

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 3 OF 2018

GAURAV MALGAONKAR.,

... Petitioner

Versus

**STATE, AS REP. BY THE OFFICER
INCHARGE, MAPUSA POLICE STATION,
MAPUSA AND ANR.,**

... Respondents

Shri Kamlakant Poulekar, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 6th March 2018

ORAL ORDER:

The challenge in this revision application, is to the order dated 04.10.2017, passed by the learned Additional Sessions Judge at Mapusa, framing charge against the petitioner, for the offence punishable under Sections 304, 338 of the Indian Penal Code (IPC, for short) and Section 134 (a) and (b) of the Motor Vehicles Act, 1988 (Act, for short).

2. At the outset, it may be mentioned that the challenge is limited to the part of the order framing charge under Section 304(II) of IPC. The learned Counsel for the petitioner submitted that at the highest, charge could have been framed under Section 304A of IPC. In view of the limited challenge, the consideration

has to be confined to see whether, prima facie case, for framing of charge for the offence under Section 304(II) of IPC is made out or not.

3. The petitioner happens to be a professional driver. On 20.01.2016 at about 5:50 hours, the petitioner was driving an Innova SUV, bearing registration No. GA-03/N-7429 and was proceeding from Mapusa to Panaji. When the petitioner was driving from Hutatma Chowk to Gandhi Chowk, he dashed against a standing scooter, resulting into death of Ms. Angana Naik and causing grievous injuries to Mr. Anuj Naik. Both were standing near the scooter at the extreme left on the road. According to the prosecution, the petitioner fled away from the spot without giving any medical aid to the victim and without reporting the accident to the police.

4. It appears that an offence at Crime No. 27/2016 was registered against the petitioner with P.S. Mapusa on the same day. The petitioner came to be arrested and was produced for medical examination at around 11:00 o'clock. The Biochemical Report of the blood sample of the petitioner showed alcohol level of 30 mg. per 100 ml. of blood, as per the test conducted at the Asilo hospital. The learned Magistrate, however, refused to frame charge against the petitioner under Section 185 of the Act, which requires alcohol level in excess of 30 mg. per 100 ml. of

blood.

5. Be that as it may, on the basis of the statement of the eye witnesses and the fact that the petitioner was aware of the terrain, where the accident occurred, the learned Sessions Judge found that this is a case where, knowledge of the consequences can be attributed to the petitioner and proceeded to frame charge inter alia under Section 304(II) of IPC.

6. I have heard Shri Poulekar, the learned Counsel for the petitioner and Shri Faldessai, the learned Additional Public Prosecutor for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the charge sheet and the impugned order passed.

7. It is submitted by Shri Poulekar, the learned Counsel for the petitioner that the petitioner cannot be foisted with the knowledge, that his act is likely to cause death, as he cannot expect any person standing by the side of the road. It is submitted that the petitioner seeing the crowd gathered there, was required to move away from the spot of the accident, expecting danger to his life and limb. It is submitted that the petitioner had reported the matter to the police. He submitted that this is not a case where, a charge for an offence under Section 304(II) of IPC can be framed.

8. Shri Faldessai, the learned Additional Public Prosecutor has supported the impugned order. It is submitted that the learned Sessions Judge has rightly found that the petitioner was aware of the terrain at the spot of the accident. The learned Additional Public Prosecutor has pointed out that the impact was so severe that it resulted into the damage of the scooter, as well as grievous injuries to the deceased, as well as Mr. Anuj Naik, who was seriously injured. The learned Additional Public Prosecutor has referred to the sketch annexed to the spot panchanama, in order to show that the petitioner had gone to the extreme left and dashed a standing scooter parked there. He submits that under Section 304(II) of IPC, what is required is the knowledge that the act is likely to cause death.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. Prima facie, at this stage, it appears that the deceased as well as the injured, were standing by the side of the scooter, which was parked at the extreme left of the road. Mr. Anuj Naik is not only an eye witness, but, also an injured witness. Mr. Anuj Naik has stated that the petitioner, driving an Innova SUV, came in a very high speed and by coming to the left side of the road, gave a dash to the scooter, injuring him as well as his sister, Ms. Angana Naik, resulting into death of Ms.

Angana Naik. It is not necessary to go into the question whether, the offence under Section 185 of the Act is made out or not, in as much as, the alcohol level in the blood sample was not in excess of 30 mg. per 100 ml. of blood. However, prima facie, the fact remains that this level of alcohol was after five hours of the occurrence of the accident. All the circumstances taken together, along with the statement of the eye witness, prima facie, are sufficient to attribute knowledge to the petitioner, that his act while driving on the public road is likely to cause danger to the life and limb of the other users of the road. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference in the revisional jurisdiction of this Court.

The criminal revision application is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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