand, death of Sugrabi Abdul Khalid Ansari is not disputed by the defence. The defence has admitted inquest panchanama (Exh.12) and P.M.Report of deceased Sugrabi. From perusal of P.M.Report it is seen that she died because of hemorrhagic shock due to polytrauma. The defence has not disputed the spot panchanama recored on 30/03/2000. This spot panchanama is at Exhibit 11. It reflects that the incident took place in front of Kudiya Badlu Chawl near Halav bridge of Kurla. Maruti van bearing registration No.MH-02-JA-228 was seen standing in damaged condition on the spot. Apart from that a broken wooden cot was also found on the spot. The spot of incident shown in the spot panchanama is a foot path having 10 feet width. Width of the road abutting that foot path is stated to be 25 feet. With this undisputed position emerging on record, let us see whether it is proved by the prosecution that it was the revision petitioner/accused who was driving the Maruti van involved in the accident and whether he has shown criminal negligence in driving it causing death of Sugrabi and injuries to P.W.No.3 Abdul Rafiq.

8 P.W.No.1 Yasmin Abdul Khalid is the first informant in the instant case. From her cross-examination, it is brought on record that deceased Sugrabi and P.W.No.1 Abdul Rafiq were

sitting on the cot outside the house. Her cross-examination further shows that she herself and her sister were standing at the door of their house. Deceased Sugrabi is her mother whereas P.W.No.3 Abdul Rafiq is her brother. Size of her house was just 10 feet x 10 feet as seen from the evidence of P.W.No.4 Ashok Sasane. From cross-examination of P.W.No.5 Salma – sister of P.W.No.1 Yasmin, it is confirmed by the defence itself that P.W.No.1 Yasmin was with P.W.No.5 Salma at the time of the incident in question and they both were standing at the door of their house. From the cross-examination of P.W.No.2 Nasim Banu – another sister of P.W.No.1 Yasmin, it is brought on record by the defence that at the time of incident in question, P.W.No.1 Yasmin was standing at the door of the house. This material brought on record by cross-examination of P.W.No.2 Nasim Banu and P.W.No.5 Salma is enough to conclude that P.W.No.1 Yasmin is an eye witness to the incident in question. This eye witness P.W.No.1 Yasmin has deposed that the Maruti van came from eastern side by driving a distance of 30 to 35 feet and dashed to her mother Sugrabi and brother Abdul Rafiq. She deposed that it was the revision petitioner/accused, who was driving the van at the time of the incident and she identified him while giving her statement before the Court. Though, in chief-examination, this witness has not uttered anything about source of light at the time of incident, this lacuna in her evidence came to be fulfilled by her cross-examination and by eliciting from her mouth that at the time of

incident in question, there was light from the street light as well as from the bulb of electricity in her house. As such, it cannot be said that because of darkness, P.W.No.1 Yasmin was not in a position to identify the driver of the Maruti van.

9 P.W.No.3 Abdul Rafiq is injured victim of the incident in question. His evidence shows that when he as well as his mother Sugrabi were sitting at the door of their house, one Maruti van came in speed across the road towards their door and ran over his mother Sugrabi as well as himself. This witness has also deposed that it was the revision petitioner/accused who was driving the Maruti van and who had ran away from the spot. While in the witness box, this witness identified the revision petitioner/ accused. Cross-examination of this witness goes to show that the Maruti van involved in the accident crossed the road and came on the foot path in order to give dash to the cot on which P.W.No.3 Abdul Rafiq and his deceased mother Sugrabi were sitting. Material elicited from cross-examination of this witness confirms the spot panchanama of the incident as foot path in front of the house of this witness as reflected in the spot panchanama – an undisputed document. There is nothing in cross-examination of this witness to disbelieve his version that it was revision petitioner/accused who was driving the Maruti van.

10 Though P.W.No.4 Ashok Sasane – a neighbourer

rushed to the spot of the incident soon after the incident, he being the next door neighbour of deceased Sugrabi, his evidence can be relied to come to the conclusion that it was revision petitioner/accused who was driving the Maruti van. This witness has categorically accepted the fact that he has not actually seen the accident, but upon hearing loud noise, he rushed out of the house and saw the incident and he had seen the revision petitioner as a driver of the vehicle. This witness has also identified the revision petitioner/accused while in the dock.

11 P.W.No.5 Salma Abdul Khalid is daughter of deceased Sugrabi and sister of first informant and injured Abdul Rafiq. Her cross-examination also reveals that Sugrabai and P.W.No.3 Abdul Rafiq were sitting on the cot and she as well as her sister P.W.No.1 Yasmin were standing at the door of the house when the incident took place. She deposed that when she was standing at the door with P.W.No.1 Yasmin, the Maruti van came and dashed to her mother and brother. She has also deposed that it was the revision petitioner/accused who was driving the Maruti van. She has also identified the revision petitioner/accused as driver of the vehicle involved in the accident. P.W.No.2 Nasim Banu is another daughter of deceased Sugrabi. She was inside the house when the incident took place. She accepted this fact. But from her cross-examination, it is elicited that she had seen the revision petitioner/accused while getting down from the driver seat of the

van after the incident.

12 It is thus clear that all prosecution witnesses have came up with a version that they had seen the revision petitioner/accused as a person who was driving the Maruti van involved in the accident. Source of light on the scene of occurrence was brought on record from cross-examination of P.W.No.1 Yasmin Abdul Khalid. Both Courts below on the basis of this evidence on record have come to the conclusion that it was revision petitioner/accused who was driving the motor vehicle involved in the accident. As such, it is not possible in the revisional jurisdiction to conclude that this finding of fact is unsupported by evidence. True it is that no test identification parade was conducted by the prosecution, but ultimately it is the dock identification which is a substantive evidence.

13 The incident in question, as seen from the witnesses' examination by the prosecution, whose presence on the scene of occurrence was natural, took place on the foot path abutting the road. The Maruti van crossed the road and came on the foot path giving dash to the deceased Sugrabi and her son P.W.No.3 Abdul Rafiq. The standard which needs to be applied in such case is that of a prudent person acting in a similar situation. By no stretch of imagination, one will say that a prudent person would drive a Maruti van in such a way to take it on the foot path of the road.

This act is certainly negligent as well as rash because it depicts lack of due care and attention. Therefore, no infirmity can be found in conviction of the revision petitioner of offences punishable under Sections 279, 337, 304-A of the IPC. Similarly, as seen from the evidence of witnesses that he instead of providing medical aid to the injured as well as Sugrabai who was found to be dead after the incident, fled from the spot of the incident. As such, the offence punishable under Sections 134(a) and (b) read with Section 187 of the M.V.Act is also made out by the prosecution.

14 In the result, no infirmity can be found with the impugned Judgment and Order of the appellate Court and as such, the order.

- (i) The revision petition is dismissed.
- (ii) Consequently, pending Criminal Application No.95 of 2017 for suspension of sentence is also rejected.
- (iii) Time of two weeks is granted to the revision petitioners to surrender.

(A. M. BADAR, J.)