

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

**CRIMINAL REVISION APPLICATION NO. 37 OF 2005**

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Dharmendra s/o Raghuvir Dusa,  
Age : 38 years, Occu.: Business,  
R/o Shrirampur, District Ahmednagar. ... Revision Petitioner

Versus

State of Maharashtra  
Through P.P., High Court,  
Aurangabad. ... Respondent

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Mrs. Smita S. Nagarkar h/f Mr. K. M. Nagarkar, Advocate for the  
Revision Petitioner.  
Mr. P. K. Lakhotia, APP for Respondent-State.

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**CORAM : V. K. JADHAV, J.  
RESERVED ON : 06.09.2018  
PRONOUNCED ON : 24.09.2018**

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**JUDGMENT :-**

1. By this criminal revision application, the petitioner/original accused has challenged the judgment and order of conviction dated 17.06.1996 passed by Chief Judicial Magistrate, Osmanabad in R.C.C. No. 84 of 1995 for the offence punishable under Section 304-A of IPC thereby sentencing him to suffer simple imprisonment for one year and to pay fine of Rs.1000/-, in default to undergo simple imprisonment for three months, which is also confirmed by

the Additional Sessions Judge, Osmanabad in Criminal Appeal No. 38 of 1996 by judgment and order dated 31.12.2004.

2. Brief facts giving rise to the present revision are as follows:

a. The incident took place on 18.10.1994 at 04.00 p.m. on Osmanabad-Beed State High Way no.1 near mile stone on 350 within the limits of Yedshi village. Sow. Rajshree Ramesh Deshmukh, Sow. Subhadrabai Tanaji Deshmukh and two small kids namely Chandrabhaga Tanaji Deshmukh (daughter of Smt. Subhadrabai Tanaji Deshmukh) and Neeta Tanaji Deshmukh were returning to their home by the left side of the road after visiting the Temple at Yedshi. One Tempo bearing No.MWA 7058 of TATA 407 model owned by Raghuveer Jagannath Dusa, the father of the accused came in high speed driven by the accused to the left side of the road from their back directly gave hit to the small kids namely Chandrabhaga Tanaji Deshmukh, a girl aged about nine years and Neeta Pralhad Deshmukh, a girl aged about four to six years. It also gave dash to Smt. Subhadrabai Deshmukh and Rajshree Deshmukh. Due to this hit, Chandrabhaga Deshmukh met with instantaneous death on the spot. Neeta Deshmukh also met with the death. The other two sustained the injuries.

b. One Ramchandra Vithoba Deshmukh grand father of deceased Chandrabhaga gave the report in respect of this incident in Yedshi Police out post at 5.15 p.m. Shri Dattatraya Vasantrao Ghadge, ASI attached to Yedshi Police Out Post prepared the occurrence report in respect of this incident and submitted in Osmanabad Rural Police Station at 8.00 p.m. Said Ramchandra Deshmukh submitted the report in Osmanabad Police Station at 8.50 p.m. Shri Abdul Sattar Babu ASI who was having the duty as PSO registered it to Crime No.134/1999 under section 304-A and other penal provisions of the Indian Penal Code. The investigation of the matter was carried out by Shri Dattatraya Ghatge, ASI attached to Yedshi Police Outpost.

c. Charge was framed by the Chief Judicial Magistrate for the offence punishable under Sections 304-A, 279 and 337 of IPC. The accused pleaded not guilty and claimed to be tried. The prosecution examined in all eight witnesses to prove the charge levelled against the accused. On conclusion of the trial, the learned Chief Judicial Magistrate passed the impugned order dated 17.06.1996 which also came to be confirmed by the Additional Sessions Judge in appeal preferred by the accused as aforesaid.

3. Learned counsel for the petitioner submits that both the courts below have not appreciated the evidence on record in its proper perspective. There is no evidence on record in respect of rash and negligent driving by the petitioner/accused. The deposition of panch witness below Exh.10, stating that he had signed the panchanama on the say of police authority, takes away the legal value of said panchanama. This aspect has not been considered by both the courts below. PW-3 Rajshree, who was also injured in the said accident, has deposed that she had no knowledge about who was driving the said vehicle. There is no identification of the accused by deposition of the witnesses.

