

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.381 OF 2017
WITH
CRIMINAL APPLICATION NO.356 OF 2017**

Bhagwat Namdeo Jagtap .. Applicant.

Vs.

The State of Maharashtra .. Respondents.

Mr. Rameshwar N. Gite for the Applicant.

Mr. S.V. Gavand APP for the Respondent.

CORAM : A. K. MENON, J.

DATED : 3RD AUGUST, 2017

P.C. :

1. By this revision application, the applicant who is in custody seeks bail. The applicant has been convicted for offence under Sections 279, 304A, 337 of Indian Penal Code read with Section 184 of the Motor Vehicles Act and under Section 3(1) read with Section 181 and under Sections 146 read with 196 of the Motor Vehicles Act, 1988. He has to undergo the sentence under Sections 279, 304A, 337 for three months each and for one week and 15 days, in the event of default and paying fine under Section 3(1) read with Sections 181 of the Motor Vehicles Act, 1988 and under Section 146 read with section 196 of Motor Vehicles Act, 1988. The sentences are to run concurrently.

2. This matter was argued substantially on 20th July, 2017 when the learned counsel for the applicant tendered a compilation consisting of the notes of evidence. Learned APP sought time and the matter came to be adjourned. The parties were heard at length. It is the case of the applicant that there is no evidence in order to convict him. None of the eye witnesses have been able to identify him. Learned counsel for the applicant submitted that the impugned order has recorded findings contrary to the evidence. He invited my attention to the paragraph 10, 11 and 14 of the impugned order. Learned counsel pointed out that the Sessions Court has observed in paragraph 10 that P.W.1 Vijay Baburao had identified the applicant to be the same person who was driving jeep at the time of accident. In the same paragraph it is recorded that P.W. 1 admitted the fact that he has not seen the driver of the vehicle yet the Court had recorded in oral evidence of the said witness that the accused was driving the vehicle and it clearly establishes the fact that the motor accident took place only because of rash and negligent driving of the driver of jeep.

3. In this context counsel for the applicant invited my attention to the deposition of P.W.1 in the compilation tendered. In paragraph 1 of the examination in chief the said witness has stated that as they were proceeding towards the house of deceased Dattatray Kale, a vehicle came from behind and hit the deceased and P.W.1 himself suffered injuries near the eye and shoulder. The deceased and he was shifted to Lasalgaon where his relative

Dattatray Kale was declared dead. He has deposed that while he was walking by the side of road on a grassy area, the vehicle which hit them was a Trax vehicle and he knew the driver who was driving the vehicle at the time of accident and he is the accused, namely, the applicant who was present in the Court on the day of deposition.

4. In the cross examination, however, the same witness admitted that because of the accident he had become unconscious and he could not say how exactly the accident took place. He was admitted in the hospital for two days and returned only on the third day. The accident happened suddenly and he became unconscious and he did not know who the driver was. In further cross examination he has stated that at the time of accident he was unable to know as to which vehicle hit himself and Dattatray Kale. In the light of this testimony, it was submitted by learned counsel for the applicant that the conclusion drawn by the Sessions Court was erroneous.

5. On behalf of the prosecution learned APP has opposed the bail application. According to him the applicant himself reported the accident in the police station and therefore there is no question of any doubt as to identity of the driver. He relied upon the statement recorded under Section 313 in which the answer to question no.5, the applicant had admitted that he had himself gone to the police station and reported the accident. Furthermore, in answer to question no.6 he admitted that Dattatray Kale had died due to

accident. Furthermore, in answer to question no.11 he admitted that front bumper of the vehicle had bent and on the right side there were blood stains, but he contend that the blood stains, are his own.

6. Mr.Gavand, learned APP also relied upon panchnama Exhibit-31 which is part of the compilation and wherein Laxman Kokate, panch has stated that the applicant had identified Trax vehicle and had also furnished the registration certificate of the vehicle and had also signed the panchnama. He submitted that if the applicant was not driving the vehicle, there was no occasion for him to furnish those details. Mr.Gavand therefore submitted that there is absolutely no reason to disbelieve statement of the said panch, who has also denied all suggestions put in the cross examination.

7. Mr.Gavand relied upon the judgment in case of Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat 1983 AIR (SC) 73, the Supreme Court had set out list of guidelines to be followed in cases where there are concurrent findings. Mr.Gavand submitted that there were concurrent findings of two courts below and there is no need to interfere with the findings recorded by the courts below, in this case if the evidence was otherwise acceptable.

8. In that case Bharwada Hirjibhai (supra) the findings of fact recorded by the Sessions Court were confirmed by the High Court and in view that there were concurrent findings of fact which cannot be reopened by

granting special leave unless it is established that the findings was based on no evidence or perverse or no reasonable person would arrive at such finding or finding was based on inadmissible evidence. The Court observed that it would not enter into re-appreciation in the context of minor discrepancies. Mr.Gavand placed reliance on the observation in the said judgment that witnesses who are wholly truthful are proved to be overawed by the Court atmosphere and out of nervousness mix up facts, get confused regarding sequence of events or fill up details from imagination on the spur of moment since the sub-conscious mind of the witness some times so operates. It is therefore submitted that discrepancies in the evidence may be ignored and evidence be read as a whole, which will reveal that the application is not bonafide. It was argued by the applicant's counsel that to the extent evidence is incriminating the same cannot be utilised but held against the applicant and accordingly he submitted that the application is liable to be dismissed.

9. Having considered the submissions, it is seen that the trial Court has concluded that the accused/applicant was driving rashly and negligently and without valid license and committed the aforesaid offences. The trial Court relied upon deposition of P.W.1 Vijay Baburao that at the time of accident the accused was himself driving the vehicle and that he immediately became unconscious and could not see who the driver of vehicle was. Pansare, panch witness turned hostile. None of the other witnesses are seen to be eye witnesses. Thus, what we have for consideration is statement of the

accused/applicant under Section 313 and the fact that he has reported the accident in police station. The accused has pleaded not guilty and the only eye witness has given conflicting version. The witnesses examined included a panch witness, Dr. Eknath Borade. The Investigating Officer was also examined. He has confirmed that intimation regarding accident was given by the applicant and as per the said intimation received at the time of incident, the applicant himself was driving the vehicle. He has also deposed as to inspection report of the RTO and certified that there was no mechanical defect in the vehicle and also observed that the driver was not possessing the driving license.

10. Quite apart from the testimony of P.W.1 a notice came to be issued to the accused under Section 209 of the Motor Vehicles Act. The applicant had replied to the notice and from reply it is noticed that deceased and injured person were walking from southern side of the road and there was sufficient material to prosecute the accused. The panchnama was prepared on the following day as it was necessary to attend injured person on that day.

11. Apropos the applicant's counsel's contention that there is nothing on record indicating that the accused was driving the vehicle apart from his own self incriminating and inadmissible statements. As against this there are concurrent findings of the courts below. The question that falls for consideration is whether these findings are perverse or irrational. In my view there is nothing that I find to fault the order. The Sessions Court has by considering the

challenge in the Criminal Appeal has correctly observed that the Magistrate had not specified whether the sentence should run concurrently and this is being corrected by the Sessions Court that is why in respect of sentence the Sessions Court has already taken into account conduct of the accused and has reduced the sentence substantially. The view taken by the Sessions Court is acceptable. There is no case made out for interference in the revisional jurisdiction of this Court. In the circumstances I pass the following order :

- (i) Criminal Revision Application is dismissed.
- (ii) In view of dismissal of criminal revision application, Criminal Application No.356 of 2017 does not survive and the same is also dismissed .

(A.K. MENON, J.)