

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

CRIMINAL REVISION APPLICATION NO. 111 OF 2022

Wasimoddin S/o Minazoddin
Age about 44 years, Occ : Labour,
R/o Khadakpura, Murtijapur,
Tq. Murtijapur, Distt. Akola

.... **APPLICANT**

// **VERSUS** //

State of Maharashtra,
Through DGP Akola
Tq & Dist. Akola

.... **RESPONDENT**

Shri Mir Nagman Ali, Advocate for applicant
Shri I.J. Damle, A.P.P for respondent

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE JUDGMENT : 23/09/ 2022.
DATE OF PRONOUNCING THE JUDGMENT : 21/10/2022.

JUDGMENT:

Heard learned Counsel for the applicant and learned Additional Public Prosecutor for the respondent finally at the stage of admission by consent of parties.

2. The present revision is filed by the convicted accused challenging the judgment and order dated 26/04/2022, passed by

learned Additional Sessions Judge, Akola in Criminal Appeal No. 02/2019, dismissing his appeal and confirming the judgment and order dated 11/12/2018, passed by learned Judicial Magistrate First Class, Akola, in Sum. Criminal Case No. 2156/2011.

3. The applicant-accused is convicted for the offence under Section 279 and 304-A of the Indian Penal Code, read with Section 184 of the Motor Vehicles Act, 1988. He is convicted under Section 279 of the Indian Penal Code and sentenced to suffer imprisonment for three months and to pay fine of Rs.1000/-, in default of payment of fine amount to suffer rigorous imprisonment for one week, for the offence punishable under Section 304-A of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment of six months and fine of Rs.20,000/- in default of payment of fine amount to suffer rigorous imprisonment for one month and also convicted under section 184 of the Motor Vehicle Act and to pay fine of Rs.1000/-, in default of payment of fine amount to suffer simple imprisonment for one week.

4. The brief facts for filing to the present Revision is as under :

On 14/05/2011 while the informant, the victim Manepalli Giri and few others were inspecting a dam site near Kanshivani road and the victim Manepalli Giri was crossing the road, the applicant dashed his auto rickshaw against Mr. Manepalli Giri. The auto rickshaw was driven at such a high speed that Mr. Manepalli Giri sustained severe injuries and died before he could be carried to the Hospital.

5. The report was lodged with the Police Station Boargaon-Manju, Akola vide Crime No. 56/2011 on 14/05/2011, under Sections 279 and 304 – A of the Indian Penal Code and Section 184 of the Motor Vehicle Act. The police started investigation, prepared spot panchanama and recorded statements of concerned witness. Upon completion of investigation, filed charge-sheet in the Court of Judicial Magistrate First Class, Akola.

6. The charges were framed against the accused under Sections 279 and 304 of the Indian Penal Code and trial proceeded further.

7. Prosecution examined witnesses to prove it's case and close it's side. The statement of accused was recorded under Section

313 to which he pleaded about false implications. The learned Judicial Magistrate First Class negated the defence and convicted the accused for the offences punishable under Sections 279 and 304 A of the Indian Penal code r/w Section 184 of the Motor Vehicles Act.

8. The Accused preferred Criminal Appeal bearing No. 02/2019 before the learned Additional Sessions Judge, Akola who dismissed the appeal of applicant/accused. Thus, aggrieved by the above judgment of dismissal of his appeal moved present revision application.

9. Learned Counsel for the applicant submitted that the order passed is erroneous. Prosecution miserably failed to establish offence beyond reasonable doubt. The prosecution has not examined any passenger nor examined R.T.O. authority to ascertain the speed of the auto at the relevant time. It is his contention that the deceased suddenly cross the road.

10. The learned Counsel for the applicant, in support of his contention relied on the following judgments as under :

1. *State of Karnataka Vs. Satish, reported in (1998) 8 SCC 493.*

2. *The State of Maharashtra Vs. Mahadeo Siddhappa Ghali, reported in 2020 ALL MR (Cri) 1348.*
3. *Deepak S/o Digambarrao Sisode Vs. Rupchand S/o Harichand Gavande and Anr, reported in 2015 ALL MR (Cri) 2176.*
4. *Bashir Janubhai Pathan, reported in 2014 All MR (Cri) 3514.*
5. *Gundappa Madolappa Samangave Vs. The State of Maharashtra, reported in 2015 ALL MR (Cri) 1060.*
6. *Mahadeo Hari Lokre Vs. State of Maharashtra, reported in 1971 CJ(SC) 364.*

11. As against this learned Assistant Government Pleader supported the judgment and submitted that the order passed by learned Judicial Magistrate First Class, Akola and order passed by learned Additional Sessions Court, Akola confirming the judgment and order passed by learned Judicial Magistrate First Class are perfectly justified and no interference is warranted.