4. The learned counsel submits possibility of occurrence of accident due to negligence on the part of the two ladies while crossing the said road alongwith two minor girls cannot be ruled out. She submits that rash and negligent driving on the part of accused has to be proved beyond reasonable doubt. All these legal aspects were absolutely ignored by the courts below while passing the impugned judgment and orders and thus, committed error on the face of record. Thus, the impugned judgment and orders are liable to be quashed and set aside.

5. The learned counsel, in order to substantiate her contention, placed reliance on the following cases:

1. *Abdul Subhan vs State (NCT of Delhi)*, reported in (2007) Cri.L.J. 1089 and
2. Decision dated 24.11.2017 of Delhi High Court in CrI. Rev. P. 805 of 2016 [*Ras Bihari Singh vs State (NCT of Delhi)*].

6. Learned APP, on the other hand, submits that from the evidence on record, particularly the certificate issued by the Inspector of Motor Vehicles to the effect that the vehicle involved in the accident was in good condition, clearly shows that the accident has not occurred on account of any mechanical defect and the same is also not disputed by the defence. There are eye witnesses to the incident i.e. PW-3 Rajshree Deshmukh, PW-4 Subhadra Deshmukh (two injured ladies) and PW-6 Machindra Keshavrao Nimbalkar, who is a hotel owner. As per their evidence, PW 3 Rajshree Deshmukh, PW 4 Subhadra alongwith two girls were walking by the correct left side of the road. It directly hit the girls and gave dash to the ladies. The impact was so high that the two girls died in the accident and two ladies have sustained injuries on their person. The said road is straight and there was no traffic on it making it impossible for the petitioner/accused to control the vehicle when it

was in good condition. He submits that considering the documents on record, including the spot panchanama, inquest panchanama, autopsy reports and the injury certificates coupled with the statements of witnesses, the prosecution has established beyond reasonable doubt the rash and negligent driving on the part of the petitioner/accused.

7. Learned APP, in order to substantiate his contention, placed reliance on the following cases:

1. *Kamalbai w/o Arjun Bhalekar vs Sanjay s/o Pandhari Potbhare*, reported in **2017 (4) BCR 739** and
2. *Ravi Kapur vs State of Rajasthan*, reported in (2012) 9 SCC 284.

8. The incident had taken place on 18.10.1994 at about 04.00 p.m. on Osmanabad Beed State Highway within the limits of village Yedshi. PW-3 Rajshree Deshmukh, PW-4 Subhadra Deshmukh alongwith two small kids namely deceased Chandrabhaga and deceased Neeta aged 5-6 years approximately were returning to the house by the left side of the road after visiting the temple at Yedshi. At that time, one tempo of TATA 407 model bearing registration no. MWA 7058

gave dash to them from their backside. The petitioner/accused was driving the said tempo in high speed. Said tempo, being driven by the petitioner/accused, gave dash to the small kids and also PW-3 Rajshree and PW-4 Subhadra. In consequence thereof, said Chandrabhaga met with instantaneous death on the spot and another child deceased Neeta succumbed to the injuries while under treatment in the hospital.

9. The incident had occurred in the broad day light. PW-3 Rajshree Deshmukh and PW-4 Subhadra Deshmukh are the injured eye witnesses and PW-6 Machindra Nimbalkar, the hotel owner, is the eye witness to the incident. According to the above injured witnesses and the another independent eye witness, PW-3 Rajshree and PW-4 Subhadra alongwith the kids were on the extreme left side of the road and said tempo gave dash to them from their back side. On careful perusal of their evidence, it also appears that, before the incident, PW-3 Rajshree and PW-4 Subhadra alongwith kids had already crossed the road and they were proceeding towards their destination by extreme left side of the road. The tempo being driven by the petitioner/accused gave dash to them from their

back side and even after giving dash to them, the petitioner/accused could not control his tempo and the tempo went towards the side of the road near compound of one boarding school. The barbed wire fencing and iron angles were found broken. The tyre marks were found on the spot going ahead 60 feet on the tar road/metal road etc. As deposed by PW-6 eye witness Machindra Nimbalkar, the body of Chandrabhaga was cut into two pieces. Thus, the impact was so severe causing instantaneous death of deceased Chandrabhaga, causing fatal injuries to deceased Nita, who subsequently died in the hospital and also causing injuries to PW-3 Rajshree and PW4 Subhadra. It has come in the evidence that head of deceased Chandrabhaga was on the road and other part of the body was on the side of the road.

