

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.523 OF 2019

Justin John Lawrence ... **Applicant**
Versus
The State of Maharashtra ... **Respondent**

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Mr.Wesley Menezes, Advocate for the Applicant.

Mr.S.V.Gavand, the Additional Public Prosecutor for the
Respondent No.1/State.

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CORAM : A.M.BADAR J.

DATED : 10th JANUARY 2020.

ORAL JUDGMENT :

1 Leave to amend the prayer clause, as prayed by the learned Counsel for the applicant is granted. He is permitted to incorporate challenge to the charge for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code in the prayer clause of the application.

2 Rule. Rule made returnable forthwith.

3 Heard finally by consent of the parties.

4 The learned Counsel for the applicant submits that the

applicant was pillion rider of the motorcycle which met with an accident and as such, he cannot be charged for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code. My attention is drawn to the charge which is marked as "Exhibit X" to demonstrate that the applicant/pillion rider of the motorcycle is also charged for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code.

5 The learned Additional Public Prosecutor opposed the application by contending that the learned trial Court has rightly framed charge for the offence punishable under Section 304 of the Indian Penal Code.

6 I have considered the submissions so advanced and also perused the material placed on record.

7 The First Information Report of the subject crime was registered on the basis of report lodged by Assistant Police Inspector Nana Patil on 15/07/2012. He reported that by rash and negligent driving of his motorcycle by co-accused John Alexander Fernandis while taking with him the present applicant and other co-accused, fatal dash of the motorcycle was given to deceased Tina Edward Miskita.

8 I have perused the entire charge sheet. Statement of witnesses does not show that the applicant/accused was sharing

any common intention with rider of motorcycle i.e. accused John Alexander Fernandis for committing culpable homicide not amounting to murder. Hence, for want of evidence incriminating the applicant/accused No.2 for the offence punishable under Section 304 of the Indian Penal Code, the charge for the said offence against him cannot be sustained. Therefore, the Order :

ORDER

- (i) The application is allowed.
- (ii) Charge for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code framed against applicant/accused No.2 Justin John Lawrence is quashed and set aside.
- (iii) The application is disposed of accordingly.

(A.M.BADAR, J.)