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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.333 OF 2017
WITH
CRIMINAL APPLICATION NO.305 OF 2017
WITH
CRIMINAL APPLICATION NO.306 OF 2017

Gorakhnath Kisan Shekhade ... Applicant
(Orig.Accused)

vs.

The State of Maharashtra & Anr. ... Respondents

Mr. P.C. Das i/b. P.C.Das & Associates for the Applicant.

Ms. P. N. Dabholkar for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 5th JULY, 2017

P.C.

1. By this revision application, the applicant challenges the order of conviction passed by the Sessions Judge, Niphad, whereby his appeal was dismissed and the accused was taken into custody for undergoing sentence. The appeal was filed against the oral judgment dated 31st August, 2010 of the Judicial Magistrate First Class, Yeola convicting him under Sections 279, 304 A, 337, 437 of the Indian Penal Code and Section 184 of the Motor Vehicles Act. The sentences were to run separately.
2. The facts in brief are that the applicant is a driver employed with the State

Transport Corporation. He was proceeding towards Aurangabad in ST bus no.MH-20/D-6177. When the bus reached near Kotamgaon it collided with a bicycle which was proceeding ahead of the ST bus causing both the children who were riding the bicycle to fall down. The child who was seated on the carrier of the bicycle was run over by the bus and sustained serious injuries and ultimately succumbed. The other child survived.

3. The accused-applicant did not adduce any evidence oral or documentary.

The prosecution examined six witnesses as follows:-

(i) PW-1 was a grandfather who received a telephonic message that the grand children having met with an accident. On reaching the spot, he saw the grandson had been run over by the front wheel of the bus on the conductor's side (left side).

(ii) PW-2 was the person who runs one STD booth in front of the temple at Kotamgaon. While at the shop, he deposed that the ST bus coming from Yeola towards Vaijapur collided with the bicycle and he saw that one child was serious.

(iii) PW-3 is one Nanasaheb Eknath Lahare was also seated at tea stall on the same road and he saw that one ST bus had collided to the bicycle. According to him, normally at the time of incident about 30-40 school children travel by this busy road.

(iv) PW-4 is one Rajendra Kotme who deposed that he heard a sound and on hearing the sound he rushed the incident and saw that the accident had taken place. He noted the registration number of the bus. He also deposed

that there were many students on the road at the time. He had not actually witnessed the incident.

(v) PW-5 is Dhananjay Kotme who was riding the bicycle. His cousin is the deceased child seated on the carrier fixed in the bicycle. His deposition is to the effect that while they were proceeding on the bicycle the ST bus approaching from the rear side collided. As a result he was thrown on the left side while his cousin Amol was run over by the bus. As a result Amol suffered serious injuries and died. Mr. Dhananjay Kotme deposed that at the time of the accident several children were travelling on that road.

(vi) PW-6 was PSI Eknath Thakare, the Investigating Officer who had inspected the ST bus and prepared the panchanama and delivered notice to the accused under Section 209 of the Motor Vehicles Act. He has also deposed that on the left side of the bus, there were marks indicative that the bus had dashed against the bicycle and a metal strip attached to the ST bus below the head light had been damaged. He further deposed that due to the U turn at the Village on this road vehicles were required to drive slowly.

(vii) Lastly, one Nivrutti Burgude, Depot Manger of the State Transport Depot was examined. He deposed that one of the aluminum strips which runs horizontally along the body of the bus was damaged on the left side of the bus.

4. The Magistrate examined the oral and documentary evidence. While the

applicant did not lead evidence, he contended that bicycle was following the bus and it collided with the bus resulting in the accident. He therefore sought to fault PW-5 Dhananjay Kotme who was riding the bicycle for having collided with the bus from the rear.

5. The learned counsel appearing for the applicant submitted that the applicant was not responsible for the accident in question. It is the case of the applicant that the order of conviction is bad in law and is liable to be set aside for want of ingredients of Section 279, 304A, 337, 437 of the Indian Penal Code. The Magistrate had omitted to consider the fact that the cycle rider was 11 years old and he was riding bicycle which is 22 inches high unsuitable for children with another child seated at the rear. He submitted that out of 7 witnesses there are five eye witnesses, the Investigating Officer and one employee of the State Transport but the trial Court failed to consider the fact that it was the child who was riding the bicycle in a rash and negligent manner and that too on a busy highway.
6. According to the learned counsel for the applicant the trial Court has not considered the version by the applicant-original accused and the order and judgment of the trial Court and the conviction is not sustainable. It is his case that the applicant ought to have been acquitted. Similarly the Sessions Judge has not appreciated the grounds of appeal and the order of Sessions Court was vitiated by non-application of judicial mind. In these

circumstances, he submitted that the dismissal of the appeal by the Sessions Court was incorrect, improper and was perverse which called for interference by this Court in its revisionary jurisdiction.

7. On the other hand, on behalf of the prosecution learned APP states that the accused led no evidence at all. The only defence is that the bicycle was riding behind the bus and had collided with the bus. Learned APP has taken me through the impugned orders and relied upon the relevant portions in support of her case. She submitted that the revision application has no merit and is liable to be rejected.
8. Having heard the learned counsel and have also perused the depositions of various witnesses PW-1 who is the grandfather is the first informant. He had filed the police complaint. In the cross examination he deposed to have seen the blood stains on the tyre of the ST bus. PW-2 is the person running the STD booth who in his cross examination admitted that he had not actually seen the accident take place but he has deposed to the incident. He has, inter alia, deposed that there was a U turn provided for on the road and till U turn all vehicles generally travel at the speed of 30-35 km. per hour and due to the temple located in the area it was a busy area and generally all vehicles travel slowly. He has deposed that the children were returning from school on the Aurangabad approach road. He further deposed that the spot of accident was 500-600 ft. away from the STD

booth. PW-3 has deposed that he was at the tea stall at about 5.15 p.m. when the accident took place. He has actually witnessed the accident as it happened and he has deposed that he rushed to the site and both children were lying on the road. He has identified the applicant as the driver of the bus. He has withstood cross examination and has deposed that about 40-42 students used the road every day and many persons also visited the temple using this road. He has however repeated his version that the road having very heavy traffic vehicles drove slowly. He denied a suggestion that he was not present at the spot. He denied that he did not see the incident himself. Thus, this is one eye witness who actually saw the incident.