10. In the backdrop of this evidence, learned counsel for the petitioner/accused has vehemently submitted that, those two deceased girls were unattended by PW-3 Rajshree and PW-4 Subhadra. They were walking behind their back. Learned counsel has also submitted that mere speed of the vehicle is not a criteria to decide rash and negligent act on the part of the driver.

11. On careful perusal of the evidence of PW-4 Subhadra, it appears that she was behind PW-3 Rajshree and those two deceased girls. Said tempo has given dash to all of them from their backside. These witnesses may not be able to tell us as to what lead the tempo to come to the extreme left side of the road and to give dash to them and also for PW-6 Machindra Nimbalkar, who is hotel owner and eye witness, to explain as to what led the tempo to go to the extreme left side and give dash to all these four persons from their back side. However, it is well settled that the doctrine of *res ipsa loquitur* is equally applicable to the case of an accident and not merely to the civil jurisprudence. In the instant case, there is sufficient evidence on record about excessive speed of the tempo which gave dash to PW-3 Rajshree and PW-4 Subhadra and the deceased girls from their back side. I have no hesitation in my mind to apply the doctrine of *res ipsa loquitur* in the instant case.

12. In a case **Ravi Kapur** (supra) relied upon by learned APP, the Supreme Court has held that the doctrine of *res ipsa loquitur* (thing speaks for itself) is also applicable to criminal

cases of accident. The Supreme Court has also explained the meaning and application of “reasonable care” and the concept of “culpable rashness” and “culpable negligence”.

13. In the instant case, the incident had taken place in broad day light. There was no reason for the petitioner/accused, who had driven the said tempo, to give dash to the aforesaid four persons from their back side who were walking on the extreme correct left side. It is also a part of evidence that they were walking on the road of village Yedshi and it is thus expected from the driver to take reasonable care. If the said parameter of “reasonable care” is taken into consideration, then, the same imposes an obligation or a duty on a person to care for the pedestrian on the road and this duty attains a higher degree when the pedestrians are children of tender years.

14. The Supreme Court in the aforesaid case of **Ravi Kapur**, in paragraph nos. 14, 15 and 20 has made following observations :-

“14. The Court has to adopt another parameter, i.e., ‘reasonable care’ in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender

years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

15. The other principle that is pressed in aid by the courts in such cases is the doctrine of *res ipsa loquitur*. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. [The Act](#) itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the [IPC](#) that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of [Section 184](#) of the Act. The courts have also taken the concept of ‘culpable rashness’ and ‘culpable negligence’ into consideration in cases of road accidents. ‘Culpable rashness’ is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (*luxuria*). ‘Culpable negligence’ is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is *prima facie* evidence of such negligence. This maxim suggests that on the circumstances of a given case the *res* speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person’s negligent conduct. [Ref. Justice Rajesh Tandon’s ‘An Exhaustive Commentary on [Motor Vehicles Act](#), 1988’ (First Edition, 2010)].

20. In light of the above, now we have to examine if negligence in the case of an accident can be gathered from the attendant circumstances. We have already held that the doctrine of *res ipsa loquitur* is equally applicable to the cases of accident and not merely to the civil jurisprudence. Thus, these principles can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. It may also be noticed that either the accident must be proved by proper and cogent evidence or it should be an admitted fact before this principle can be applied. This doctrine comes to aid at a subsequent stage where it is not clear as to how and due to whose negligence the accident occurred. The factum of accident having been established, the Court with the aid of proper evidence may take

assistance of the attendant circumstances and apply the doctrine of *res ipsa loquitur*. The mere fact of occurrence of an accident does not necessarily imply that it must be owed to someone's negligence. In cases where negligence is the primary cause, it may not always be that direct evidence to prove it exists. In such cases, the circumstantial evidence may be adduced to prove negligence. Circumstantial evidence consists of facts that necessarily point to negligence as a logical conclusion rather than providing an outright demonstration thereof. Elements of this doctrine may be stated as :-

The event would not have occurred but for someone's negligence. ? The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

Accused was negligent and owed a duty of care towards the victim."