12. I have heard both the parties at length, perused the judgment passed by both the Courts below. I have also gone through the notes of evidence placed on record.

13. P.W.1, deposed that he was overall in-charge of Sukli project. The deceased Manepalli Giri was the Supervisor. As he was crossing the road, suddenly the auto driven by the accused came with high speed and gave dash to Manepalli Giri, in the said accident he suffered injury to his head. He identified the accused. He denied all suggestions.

14. P.W.2 is the person who was along with Contractor Engineer Anil Nathe and his representatives deceased Manepalli Giri went to the office as they were taking up the construction of dam which place is situated interior. He was discussing along with agriculturist standing on the side of the road. One auto came from Wani Rambhapur and gave dash to Manepalli Giri. He denied the suggestions put up to him. The suggestion was admitted by him that deceased Manepalli Giri was crossing the road and was coming towards them. However, in next breath he said that we all were standing near the road and Manepalli Giri was not crossing the road.

15. P.W.4, the agriculturist deposed that on 14/05/2011, near about 12:00 p.m. the incident occurred on the dam side of Wani to Kanshivani road. All the Officials, Mr. Chauhan, Manepalli

Giri and other two-three persons were standing beside the road. Meanwhile, the alleged auto came in a high speed and dashed the deceased Manepalli Giri. He also specifically stated that from the slope the alleged auto came in a high speed, got uncontrolled and dashed to deceased Manepalli Giri. He also stated that 946 was the middle number of the auto, but could not recall the full number of the same.

16. This consistent evidence clearly goes to show that the accused was driving his auto rickshaw in high speed and he could not control the said speed and gave dash. There is no any doubt that deceased was died due to dash given by auto and each of the witness specifically stated that his auto was in high speed. It has come in the deposition of P.W. 1 that while Manepalli Giri was crossing the road, at that time the said auto gave dash to the deceased. Whereas, P.W. 4 deposed that he was standing near the road.

17. On perusal of spot panchanama along with rough sketch drawn, there is no doubt that the auto gave dash to the deceased and in view of the depositions, he must be standing near the road or just crossed the road. However, whether dash is given to the

deceased while he has crossed the road or was standing near the road, is not that material in view of the fact that it is consistently deposed by all the witnesses that auto was in high speed and driver could not control it and gave dash to the deceased Manepalli Giri. The learned Judicial Magistrate First Class rightly appreciated this fact that the incident is on 14/05/2011 and witnesses entered into witness box in the year of 2018, so there may be some discrepancy in the evidence of witnesses. However, all of them in my considered opinion are stick up to the material facts when such incident happened suddenly, there may be some perception of each person which may differ, however, witnesses consistently deposed that accused was in high speed and gave dash to the deceased Manepalli Giri.

18. Learned Counsel for applicant relied on ***State of Karnataka Vs Satish*** (supra), however, facts involved in the said citation are distinguishable from the facts in the present matter. In the said matter there was no material on record to conclude rashness or negligence and only on the basis *res ipsa loquitor*, it cannot be said that the vehicle was in high speed. In present matter, the witnesses consistently deposed that the auto was in high speed and

could not control his vehicle, which also supported by documentary evidence.

19. Learned Counsel also relied on ***State of Maharashtra Vs. Mahadeo*** (supra), ***Gundappa Madolappa Samangave*** (supra). However, as said earlier this citation is of no avail to the applicant as there was no evidence by witnesses to come to the conclusion that vehicle was in high speed. So far as, judgment relied on by the Counsel for applicant ***Deepak Sisode*** (supra), the facts involved are different. It was observed by this Court that the spot panchanama shows that a little boy was crossing the road, the accused applied breaks. Thus, due care and caution was taken by driver while driving vehicle on road. Herein sketch along with spot panchanama is seen the vehicle gave dash to the deceased at extreme right end of the road.

20. So far as citation ***Mahadeo Hari Lokre*** and ***Bashir Janubhai Pathan*** (supra), there is no evidence to conclude that the driver of the vehicle though in the high speed were rash and negligent also.

21. On the contrary, in the present matter, the witnesses deposed consistently that the driver of the auto was in high speed and drove his vehicle rashly and negligently. The said fact is supported by the panchanama as well as sketch of spot of incident, which shows that auto was to his extreme right side of the road and gave rash to the deceased Manepalli Giri. As such, I do not see any reason to interfere in the order passed by learned Judicial Magistrate First Class or by learned Appellate Court. Accordingly, revision is liable to be dismissed and hence dismissed.

[SMT. M.S. JAWALKAR, J.]

Jayashree..