

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL REVISION APPLICATION NO.308 OF 2005**

Sudhir s/o Kalidas Deshmukh,
Age-38 years, Occu:Service,
(Driver) attached to S.T. Depot,
Soyegaon, Dist-Aurangabad,
R/o-Yawal, Tq-Yawal,
Dist-Aurangabad.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
None present for Applicant.
Mr. A.P. Basarkar, A.P.P. for Respondent.
...

CORAM: V.M. DESHPANDE, J.

DATE : 2ND APRIL, 2019

ORAL JUDGMENT :

1. By the present Revision Application, the Applicant is challenging the Judgment and order of conviction passed by the learned Judicial

Magistrate, First Class, Soygaon, Dist-Aurangabad on 15th March, 2003, in Summary Criminal Case No.173 of 2001, whereby the Applicant was convicted by the learned Magistrate for the offence punishable under Section 279, 304-A of the Indian Penal Code and he was directed to suffer rigorous imprisonment for three months and to pay fine amount of Rs.500/-. The appeal carried by the Applicant vide Criminal Appeal No.46 of 2003, is dismissed by the learned 2nd Ad-hoc Additional Sessions Judge, Aurangabad on 14th September, 2005, confirming the Judgment and order of conviction.

2. The Applicant was released on bail by this Court on 20th October, 2005, at the time of admission of this Revision Application. Record and Proceedings were called.

3. Today, when this Revision was taken up for final hearing, the counsel for the Applicant

chose not to remain present before this Court.

4. With the assistance of learned Additional Public Prosecutor, I have gone through the Record and Proceedings.

5. According to the prosecution, the Applicant was driving the State Road Transport bus, bearing registration No.MH-20-D-0636, via Shendurni to Soygaon, and at Soygaon near hand pump-set of water, when the Applicant was driving the vehicle, knocked down the victim girl, Kamal Sandu Bankar, aged about 6 years. According to the prosecution, immediately the incident was reported by the conductor to the police station, Soygaon. So also Vasant Vishnu Bankar (PW-1) lodged the First Information Report (Exhibit-23). After the investigation, the case was registered as Summary Criminal Case No.173 of 2001, however the learned Magistrate tried it as a warrant case and the

charge was also framed against the Applicant. The said was denied.

6. In order to bring home the guilt of the Applicant, the prosecution has examined in all seven witnesses.

7. PW-1 Vasant Bankar is the first informant and father of deceased. He is not an eye witness. Even the First Information Report, Exhibit-23 is against unknown person. From his evidence, it is clear that he made enquiry, as to who was the driver of the offending vehicle and according to his evidence, on enquiry he came to know that offending vehicle was driven by the present Applicant. However, conveniently he did not disclose the names of the persons from whom he made enquiry about the fixing of identity of the Applicant as a driver. On the contrary, in the cross-examination, he made a statement that after

the incident he went to the spot and there he made enquiry with the conductor alone regarding the identity of the driver of the offending vehicle and according to this prosecution witness, the conductor disclosed that the present Applicant was driving the offending vehicle. However, for the reasons best known to the prosecution, conductor is not examined. Therefore, the statement made by PW-1 Vasant that he made enquiry with the conductor, cannot be accepted as a gospel truth.

8. PW-2 and PW-3 are Bhagwan Patil and Shaikh Sajed. They are panch witnesses. PW-2 Bhagwan has proved the spot panchnama, Exhibit-26 and PW-3 Shaikh Sajed has proved inquest panchnama, Exhibit-28. The evidence of PW-2 and PW-3 is not at all relevant to decide the fact, as to whether the Applicant was driving the offending vehicle or not.

9. PW-4 is Kantabai Bankar, she is mother of the deceased. She is also not the eye witness. PW-5 is Baliram Sonawane, who claims from the witness box that the Applicant was the driver of the said bus. The incident in question has occurred on 7th August, 2001, whereas evidence of this witness was recorded on 27th August, 2002. The test identification parade was not conducted during the course of the investigation. It is not the claim of Baliram (PW-5) that prior to the accident he was knowing the Applicant. Therefore, identification by this man, of the Applicant for the first time after one year in the Court Hall, in my view, is not useful. Further, evidence of Baliram does not show that at the relevant time, the driver of the offending vehicle was driving the vehicle rashly and negligently. On the contrary, his evidence would show that the driver of the offending vehicle has applied the brakes. The driver of the offending vehicle can be

convicted for rash and negligent driving. If the prosecution fails to prove that at the relevant time the driver of the offending vehicle was found to be driving the vehicle rashly and negligently, he cannot be convicted for the offence punishable under Section 279, 304-A of the Indian Penal Code.

10. The evidence of PW-6 Sandu Bankar and PW-7 Arunabai Sonawane is also not relevant to decide the present case.

11. What is important to note here is, that the Applicant, according to the prosecution, was working as a driver in Maharashtra State Road Transport Corporation and he was discharging his official duties by plying the offending vehicle. It was open for the prosecution to obtain the relevant record from the depot to which the Applicant was attached, to show that at the relevant time the Applicant was driving the

offending vehicle. Further, it was obligatory on the part of the prosecution to prove those documents. In the present case, that has not been done. On the contrary, the learned lower appellate Court, it appears that, dismissed the appeal on the basis of unproved documents.

12. Right from initial, it was the defence of the Applicant that he was not driving the offending vehicle. The burden was firmly on the shoulder of the prosecution to prove that, at the relevant time the Applicant was the driver of the offending vehicle. In my view, on the basis of the available evidence, it cannot be said conclusively that the Applicant was driving the offending vehicle. Therefore, he is entitled for the benefit of doubt. These points were not properly considered by the Courts below. Resultantly, I pass the following order:-

O R D E R

(I) The Criminal Revision Application is allowed.

(II) The Judgment and order passed by the learned Judicial Magistrate, First Class, Soygaon, Dist-Aurangabad in Summary Criminal Case No.173 of 2001, dated 15th March, 2003, convicting and sentencing the Applicant for the offence punishable under Section 279, 304-A of the Indian Penal Code, is quashed and set aside.

(III) The Judgment and order passed by the learned 2nd Ad-hoc Additional Sessions Judge, Aurangabad in Criminal Appeal No.46 of 2003, dated 14th September, 2005, confirming the Judgment and order of conviction and sentence

passed by the learned Judicial Magistrate, by dismissing the appeal, is quashed and set aside.

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

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

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

[V.M. DESHPANDE, J.]