

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

CRIMINAL REVISION APPLICATION (REVN) NO.105 OF 2022

Durgesh s/o Bapu Shegamwar

..Versus...

The State of Maharashtra Through Police Station Jivati, Tah.
Jivti, Dist. Chandrapur

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

Court's or Judge's orders

Shri C.B. Barve, Advocate for Applicant
Shri A.R. Chutke, APP for the non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 23rd JUNE, 2022

1. Heard Shri Barve, learned Counsel for Applicant and Shri Chutke, learned Additional Public Prosecutor for the non-applicant/State.

2. The revision challenges the judgment dated 30.07.2015 in Summary Criminal Case No.833 of 2011, whereby the learned Magistrate has convicted the Applicant/Accused for the offence punishable under Section 279 of the Indian Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for three months and to pay a fine of Rs.1,000/- (One Thousand Only), in default, undergo rigorous imprisonment for 15 days and for the offence

punishable under Section 304-A of IPC, for which, he has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.3,000/- (Three Thousand Only), in default, to suffer rigorous imprisonment for one month and for the offence under Section 134 (a) (b) punishable under Section 187 of the Motor Vehicles Act, 1988, he has been sentenced to suffer rigorous imprisonment of one month and to pay a fine of Rs.500 (Five Hundred Only), in default, to suffer rigorous imprisonment for seven days. The learned Appellate Court vide its judgment dated 08.04.2022 has maintained the conviction by dismissing the appeal.

3. Shri Barve, learned Counsel for Applicant, submits that there are contradictory versions of the accident coming on record in the evidence of PW-2 Gokul Prakash Rathod and PW-3 Kamlabai Prakash Rathod, both of whom were traveling in the truck along with the Accused/Applicant at the relevant time, and therefore, relying upon ***State of M.P. ..Vrs.. Bacchudas alias Baliram and Ors., 2007 (9) SCC 135 (para 9)***, it is submitted, that when two views are possible on the evidence adduced in this case, the view which is favorable to the Accused should be adopted. He further relies upon ***State of Karnataka ..Vrs.. Satish, 1998 (8) SCC 493***, to contend that mere driving of the truck at high speed cannot be termed as a rash or negligent driving, unless there is material to establish the same. He therefore submits, that considering the

contradictory statements of Gokul and Kamalabai, the conviction of the Applicant/Accused cannot be sustained and is required to be quashed and set aside.

4. Shri Chutke, learned APP for the non-applicant/State opposed the revision application and submits, that the evidence of PW-2 Gokul demonstrates that there was rash and negligent act on the part of the Applicant/Accused. He further submits, that though PW-3 Kamalabai in her cross-examination states, that the accused was blowing the horn and was not at a fault as the motorcycle suddenly came in front of him, he however submits, that considering the accident has happened on a turn, it was obligatory upon the Applicant/Accused to have taken due precaution while driving the truck. He further invites my attention to the conduct of the accused, which is demonstrated from the evidence of PW-2 Gokul, which indicate that even after the accident, he did not stop, in spite of Gokul asking him to do so, to render aid to the persons traveling on the motorcycle, but took out a bottle of country liquor due to which, PW-2 Gokul felt threatened and did not pursue his request for stopping to render aid.

5. PW-1, PW-2 and PW-3 are the only eyewitnesses. PW-2 and PW-3 were sitting in the cabin of the truck, when the accident took place. PW-3 states, that the truck was coming down on the slope and the motorcycle was coming upward,

when the motor cycle came under the truck. It is not disputed, that the accused was driving the truck at the relevant time. She, however, categorically admits, that the accident had happened on a turn. She also admits, that the Applicant/Accused was blowing the horn, when he was driving down the truck on the slope. It is also stated, that the motorcycle suddenly came in front of the truck, and therefore, accident took place and the Accused was not at a fault.

6. PW-2 Gokul, the other eyewitness, who was sitting beside the accused states, that a motorcycle was coming from the opposite direction and the truck dashed against the motorcycle. He admits, that the accident had happened on a turn and further goes on to state, that since the driver had not put on the brakes, the accident took place. He also states, that when he had asked the accused to stop the truck with an intention to assist the injured, the same was not done.

