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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 501 OF 2002

Dashrath Nivrutti Tandale	]
age: 45 years, Occn. Service,	].... Applicant.
residing at B -32, Kanchan Ganga	]
Arcade, Hadapsar, Pune -28	]

V/s.

State of Maharashtra	]...Respondent
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Mr. Ram Apte, Senior Counsel a/w Mr. Satyam H. Nmbalkar a/w Mrs Bhavika Shinde, Ms. Sonali Kunekar i/by Vikas Mahanagar, for the applicant
Mr. A.A. Palkar, APP for Respondent State.

CORAM : C.V. BHADANG, J.

DATE : 13rd March, 2020.

Oral Judgment

1] The challenge in this Revision Application is to the judgment and order dated 15th November, 2014, passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.86 of 2001. By the

impugned judgment, the learned Sessions Judge, while partly allowing the appeal filed by the applicant, has confirmed the conviction of the applicant, for the offence punishable under Section 304-A of the Indian Penal Code (for short, "I.P.C."). Consequently the sentence awarded to the applicant for the said offence, directing him to undergo Simple Imprisonment for six months and to pay fine of Rs.1,000/- in default to suffer Simple imprisonment for 15 days, also stands confirmed.

2] Brief facts are that the applicant was at the relevant time working as a driver on Tanker No. MH-12/7993. The said tanker met with an accident on 11th September, 1995, when the applicant was driving the said tanker and was proceeding from Pune City towards Hadapsar. In the accident the tanker dashed with a M-80 bike, resulting into the death of one Kusum Kharat. According to the applicant the M-80 Motor bike which was being driven by Hemant Kharat, P. W.3, suddenly applied emergency break and in the said attempt Kusum Kharat-the mother of Hemant, who was a pillion rider on the bike fell down, suffered head injury and succumbed to the same. The accident occurred near Ram Tekdi Bus stop.

3] The applicant was tried before the learned Judicial Magistrate First Class, at Pune in Criminal Case No.2833 of 1995. The learned Magistrate by her judgment and order dated 2nd June, 2001 found the applicant guilty of the offences punishable under Sections 279, 304-A of I.P.C. and for offence punishable under Sections 119 r/w 177 of the Motor Vehicles Act (for short "M.V Act.). The learned Magistrate sentenced the applicant on various counts.

4] The applicant feeling aggrieved, challenged the same before the learned Sessions Judge, in Criminal Appeal No.86 of 2001. As noted above, the said appeal has been partly allowed and while setting aside the conviction under Section 279 of I.P.C. and under Section 199 r/w section 177 of M.V. Act, the conviction and sentence to the extent of Section 304-A of I.P.C. has been confirmed.

5] I have heard the learned Senior Counsel for the applicant and the learned APP for the State. Perused record.

6] It is submitted by the learned Senior Counsel for the applicant that the incident is of the year 1995 and considering the evidence on record, there was an Auto-rickshaw in front of the tanker which was proceeding ahead of the bike which stopped all of a sudden and in the incident, Hemant Kharat P.W.3 was also required to stop his motor bike as a result of which, his mother deceased Kusum, who was a pillion rider fell down and suffered injuries to which she subsequently succumbed. It is submitted that considering the circumstances, negligence cannot be attributed to the applicant in the occurrences of the accident. The learned Counsel submitted that admittedly there was no damage to the M-80 vehicle, which would be indicative of absence of negligence on the part of the applicant.

7] In the alternative it is submitted that having regard to the age of the applicant and further having regard to the fact that the incident dates back to the year 1995, the applicant be let off on the period already undergone. The learned Senior Counsel has pointed out that the applicant was taken in custody on 15th November, 2002, when the learned Sessions Judge dismissed his appeal. It is submitted that the

applicant was released on bail under the orders passed by this Court on 13th December, 2002. It is submitted that the applicant the period undergone will be adequate even assuming that the offence alleged against him is held to be proved.

8] The learned APP has supported the impugned order. It is submitted that in the accident Kusum the mother of P.W.3 has lost her life and therefore, no case for leniency is made out.

9] I have carefully considered the rival submissions made by both the parties.

10] The evidence on record indicates that at the time of accident there was an auto rickshaw which was proceeding in front of the M-80 vehicle on which the deceased was riding as a pillion rider. It has also come on record and which is not disputed that the M-80 vehicle on which the deceased was riding as pillion rider did not suffer any damage, which would be indicative of the nature of the impact, if any, between M-80 vehicle and the tanker driven by the applicant.

11] Thus, the possibility of PW.3 having applied emergency breaks resulting into stoppage of the bike and the consequent impact by the tanker driven by the applicant cannot be ruled out. In any event, even assuming that there is any negligence as alleged on the part of the applicant, the Court is required to look into the degree of such negligence, when it comes to deciding on the quantum of punishment/sentence. It is a matter of record that the incident dates back to the year 1995. The applicant today is stated to be of 66 years of age. The applicant had undergone sentence from 15th November, 2002 till 13th December, 2002. Considering the overall circumstances, I find that the sentence awarded to the applicant can be modified to the period already undergone subject to the enhancement of fine amount to Rs.10,000/-.

In the result, following order is passed.

Order

- i] Revision Application is partly allowed.
- ii] The conviction of the applicant for the offence punishable under Section 304A of I.P.C. is hereby maintained. However, the

sentence awarded to the applicant is modified.

iii] The applicant is sentenced to suffer simple imprisonment for the period already undergone and to pay a fine of Rs.10,000/- and in default to suffer simple imprisonment for a period for 15 days.

iii] The fine amount be deposited within two weeks before the learned Judicial Magistrate First Class, Cantonment Court, Pune.

iv] On failure of the applicant to pay the fine amount within the stipulated period, the learned Judicial Magistrate First Class, Cantonment Court, Pune shall take the applicant in custody to undergo sentence awarded in default of payment of fine amount.

iv] The revision is disposed of in the aforesaid terms.

v] The learned Judicial Magistrate First Class, Pune shall act on the basis of authenticated copy of this order.

12] The Revision Application be listed on 03.04.2020 for reporting compliance.

[C.V. BHADANG, J.]