

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 57 OF 2015**

Anand Naik, S/o. Namdev Naik, 52 years, R/o ... Applicant
Povacao Moira, Bardez, Goa.

Versus

1. State, Represent by the PP, Panaji, Goa.
2. Police Inspector, Mapusa Police Station, ... Respondents
Mapusa, Goa.

Mr. Arun Bras De Sa, Advocate for the Applicant.

**Mr. Mahesh Amonkar, Additional Government Advocate for
the Respondents-State.**

**CORAM: MANISH PITALE, J
DATED: 26th November, 2021**

ORAL JUDGMENT

1. By this Revision Application, the Applicant is challenging concurrent orders passed by the Judicial Magistrate First Class and the Sessions Court, whereby the Applicant has been convicted under Sections 279 and 338 of the Indian Penal Code (IPC) and Section 3 of the Motor Vehicles Act, 1988. The Magistrate imposed a sentence of undergoing Simple Imprisonment for one month each under Section 279 and 338 of the IPC, with the sentences running concurrently and to pay fine of ₹1,000/- on each count. Being convicted under Section 3 of the Motor Vehicles Act, 1988, the Applicant was directed to pay a fine of ₹100/-.

2. The incident in question in the present case, took place on 01.04.2011 at about 4.45 p.m. at Moira, Bardez, Goa, when the Applicant while riding a bullet motorcycle, without a driving licence,

dashed against TVS Scooty being driven by the original Complainant/victim. As a consequence of the aforesaid accident, the Complainant suffered injuries due to which he had to be hospitalised.

3. Upon a First Information Report (FIR) being registered, investigation was undertaken and chargesheet was filed. The prosecution examined nine witnesses, including the victim/Complainant and the Doctor. On the basis of the oral and documentary evidence on record, the Court of the Magistrate convicted and sentenced the Applicant in the aforesaid manner.

4. Aggrieved by the same, the Applicant filed an Appeal before the Sessions Court. By Judgment and Order dated 12.05.2015, the Appeal was dismissed and the order of the Magistrate was confirmed.

5. The present Revision Application is filed challenging the aforesaid concurrent orders. By Order dated 16.10.2015, this Court suspended the sentence imposed upon the Applicant and he was directed to be released on furnishing PR bond of ₹ 10,000/- with one surety in the like amount to the satisfaction of the Registrar of this Court.

6. The Revision Application has come up for final hearing today.

7. Mr. Arun Bras De, learned Counsel appearing for the Applicant, submitted that if the evidence and material on record had to be appreciated in correct perspective, the conviction and sentence imposed upon the Applicant can be said to be unsustainable. It is submitted that the accident took place, even according to the material

on record, because of the vehicle in front of the motorcycle of the Applicant suddenly coming to a stop. It was submitted that in these circumstances, when the Applicant took a turn while descending down the road, the accident occurred and the Complainant suffered injuries.

8. On the other hand, Mr. Mahesh Amonkar, learned Additional Public Prosecutor appearing for the Respondents-State supported the concurrent orders passed by the Court below.

9. This Court has perused the Judgment and Orders passed by the Magistrate and the Sessions Court. The oral and documentary evidence on record has been appreciated in detail and findings have been rendered against the Applicant. The extent of injuries suffered by the Complainant do indicate the manner in which the Applicant was riding the Bullet motorcycle whilst descending on the slope. A perusal of the material on record shows that the findings rendered by the two Courts below concurrently cannot be said to be perverse or unsustainable and, therefore, the conviction under the aforesaid provisions imposed upon the Applicant is found to be justified.

10. At this stage, the learned Counsel appearing for the Applicant submitted that since the Applicant is now a Senior Citizen and the manner in which the accident occurred, would show that the entire blame could not be foisted on the Applicant, this Court may consider reducing the sentence only to payment of fine, which may be made over to the victim as compensation. It was submitted that the Applicant may not be directed to suffer the sentence of imprisonment as he is now a Senior Citizen.

11. Considering the material on record, this Court is of the opinion that even if the conviction can be sustained, the sentence can be modified in the interest of justice. The learned Additional Public Prosecutor appearing for the State brought to the notice of this Court that the victim in the present case had to be hospitalised due to injuries suffered as a result of the accident and that, therefore, this aspect may be taken into consideration while ascertaining the extent of compensation to be paid to the victim.

12. In view of the above, the Revision Application is partly allowed in the following manner :

(a) The conviction of the Applicant under Section 279 and 338 of the IPC as also Section 3 of the Motor Vehicles Act, 1988, is sustained.

(b) The sentence of imprisonment of one month on each count under Sections 279 and 338 of the IPC is set aside and instead the Applicant is directed to pay a further amount towards fine of ₹ 15,000/- on each count.

(c) The aforesaid fine amount shall be paid as compensation to the victim under Section 357(1) (b) of the Cr.P.C.

(d) The fine amount be deposited within two weeks from today i.e. ₹15,000/- on each count and upon such deposit of the fine amount, the

Respondents-State shall ensure that it is made over to the victim immediately as compensation under Section 357(1)(b) of the Cr.P.C.

(e) The sentence of payment of fine of ₹100/- for conviction under Section 3 of the Motor Vehicles Act, 1988, is maintained. The said amount be paid within a period of two weeks, if not already paid.

13. Pending Applications, if any, stand disposed of.

MANISH PITALE, J

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