7. It is not in dispute, that in the accident Shridhar Bhagwan Bhongale lost his life. The report of the Medical Officer of Rural Hospital Gadchandur states, that he was brought dead. Sumanbai Shridhar Bhongale (PW-1) who was riding pillion on the motorcycle, also sustained multiple injuries, which is indicated by the MLC Report, which is at Exh-36, which has been proved by PW-5 Dr. Vijay Tatobaji Kadaskar, who has examined Sumanbai at Exh-35 and has

proved the injuries.

8. Sumanbai, the wife of the deceased has been examined as PW-1 and has categorically stated, that it was the truck coming from the opposite direction, which dashed the motorcycle driven by her husband, in spite of the fact that her husband had sounded the horn of the motorcycle. In her cross-examination, the statement about the sounding of the horn and taking the motorcycle to one side, has been admitted to be an omission.

9. The evidence has been appreciated by the learned Trial Court, after considering which, it has come to the finding that though the speed of the truck is not a sole criteria for inferring negligence or rashness, however, reasonable care is also required to be taken, which, in the instant case has been found to be absent. The subsequent conduct of the accused, is not stopping at the spot but running away, in fact, is an action, which adds to the guilt of the accused.

10. What is also material to consider is, that Section 304-A of the IPC does not contemplate only a rash act, but also a negligent one and the two are separately distinguished. Thus, absence of any rash act, would not mean that there was no negligence and the accused in such cases, is entitled be left off.

11. The spot panchanama (Page 96) indicates, that the accident has happened on a turn and there was a sloping road towards the side of Gadchandur, on which, the accused was driving the truck and the motorcycle was climbing upwards. Spot panchanama shows the location of the accident towards the right hand side of the sloping down road, which would indicate that the motorcycle was on the correct side of the road and would indicate negligence on the part of the accused. The spot panchanama Exh-27 has been proved by Ananta Balwant Wable PW-4, who has been examined at Exh-26 and nothing has been brought out in his cross-examination.

12. Thus, the evidence of PW-1 and PW-2 coupled with the spot panchanama at Exh-27 and the evidence of Dr. Vijay Kadaskar PW-5 would indicate, that the accident has happened on account of the negligence of the Applicant/Accused, and though there are certain admissions in the evidence of PW-3/Kamlabai, the evidence of PW-1 and PW-2, coupled with the spot panchanama and the injury report would indicate negligence, and thus the present matter does not fall within what has been held in *Bacchudas* (supra), considering which, I do not see any reason to interfere in the conviction awarded by the learned Trial Court as confirmed by the learned Appellate Court.

13. Shri Barve, learned Counsel for the Applicant submits, that the Applicant/Accused, is now 56 years of age and has already undergone 20 days of incarceration, and therefore submits, that the sentence imposed by the learned Trial Court may be reduced, considering the passage of time and the age of the Applicant/Accused. Though Shridhar Bhongale has lost his life in the accident and so also Sumanbai Bhongale has sustained injury, however, what is also necessary to appreciate is that the accident is date 03.09.2011 and 10 years have already passed and considering the age of the Applicant, the sentence imposed by the learned Trial Court upon the Applicant/Accused under Section 304-A of the IPC is reduced to six months. Rest of the impugned judgment is maintained. The bail bonds of the Applicant/Accused stand cancelled.

14. Since the Applicant/Accused was in jail for 20 days, he be given set off as per rules. Since the Applicant/Accused is on bail, he is directed to surrender himself to the Police Station Jivati, Tah. Jivati, District Chandrapur for undergoing the remaining sentence within ten days from the date of this order, failing which, the Police Station Officer Jivati, District Chandrapur is directed to take the Applicant/Accused into custody for undergoing the sentence.

15. In the meanwhile, Shri Chutke, the learned Additional Public Prosecutor for the non-applicant/State shall

communicate this order to the Police Station Officer, Jivati, District Chandrapur accordingly.

16. The criminal revision application is partly allowed to the above extent and disposed of accordingly. No costs.

(AVINASH G. GHAROTE, J.)

TAMBE