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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.123 OF 2018

Shaikh Imran s/o. Shaikh Raheman,
Age: 50 yrs., Occu: Labour,
R/o. Imampura, Old City, Akola.
Taluke and District Akola

..Applicant.

V/s.

State of Maharashtra

..Respondent.

Mr.Abdul Subhan for the applicant.

Mr.V.A.Thakre, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : AUGUST 10, 2018

PC.:-

In Summary Criminal Case No.5061/2008, the applicant-accused was convicted for an offence punishable under section 279 of the Indian Penal Code and directed to undergo rigorous imprisonment for two months and to pay fine of Rs.100/- in default to suffer simple imprisonment for seven days, in addition to his conviction for an offence punishable under section 337 of the Indian Penal Code for same period by order dated

March 30, 2010.

2. An appeal against the aforesaid conviction being Criminal Appeal No.99/2010 came to be dismissed on October 7, 2017. As such, this revision against the conviction.

3. Heard Mr.Abdul Subhan, the learned counsel for the applicant and Mr.V.A.Thakre, the learned APP for the State.

4. The learned counsel for the applicant would urge that in the incident in question, in all six witnesses were examined of which Gajanan and Shaligram are the victims of the offence in question. According to him, there are material contradictions and it is not established as to whether the applicant-accused was riding his motor cycle i.e. from Akola to Murtizapur or from Murtizapur to Akola, as the incident took place near Borgaon Manju bus stand. He would urge that to find out whether the applicant was riding his vehicle on the wrong side, can be appreciated from the deposition of these two witnesses only. He would then urge that, so as to show his *bona fides* and to show his remorse, the applicant has volunteered to deposit an amount of Rs.50,000/- which needs

to be made over to any NGO who are working on traffic discipline and safety.

5. The learned APP would urge that in all six witnesses were examined and guilt of the applicant-accused is clearly established. According to him, the degree of rash and negligent driving can be inferred from the evidence of PW2 Gajanan, PW3 Shaligram as the applicant-accused had hit both these persons.

6. Considered rival submissions.

7. PW1 Ramchandra, who was called as a panch witness has proved the spot panchanama. PW2 Gajanan and PW3 Shaligram are the victims, whose evidence is discussed in the later part of the judgment. PW4 Rahul claimed to an eye-witness who was unable to identify the accused. PW5 Lanjewar is examined in support of the prosecution. He has helped in carrying out the investigating of the incident with the Investigating Officer. PW6 Rashid is an autoriskhaw driver examined in support of the spot panchanama. He turned hostile. However, the spot panchanama was already proved by panch witness PW1 Ramchandra and Investigating Officer PW5 Lanjewar.

8. The material evidence in the present case appears to be PW2 Gajanan and PW3 Shaligram, who are victims of the incident in question. If the evidence of both these witnesses is appreciated, it is absolutely clear that the prosecution has failed to demonstrate as to whether the applicant was riding the motor cycle from Akola to Murtizapur or from Murtizapur to Akola i.e. exactly in opposite direction. Once the aforesaid fact is not proved by the prosecution, it is really difficult to infer that the applicant was driving his motor cycle on the wrong side of the road, which has resulted in causing the incident in question.

9. Though PW2 Gajanan has stated that the applicant was driving his motor cycle at a high speed of 80 kms. per hour, it is really difficult to believe such evidence of PW2 Gajanan. There is no corroboration of the same and it is claimed that he was victim of the incident in question while he was riding his own motor cycle. As such, the evidence of this witness to the aforesaid incident also needs to be rejected.

10. In the aforesaid background, I am of the opinion that the prosecution has failed to prove the case against the applicant-

accused for offences punishable under section 279 and 337 of the Indian Penal Code.

11. As such, conviction of the present applicant is quashed and set aside and the applicant is acquitted for the aforesaid offences.

12. The amount of Rs.50,000/- which the applicant has deposited in this Court be handed over to an NGO through the Superintendent of Police, Akola, who shall take appropriate steps in transferring the said amount to any registered NGO who are working for the traffic discipline and safety. The aforesaid process of transfer of the amount from this Court to the account of Superintendent of Police, Akola and transfer of the said amount of Rs.50,000/- from the account of Superintendent of Police, Akola to NGO be completed within a period of 8 weeks from today. This Court expects Superintendent of Police, Akola to submit a compliance report within a period of four weeks thereafter.

13. With the above observations, the revision stands allowed.

(NITIN W.SAMBRE, J.)