9. PW-4 was present at the tea stall and he had only heard the sound and not actually seen the accident happened. PW-5 who was a victim and was riding the bicycle has deposed that his cousin Amol was sitting on the carrier. He was on the left side of the road and while proceeding the ST bus came from the rear side and hit their cycle and he was thrown to a side of road and Amol was run over by the front tyre of the bus as a result of which he died. He identified the driver of the bus in Court. The said witness has withstood cross examination. He has stated that at the time of incident he was in 8th standard and approximately 11 years old. He has deposed that he met with cousin Amol at school. He has denied the suggestion that since the cycle was 22 inches high he could not maintain balance. He denied the suggestion that he was not well versed in riding a

cycle. The cross examiner had sought to suggest that the witness had lost his balance but the witness refuted the suggestion. He had denied the suggestion that when he approached the road the ST bus had already passed and the cycle hit the rear side of the bus. He reiterated in cross examination that the bus was approaching from rear side and dashed against the cycle. The Investigating Officer has also deposed to the incident and has prepared a panchnama and recorded the statements of the witnesses. He has also withstood cross examination and he has refuted the suggestion that he has tutored Dhananjay Kotme PW-5.

10. I am of the view that the applicant has not been able to make out any case for interference. The Sessions Court has considered the oral and documentary evidence and has rightly come to the conclusion that the appeal was devoid of merits and deserved to be dismissed. In the process of hearing the appeal, the Sessions Court set out the following points for determination all of which have been answered in the affirmative:-

“(1) Whether the prosecution proves that on 26/12/2007 at about 5-15 p.m. on Yeola to Vaijapur Road near Kotamgaon, accused drove ST bus bearing no.MH-20/D-6177 in a rash and negligent manner so as to endanger human life and gave a dash to a bicycle and thereby committed an offence?”

“(2) Whether the prosecution further proves that on the above date, time and place, accused drove the aforesaid ST bus in a rash and negligent manner and gave dash to bicycle resulting into death of Amol Kotme and thereby committed an offence?”

“(3) Whether the prosecution further proves that on the

above date, time and place, accused drove the aforesaid ST bus rashly and negligently so as to endanger human life or personal safety and thereby caused hurt to bicycle rider Dhananjay Kotme and thereby committed the offence?

(4) Whether the prosecution further proves that on the above date, time and place, accused drove the aforesaid ST bus rashly and negligently and committed mischief by giving dash to bicycle causing damages amounting to Rs.50/- or more and thereby committed the offence?

(5) Whether the prosecution further proves that on the above date, time and place, accused drove the aforesaid ST bus at a speed or in a manner which is dangerous to the public and thereby committed an offence?

(6) Whether the impugned judgment and order warrants interference in appeal?"

8. In the course of the trial, the defence counsel has took no objection to the exhibits being marked. Panchanama of the bus dated 27th December, 2007, spot panchanama dated 27th December, 2007 and accident report form, post-mortem report and inquest panchanama, all were proved and the accused had no objection to the same. The genuineness of these documents and its contents have therefore not been called into question. In the Section 313 statement the applicant has not disputed that the accident occurred and that the children were hurt. He has also admitted the presence of PW-2 Prakash Vitthal Jadhav, PW-3 Nanasahab Eknath Lahare and PW-4 Rajendra Kotme at the spot of the accident. In answer to question no.10 in 313

statement he admitted that the children was on the bicycle. His only defence was that the cycle hit on the bus on the rear side and therefore he was not responsible for the accident. The defence had sought to argue that there was no evidence on record to show that the bus was being driven rashly and negligently and the trial Court had not considered the evidence in its proper perspective.

9. According to the defence, the panchanama indicates that the accused was not rash or negligent while driving the bus and the trial Court had failed to appreciate the evidence. It was urged on behalf of the applicant that PW-1 to 5 belong to the same village and therefore they are interested witnesses. However, during the course of cross examination, nothing was brought on record to show that they were interested witnesses. I find that PW-2 to 4 were independent witnesses who were present at the spot. PW-2 was running a STD booth in front of temple at Kotamgaon, PW-3 and 4 was sitting at the tea stall at the spot and PW-5 was one of the victims of the accident. The Sessions Judge observed that while the applicant had sought to challenge the deposition of PW-5 Dhananjay Kotme who was riding the cycle as unreliable, the Court considered the fact that the evidence of PW-2 to 4 is corroborative as PW-2 to 4 are witnesses. PW-3 Nanasaheb Eknath Lahare had actually seen the accident take place and the bus colliding with the cycle. The other witness i.e. PW-2 and 4 were present near the spot of the accident. PW-3 has in no uncertain terms clarified that he saw the

accident take place. Thus, the mere fact that PW-5 admitted in his cross examination that his memory has been refreshed before entering the witness box would not affect on the case of the prosecution. Therefore, I do not find any circumstance that would justify suspension of sentence or granting bail. In the circumstances, I pass the following order:

- (i) The revision application is rejected.
- (ii) There will be no order as to costs.
- (iii) In view of the disposal of the revision application, criminal application nos.305 of 2017 and 306 of 2017 do not survive and the same are also disposed of.

(A. K. MENON, J.)