

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.1 OF 2007

Popat Bhaginath Kasar,
Age-25 years, Occu:Driver,
R/o-Walki, Tq-Nagar,
Dist-Ahmednagar.

...APPLICANT

VERSUS

State of Maharashtra

...RESPONDENT

...
Mr.Joydeep Chatterji Advocate for Applicant.
Mr.A.A. Jagatkar, A.P.P. for Respondent.
...

CORAM: V.M. DESHPANDE, J.

DATE : 16TH APRIL, 2019

ORAL JUDGMENT :

1. Heard Shri Joydeep Chatterji, the learned counsel for the Applicant and Shri A.A. Jagatkar, the learned Additional Public Prosecutor for the State.

2. By the present Revision, the Applicant is challenging the Judgment and order of conviction passed by the learned Ad-hoc District Judge-4 and Additional Sessions Judge, Ahmednagar on 21st December, 2006, in Criminal Appeal No.51 of 2006. By the said, the learned lower appellate Court partly allowed the appeal filed on behalf of the Applicant. Though for other offences the Applicant was acquitted, the learned lower appellate Court confirmed the conviction of the Applicant for the offence under Section 304-A of the Indian Penal Code, however, reduced the quantum of sentence from one year to three months and to pay fine of Rs.5000/-, and in default to suffer further rigorous imprisonment for one month. Though the quantum of sentence was reduced from one year to three months by the learned lower appellate Court, the State chose not to file the appeal against the said.

3. In short, the case of the prosecution was that on 3rd December, 2004 at about 6.00 p.m., the Applicant was driving his vehicle having registration No. MH-16/B-2894, a 407 Tempo and he was plying the said vehicle on Nagar-Dound road in most rash and negligent manner. According to the prosecution, when the said vehicle crossed Kinetic square, which is situated at the outskirts of Ahmednagar city, it gave dash to one boy, namely, Neeraj, whose age was seven years at the relevant time, resulting into his death on the spot itself. After completion of usual investigation, challan was presented in the Court of learned Judicial Magistrate, who framed charge against the Applicant. The Applicant abjured his guilt and claimed for his trial. In order to bring home the guilt of the accused, the prosecution examined only two witnesses, PW-1 Dnyaneshwar Bhalsing and PW-2 Sunil Jadhav, and also relied on various

documents duly proved during the course of the trial.

4. After the appreciation of the prosecution case in S.T.C. No.47 of 2005, the learned Judicial Magistrate, First Class, Court No.8, Ahmednagar, on 13th March, 2006, found that the Applicant is guilty of committing offence punishable under Section 304-A, 279 of the Indian Penal Code and Section 184 and 183(1) of the Motor Vehicles Act. The learned Magistrate inflicted sentence of one year for the offence punishable under Section 304-A of the Indian Penal Code and one month for the offence punishable under Section 279 of the Indian Penal Code, and also awarded sentence of one month for the offence under Section 184 of the Motor Vehicles Act, and also directed to pay various amounts by way of fine.

5. The Applicant carried an appeal before

the lower appellate Court. His appeal was registered as Criminal Appeal No.51 of 2006. The learned lower appellate Court, after hearing the parties to the appeal, partly allowed the said and though he acquitted the Applicant for the offence under Section 279 of the Indian Penal Code and the offences for the Motor Vehicles Act, he approved the conviction of the Applicant for the offence punishable under Section 304-A of the Indian Penal Code, however, at the same time, reduced the quantum of punishment from one year to three months. Hence, this Revision.

6. The record shows that the incident in question is not at all disputed on the part of the Applicant before the Court below. It is also not disputed that at the relevant time the Applicant was driving the offending vehicle. According to the defence, the deceased came suddenly running in between the road and though the Applicant tried

his level best to avoid and/or avert the dash, unfortunately the deceased came in the rear side of the vehicle. Thus, it is the submission on the part of the learned counsel for the Applicant that though reasonable care was taken by the Applicant, the unfortunate incident has occurred.

7. Exhibit-13 is the postmortem notes. Perusal of the said shows various crush injuries on the dead body.

8. The only question that is posed for consideration before this Court is, whether at the relevant time the Applicant was driving the vehicle in a rash and negligent manner.

9. PW-1 is Dnyaneshwar Bhalsing. His evidence is having its own value, since this prosecution witness was travelling in the offending vehicle. Not only that he was travelling

in the offending vehicle, he was sitting beside the Applicant who was driving the vehicle. In his examination-in-chief itself, he stated on oath that at the relevant time when the deceased came from the Western side and he was running towards his mother to the Eastern side, the driver of the vehicle though tried to control the vehicle, but it was in a high speed and therefore the Tempo left the main road and at that particular point of time the boy came across and came under the rear wheels of the Tempo. Thus from the examination-in-chief itself, there cannot be any doubt that at the relevant time, the Applicant was driving the vehicle in a high speed.

10. Speed alone is not a criteria to reach to the conclusion about the rashness on the part of the driver of the offending vehicle. However, at the same time, it will be one of the factor as an indicator to show that the driver was driving the

vehicle in most rash and negligent manner if he is unable to control the speed of the vehicle. This Court is mindful of the principle that, there cannot be straight jacket formula as to what speed will be the high speed and which could be said as factor to determine the rashness. Each case will have to be adjudicated in the light of the facts brought on record.

11. In the present case, in the cross-examination of Dnyaneshwar Bhalsing (PW-1), it is brought on record that road on which the incident has occurred, is full of traffic. The vehicles are parked on both sides of the road.

12. PW-2 is Sunil Jadhav, who is a panch on the spot. He has proved spot panchnama (Exhibit-19). Through his cross-examination, it is brought on record that near the spot of the incident, there is Ajay Gas Godown and usually

there is rush for transportation of the cylinders from Ajay Gas Agency, and also there exist one cattle shelter. Exhibit-19, the spot panchnama shows that the road on which the incident occurred, was running North-Sourth. The sketch map, as it could be seen from Exhibit-19, shows that the driver was required to apply the brake and brake marks are noted to the extent of 35 ft. from the middle of the road till Eastern side of the road. Brake marks of 35 ft., clearly demonstrates that the offending vehicle was not in a high speed but was in a very high speed and though the driver tried to apply brake, till 35 ft. he was unable to stop the vehicle. As seen from the evidence of the two prosecution witnesses, the incident in question has occurred, though at the outskirts of Ahmednagar city, it was thickly populated area and there was heavy rush of various vehicles. In that view of the matter, it was expected from a driver not to drive the

vehicle at very high speed at such place. When the driver, inspite of knowing the fact that the spot of the occurrence is thickly populated and very busy road, still allows himself to drive the vehicle in very high speed, in my view, it will be one of the shade of driving the vehicle in rash and negligent manner. In the incident, had the driver at the relevant time, was driving the vehicle in not in rash and negligent manner, life of a boy, namely Neeraj, aged about seven years, could have been saved. Due to the rash and negligent act on the part of the Applicant, his precious life was cut-short.

13. In my view, driving the vehicle in a high speed in the area which is thickly populated and having too much movements, is one of the shade by which it could be said that it is a rash and negligent driving, the present Revision must fail and accordingly the Revision is dismissed.

14. The Applicant, who is on bail, should surrender to his Bail Bonds immediately, else, the learned Magistrate is directed to take steps to procure the presence of the Applicant to serve out his remaining jail sentence. The Revision Application is dismissed. Rule discharged.

[V.M. DESHPANDE, J.]

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