

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

CRIMINAL APPEAL NO.702 OF 1998

The State of Maharashtra

Appellant

versus

Kailas Bhagwan Darwase,
age 36 years, Occ.S.T.Driver,
R/o.Kurduwadi.

Respondent

Mr.R.M.Pethe, APP, for Appellant-State.

None for the Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th July 2021

JUDGMENT :

1. The State of Maharashtra has preferred this appeal under Section 377(i) of Code of Criminal Procedure for enhancement of sentence imposed by judgment and order dated 8th June 1998 passed by learned Judicial Magistrate, First Class, Solapur, in Summary Trial Case No.2047 of 1997.

2. The respondent was tried for the offences punishable under Sections 304(A), 279, 176 of Indian Penal Code and under Sections 183 and 184 of Motor Vehicles Act.

3. The case of prosecution is that the respondent was driving State Transport Bus rashly and negligently and dashed at the victim by causing his death. The Trial Court vide his judgment had

convicted the respondent for the offences under Sections 279 of 304(A) of IPC as well as offences under Sections 183 and 184 of Motor Vehicles Act. However, the respondent was released under Section 4 of Probation of Offenders Act on entering into probation of good conduct bond of Rs.3,000/- for a period of two years. He was directed to appear and receive sentence when called upon during this period, if he violated the bond within prescribed period.

4. Learned APP submitted that considering the nature of offence, the sentence imposed by the Trial Court was not justified. Although the respondent-accused was convicted for the offence, he was directed to be released on probation of good conduct. The respondent-accused was rash and negligent while driving the S.T.bus, which caused death of minor boy and having held him guilty for the offence, the Trial Court ought not to have released him on probation. There were not justifiable reasons for imposing such sentence against respondent-accused. Learned Magistrate ought to have considered that due to the act of rash driving, the death of minor boy has caused. The respondent is convicted for the offences under Sections 279 and 304(A) of IPC, which are punishable with imprisonment extending to six months and two years respectively. Hence, reasonable sentence of imprisonment ought to have awarded to the respondent.

5. The case of prosecution is based on the evidence of five witnesses. PW-4 and 5 were the alleged eye witnesses to the incident. PW-1 is the complainant. She is the mother of victim boy. Her evidence is hear-say. PW-2 Jayajirao Shinde is also not the eye witness to the incident. He was informed about the incident. PW-3

Alkadevi Shinde is the sister of PW-1. Her evidence is hear-say. PW-4 Ghanshyam Tambile was present at the place of incident. According to him, the victim was proceeding on foot from South to North direction. The bus was driven in speed. The bus dashed at the victim from cleaner side. The victim died. He is related to the victim. The body was lying on the middle of road. PW-5 Bibhishan Dhere is another eye witness to the incident. He stated that bus was plying from Tuljapur to Kurduwadi in speed. The victim was proceeding from village to field. The bus dashed at the victim from front side. The respondent was driving the bus. The victim is related to him. PW-6 is the grandfather of victim. He admitted that he was not the witness to the incident.

6. The Trial Court has accepted the evidence and convicted the accused. While awarding sentence the Court has heard the accused on the point of sentence. It was submitted at the instance of accused that he is the loan member of his family. It was his first offence. Leniency may be shown to him by releasing him on probation bond. Learned Magistrate has taken note of the fact that previous life has been lost in the accident. However, considering the facts and circumstances of case and submissions at the instance of accused, and the fact that there is no material on record to show that the accused was previously involved in such act, leniency can be shown. The impugned judgment was passed on 8th June 1998. The respondent was directed to be released on probation of good conduct bond of Rs.3,000/- for a period of two years and receive the sentence when called upon during this period if he violated the bond within prescribed period. Apparently the period of two years has lapsed. There is nothing on record to show that there was breach of bond.

After a gap of about 22 years, the reasoning assigned by the Trial Court for awarding aforesaid sentence need not be interfered. Hence, the appeal must fail. I, therefore, pass following order :

ORDER

(i) Criminal Appeal No.702 of 1998 is dismissed. No order as to costs.

(PRAKASH D. NAIK, J.)

MST