

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Appeal No.482 of 2021

Chandrasen s/o Chindhuji Dongre

vs.

The State of Maharashtra, through P.S.O. Pulgaon, District Wardha

with

Criminal Appeal No.483 of 2021

Lata Eknathrao Tembhurne @ Lata Chandrasen Dongre

vs.

The State of Maharashtra, through P.S.O. Pulgaon, District Wardha

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri Anil S. Mardikar, Senior Advocate assisted by
Shri V.R. Deshpande, Advocate for the Appellant.
Shri S.M. Ghodeshwar, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI, J.
DATE : 25th NOVEMBER, 2021.

Criminal Appeal No.482 of 2021:

Heard.

02] **Admit.**

03] Issue notice to the respondent/State. The learned
 A.P.P. waives notice on behalf of the respondent/State.

04] Call for records and proceedings.

Criminal Appeal No.483 of 2021

Heard.

02] **Admit.**

03] Issue notice to the respondent/State. The learned
 A.P.P. waives notice on behalf of the respondent/State.

04] Call for records and proceedings.

**Criminal Application [APPA] No.655/2021 in
Criminal Appeal No.482/2021**

&

**Criminal Application [APPA] No.656/2021 in
Criminal Appeal No.483/2021:**

These applications are for seeking suspension of execution of substantive sentences passed by the Additional Sessions Judge, Wardha in Sessions Case No.107/2015 vide judgment and order dated 18/11/2021. The applicants/appellants (Accused Nos.3 & 4) are convicted by the trial Court for the offence punishable under Section 304 Part-II read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years along with fine of Rs.50,000/- each with default clause. Both applicants are seeking suspension by contending that the impugned judgment is erroneous. The trial Court without evidence held that the applicants have committed charged offence of homicidal death not amounting to murder.

02] Heard both the sides. With the assistance of both the sides, perused the impugned judgment and the evidence recorded during the trial.

03] In all, four accused were put on trial for the offence punishable under Sections 304 of the Indian Penal Code along with some other offences under the Indian Penal Code and the Motor Vehicles Act. It emerges from the record that applicant-Chandrasen (Accused No.3) was a trustee, whose management was running a school and applicant-Lata (Accused No.4) was the owner of a van. The said van was driven by original accused No.1-Nilesh to ply minor children along with two teachers from residence to the school run by the management. While, the van

was proceedings towards the school, it gave a dash to a stationary truck, which was parked by original accused No.2-Mohd. Salim.

04] The prosecution case, in nutshell, is that accused No.1-Nilesh, without having valid motor driving licence, though not sufficiently skilled, drove van and rammed on a stationary truck carelessly parked by accused No.2 and, therefore, caused death of two school going children in the occurrence. Accused Nos.3 & 4, who are the applicants, were charged for gross negligence coupled with knowledge of likely result of their act. It is the prosecution case that accused No.3-Chandrasen, who is a trustee, was well aware about the inability of driver Nilesh and the worse condition of the van, while directing him to ply the children. Similar is the charge against accused No.4-Lata in the capacity of the owner of the van. It is the prosecution case that by permitting unskilled and unlicensed person to drive a van without safety gadgets, they have caused loss of life. The act of accused-applicants permitting to do so, was with a knowledge that their act is likely to cause death and, therefore, the charge.

05] The learned Senior Counsel appearing for both applicants submitted that there cannot be a vicarious liability against these applicants. There is no material to constitute that the applicants had sufficient knowledge that their act may result into the death. It is the applicants' stand that at the most it is a case of negligence. According to him, even by any stretch of imagination, the applicants' knowledge about likelihood of causing death cannot be construed. The learned A.P.P. opposed the applications by taking me through certain paragraphs of the judgment. Admittedly, as per the prosecution case, accused No.1-Nilesh drove the van in reckless manner, which proved to be fatal.

These applicants were not present at the time of occurrence. Whether permitting unlicensed person to drive resulting into an accident can *ipso facto* constitute a knowledge regarding likelihood of result requires consideration. Undoubtedly, the applicants have made out a strong arguable case on merits.

06] During trial, the applicants were on bail and post conviction, they have deposited entire fine amount. In case the applicants succeed in their respective appeals, then the position would be irreversible, if they remain to be under trial prisoners. The appeals will take its own time for disposal according to law. Having regard to the peculiar facts of this case, the applicants have made out a case for suspension of sentence.

07] In view of that, both applications are allowed. The execution of substantive sentences passed in Sessions Case No.107/2015 by the learned Additional Sessions Judge, Wardha vide judgment and order dated 18/11/2021 is hereby suspended to the extent of the applicants viz. Chandrasen and Lata, till final disposal of the appeals. In the meantime, applicant-Chandrasen and applicant-Lata be released on bail on their furnishing P.R. Bond in the sum of Rs.50,000/- with sureties of the like amount each.

JUDGE