

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.248 OF 2005

Shrianand s/o Narayanrao Wange,
Age-34 years, Occu:Driver,
R/o-Vithal Nagar, Latur,
Tq. & Dist-Latur.

...APPLICANT

VERSUS

The State of Maharashtra,

...RESPONDENT

...

Mr.T.M. Venjane Advocate for Applicant.
Mr.S.Y. Mahajan, A.P.P. for Respondent.

...

CORAM: V.M. DESHPANDE, J.

DATE : 28TH MARCH, 2019

ORAL JUDGMENT :

1. Heard Shri T.M. Venjane, the learned counsel for the Applicant and Shri S.Y. Mahajan, the learned Additional Public Prosecutor for the State. Also perused the record and proceedings

which was called at the time of admission of this Revision, in the year 2005.

2. The present Revision is directed against the Judgment and order of conviction passed by the learned Chief Judicial Magistrate, Latur in S.T.C.C. No.5733 of 1998, dated 2nd June, 2004 convicting the Applicant for the offence punishable under Section 279 of the Indian Penal Code and was directed to suffer rigorous imprisonment for three months. The Applicant was convicted for the offence punishable under Section 337 of the Indian Penal Code and on that count the learned Chief Judicial Magistrate sentenced him to suffer rigorous imprisonment for three months. The Applicant was also convicted for the offence punishable under Section 304-A of the Indian Penal Code and was directed to suffer rigorous imprisonment for six months and payment of fine of Rs.500/-.

. Feeling aggrieved thereby, the appeal was carried by the Applicant before the Sessions Court, Latur, and learned Ad-hoc Additional Sessions Judge, Latur in Criminal Appeal No.22 of 2004, dated 8th August, 2005, confirmed the Judgment and order of conviction passed by the learned Chief Judicial Magistrate, by dismissing the appeal.

3. The First Information Report is at Exhibit-33. The said was lodged by Deepak Inde (PW-1). The report shows that on the day of incident i.e. on 31st January, 1998 when the first informant along-with his friend Shiva, were proceeding on the two-wheeler Scooty of the first informant. At that time, first informant's friend Shiva was a pillion rider. It is stated in the First Information Report and which is also reiterated in the evidence from the witness box by

Deepak that when the Scooty came in front of one Dalda factory, one truck bearing No.MH-04-C-296 was proceeding slowly and near Shivshakti Goods, the said truck stopped. Resultantly, Deepak also applied breaks and stopped his vehicle. At that time, according to the First Information Report, the offending jeep came in rash and negligent manner and gave dash from behind, resultantly, throwing away the pillion rider. Due to the said incident, pillion rider suffered injuries and he expired.

4. Post-mortem report is at Exhibit-27. The said was admitted during the course of the trial. The cause of death is fracture to the cervical spinal cord. Inquest panchnama is at Exhibit-15.

5. Before the learned trial Court, the prosecution, to prove its case against the Applicant, examined in all three witnesses. PW-1

is the first informant Deepak. PW-2 is Shaikh Abdul Jalilsab, who is having a transport office in front of Dalda factory, Latur, and PW-3 is Dnyanoba, a panch witness, who has turned hostile.

6. According to the First Information Report, and according to the evidence of Deepak (PW-1), he was on the driver seat of Scooty and the deceased was pillion rider. The dash was given from back side. That itself is sufficient to record a finding that it would be impossible for Deepak to notice who was driving the offending vehicle. Apart from that, it is not the claim of Deepak either in the First Information Report or in his evidence that he noticed that, at the relevant time the Applicant was driving the offending vehicle. It would be useful to reproduce the deposition of Deepak in his examination-in-chief itself;-

"When dash was given to my scooty, Shrianand was driving the jeep. I did not saw the jeep driver. Till today I had no occasion to see the said jeep driver. I came to know the name of jeep driver as Shriananad, as it was told to me by other person. I lodged the report in Police Station, Gandhi Chowk, Latur. Report now shown to me bears my signature. Report is at Exh-33. I do not know whether the accused present before Court is same Shrianand."

7. From the aforesaid, it is crystal clear that the first informant did not identify the Applicant as a person who was driving the vehicle. The evidence of PW-2 is also totally silent about the identity of the driver. PW-3 has turned hostile, therefore, even the spot panchnama is also not proved.

8. The Court below has convicted the Applicant only on the basis of his statement which

was recorded during the course of his examination under Section 313 of the Code of Criminal Procedure. In my view, the statement made by an accused when he is examined under Section 313 of the Code of Criminal Procedure, cannot be termed as evidence. Therefore, the present case is a classic case wherein the Applicant is convicted without there being any legal admissible evidence. In that view of the matter, the Revision Application is required to be allowed. Consequently, I pass following order:-

O R D E R

(I) Criminal Revision Application is allowed.

(II) The Judgment and order passed by the learned Chief Judicial Magistrate, Latur in S.T.C.C. No.5733 of 1998, dated 2nd June, 2004 convicting and

sentencing the Applicant for the offence punishable under Section 279, 337 and 304-A of the Indian Penal Code, is quashed and set aside.

(III) The Judgment and order passed by learned Ad-hoc Additional Sessions Judge, Latur in Criminal Appeal No.22 of 2004, dated 8th August, 2005, confirming the Judgment and order of conviction and sentence passed by the learned Chief Judicial Magistrate, by dismissing the appeal, is quashed and set aside.

(IV) The Applicant is acquitted for the offence punishable under Section 279, 337 and 304-A of the Indian Penal Code.

(V) The Applicant who is on bail, his bail bonds stand cancelled.

(VI) Rule is made absolute in above terms. The Criminal Revision Application stands disposed of, accordingly.

[V.M. DESHPANDE, J.]

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