

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.67 OF 2017

Aijj Shaikh s/o Abdul Rajak Shaikh

..VS..

State of Maharashtra, through Police Station Officer, Police Station
Gadchiroli, District Gadchiroli

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Ms J.P. Junghare, Adv. H/f Shri M. Anil Kumar, Counsel for the applicant.
Ms T.H. Udeshi, Addl.P.P. for the non-applicant/State.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 4, 2017.

1. The present applicant faced Trial for offences punishable under Sections 279, 304A, and 338 of the Indian Penal Code, 1860 and under Section 184 of the Motor Vehicles Act, 1988. He was tried for these offences in Summary Criminal Case No.103 of 2015 before learned Chief Judicial Magistrate at Gadchiroli.

2. Learned Chief Judicial Magistrate at Gadchiroli convicted the him for all these offences.

On account of conviction under 279 of the Indian Penal Code, 1860, the applicant was directed to pay a fine of Rs.1,000/- and in default of payment of fine amount to suffer

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simple imprisonment for 1 month.

On account of conviction under Section 338 of the Indian Penal Code, 1860, the applicant was sentenced to suffer rigorous imprisonment for 6 months.

So also, on account of conviction under Section 304A of the Indian Penal Code, 1860, the applicant was directed to suffer rigorous imprisonment for 1 year and 6 months.

Insofar as conviction under Section 184 of the Motor Vehicles Act, 1988 is concerned, the applicant was directed to pay a fine of Rs.500/- and default of payment of fine amount to suffer simple imprisonment for 15 days.

3. Being dissatisfied by aforesaid judgment and order of conviction passed by learned Chief Judicial Magistrate at Gadchiroli, the present applicant preferred a criminal appeal bearing No.53 of 2015 before learned Sessions Judge at Gadchiroli. Learned Sessions Judge at Gadchiroli, on 5.5.2017, partly allowed the said criminal appeal. Though learned Sessions Judge confirmed the conviction for the offence punishable under Section 304A of the Indian Penal Code, 1860, he reduced jail sentence from 1 year and 6 months to 1 year. He acquitted the applicant for the offence punishable under Section 338 of the Indian Penal Code, 1860. However,

applicant's conviction and sentence, for the offence punishable under Section 279 of the Indian Penal Code, 1860 and for the offence punishable under Section 184 of the Motor Vehicles Act, 1988, were maintained.

Against this, the present criminal revision application is preferred.

4. I have heard learned counsel Ms J.P. Junghare h/f learned counsel Shri M. Anil Kumar for the applicant and learned Additional Public Prosecutor Ms T.H. Udeshi for the non-applicant/State.

5. The incident, in question, occurred on 11.1.2015 at 18:00 hours. That time, deceased Rakesh Kohapare was on his motorcycle bearing registration No.MH-33/H-9838 and was proceeding towards complex area. Near a Guest House, a truck having registration No.CG-07/NA-6888 came from opposite direction and gave dash to the said motorcycle resulting into, sustaining grievous injuries to Rakesh, who succumbed to the said injuries during his medical treatment. The applicant was driving the said offending truck.

6. PW1 Devanand Janardhan Goradwar was examined as a pancha witness, who proved spot panchanama Exhibit 21.

PW2 Dipak Purushottam Boliwar is an eyewitness. As per his evidence, he was proceeding towards Gadchiroli City from complex area by a motorcycle. There was a truck in front of him and one Tata Sumo was ahead of the said truck. It is his evidence that the offending truck tried to overtake the said Tata Sumo and in that attempt went on wrong side and that time he heard a noise. It was a collusion between the said truck and motorcycle, which was coming from opposite direction.

PW3 Police Constable Indel Ramrao Rathod also corroborates the said evidence and further stated that the truck driver/present applicant tried to ran away from the spot. However, he was apprehended.

7. The scope in the criminal revision is limited. Unless it is shown that approach of the Courts below is perverse and the Courts below have not considered available evidence on record, the revisional Court will exercise its jurisdiction.

8. The factum of death is not denied. The only submission advanced before this Court was that the prosecution has not examined the doctor, who has performed the postmortem. Except this, no other point was raised. There is a concurrent finding of fact recorded by both the Courts below that the applicant, who was driving the offending truck, tried to

overtake the Tata Sumo from wrong side and in that process, he gave a dash from front side to the motorcycle, which is coming from opposite direction.

9. No case is made out for interference. The criminal revision application is rejected.

JUDGE

!! BRW !!