15. In a case *Ras Bihari Singh* (supra) relied upon by the learned counsel for the petitioner/accused, in the facts of the said case, in paragraph no.23 of the judgment, the Delhi High Court has made following observations :-

"23. The prosecution had to prove that there was a direct nexus between the death of the person and rash and negligent act of the petitioner. No doubt a life has been lost. The prosecution had to prove that petitioner had acted with recklessness and therefore a failure to exercise reasonable and proper care in person but in the instant case the baby had been left unattended. The mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the petitioner cannot be drawn. In order to impose criminal liability on the petitioner, it must be found as a fact that the accident was entirely or at least mainly due to the rashness or negligence on the part of the petitioner who was driving the vehicle."

16. Here, in the instant case, there are three eye witnesses to the incident and in addition to that, the attending circumstances, which squarely make applicable the doctrine of *res ipsa loquitur*, unmistakably point out the rash and

negligent driving of tempo on the part of the petitioner/accused at the relevant time. Thus, the aforesaid case relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

17. In a case *Abdul Subhan* (supra) relied upon by learned counsel for the petitioner/accused, the Delhi High Court has referred the case of ***State of Karnataka Vs. Satish***, reported in 1998 SCC 1508, wherein the Supreme Court has held that mere allegations of higher speed would not tantamount to rashness or negligence. There being no evidence on record to establish negligence or rashness in driving the truck and as such, there is nothing to indicate that the petitioner acted in a manner which could be regarded as rash or negligent.

18. In the instant case, the very fact that the Tempo gave dash to the four pedestrians from their back side while walking from the extreme correct left side of the road itself is sufficient to draw an inference about rash and negligent driving on the part of the petitioner/accused. Needless to say that the same is in addition to the ocular evidence in this case. Both the Courts below have rightly observed that the

omissions and contradictions are not material in its nature.

19. It is well settled that revisional powers of the High Court under section 401 of Criminal Procedure Code is to be exercised in the following exceptional cases :-

- a) if there is glaring defect in the procedure ;
  - b) If there is manifest error on the point of law which is consequently resulted into flagrant miscarriage of justice.
  - c) The trial court has totally misread the evidence and has also failed to apply the well settled principles of law.
- II. When the prosecution evidence is altogether unsatisfactory and could not discharge the burden of proof.
- III. Where the conviction was based on no evidence, was legally misconceived and suffered non application of mind.
- IV. Where conviction is unfounded and illegal.
- V. Where the finding of conviction is unreasonable and perverse.
- VI. Where there is complete paucity of evidence and the order of conviction could not have been recorded.
- VII. The order of conviction is tainted with serious lapses and discrepancies, which resulted into serious prejudice to accused and there is total failure of justice.

20. Further, revisional Court should not interfere in such matters where the lower Court has found the offence

established against the revision petitioner and there is no error in appreciation of evidence. When there are concurrent findings on merits, interference is not warranted. Furthermore, there should be no interference when there is no error of law, impropriety of procedure or non-application of mind has been pointed out.

21. In the instant case, I find no contingency as detailed above so as to justify the interference while exercising the revisional powers of this Court.

22. In view of the above, I do not find any substance in this Criminal Revision application. The learned Judge of the Trial Court has rightly recorded the conviction, which is confirmed by the Additional Sessions Judge, Osmanabad. Accordingly, I proceed to pass the following order.

**ORDER**

- I. Criminal Revision Application is hereby dismissed.
- II. Criminal Revision Application is accordingly disposed off.

Sd/-  
( **V.K. JADHAV, J.**  )

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