

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.81 OF 2018
IN
CRIMINAL REVISION APPLICATION NO.91 OF 2018

Mangesh Vitthal Varak
versus
The State of Maharashtra

Applicant

Respondent

Ms.Prabha V. Badadare with Mr.Omkar Nagvekar for applicant.
Mr.M.G.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2018

PC :

1. This is an application for suspension of sentence. The applicant is convicted for offence under Section 304-A of Indian Penal Code and sentenced to suffer imprisonment for six months. He is further convicted for the offence u/s 279 of IPC as well as Section 184 of IPC and sentenced to suffer imprisonment for six months and three months respectively.

2. The case of the prosecution is that the deceased, her husband and son were walking from the side of the road and at that time the accused was driving the vehicle and dashed the deceased, which has resulted in her death. The learned counsel for applicant submitted that the deceased and two others were walking together and in the circumstances it is difficult to believe that others were not injured. It

is further submitted that tyre marks at the scene of the incident were not attributed to the vehicle which was driven by the applicant-accused. It is further submitted that the version of the husband of the deceased that his wife was two to three feet behind him and son was walking ahead of him and if the said version is accepted, it is not possible to believe the prosecution case that the accused was driving rashly and negligently, which has caused the accident resulting in death of the deceased. It is submitted that the applicant was on bail during trial and also during pendency of the appeal.

3. Learned APP submitted that there is concurrent findings of two Courts. There are eye witnesses to the incident. There is medical evidence to show that the applicant was under the influence of alcohol.

4. It is apparent that the deceased and two others i.e. her husband and son were walking together and the accused allegedly gave dash only to the deceased. It is the prosecution case that all three were walking at the side of road one after another and at that time the accused, who was driving rashly, had caused the accident. The applicant is in custody since 24th January 2018. Although the applicant is convicted on three different counts, the judgment of the Trial Court as well as the Appellate Court does not specify the reasons for not directing that the sentence to run concurrently. Considering the submissions advanced by the advocate for applicant and learned APP, and also considering the fact that applicant was on bail during the trial as well as during pendency of the appeal, case of suspension of sentence is made out. Hence, I pass following order :

ORDER

(i) The sentence of imprisonment awarded by the judgment and order dated 5th April 2010 passed by the Judicial Magistrate, First Class, Roha in Regular Criminal Case No.61 of 2007, which was confirmed by the Additional Sessions Judge, Mangaon, vide judgment and order dated 24th January 2018 passed in Criminal Appeal No.14 of 2010, is suspended and the applicant is permitted to be released on bail on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

(ii) Criminal Application No.81 of 2018 is disposed of.

(PRAKASH D. NAIK, J.)

MST