

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

CRIMINAL REVISION APPLICATION NO. 73 OF 2021

1. Ravindra S/o. Suresh Madavi,
Age 27 years, Occu.- Driver,
2. Sanjay S/o. Pandurang Madurwar,
Age 55 years, Occu.: Agriculturist,

Both R/o. Wadholi, Tah. Gondpimpri,
District : Chandrapur.

.... **APPLICANTS.**

// VERSUS //

State of Maharashtra,
Through PSO Gondpimpri,
District : Chandrapur.

.... **RESPONDENTS.**

Shri A.M.Jaltare a/b Shri A.S.Pande, Advocate for Applicants.
Shri V.A.Thakare, A.P.P. for Respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 16, 2022

ORAL JUDGMENT :

1. This revision takes exception to the judgment and order

14/09/2021 passed by Additional Sessions Judge, Chandrapur in Criminal Appeal No.02 of 2018, dismissing the appeal arising out of the judgment and order dated 07/12/2017 passed by learned Judicial Magistrate First Class, Gondpipari, District : Chandrapur in Summary Criminal Case No.08 of 2012, convicting both the applicants for various offences.

2. The prosecution story, in brief, is as under:

As per the prosecution case, one Sahadev Deshmukh was residing at village Ghatkul and he was a student of 9th Std. On 19/11/2011 he along with his friends and class mates Rakesh Chahare, Ankush Wakulkar, Jankiram Raut and others had gone to village Wadholi to repair his bicycle. After repairing bicycle, when they were proceeding to drink water towards the house of maternal uncle of Pankaj Wakulkar and had reached in front of Primary School, accused No.1 came from opposite side on tractor bearing No. MH-34-L534 and trolley bearing No. MH-34-L-535 in high speed. He was driving the tractor in rash and negligent manner thereby gave dash to the cycle of Sahadev, and the large front wheel of the right side of the tractor went over the head of

the deceased and he died on the spot.

3. Thereafter, FIR came to be registered against the driver of the tractor-accused No.1 for the offences under Sections 279, 304-A of the Indian Penal Code. During the course of the investigation, accused No.1 was arrested and it was transpired that accused No.1 did not have any driving licence and accused No.2 had unauthorizedly permitted him to drive the tractor. After completion of investigation, the charge-sheet came to be filed against the accused in connection with the offences punishable under Sections 279, 304-A of the Indian Penal Code and 184, 3/181 and 5/180 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act of 1988”).

4. The case was registered as Summary Criminal Case No. 8 of 2012. The learned Judicial Magistrate, First Class, Gondpipri explained the particulars of the above said offences to the accused on their appearance. They pleaded not guilty vide Exh.29.

5. The prosecution has examined total 7 witnesses, namely, P.W. 1-Sachin Khapne Panch witness, P.W. 2-Jiwankala Borkute relative

of the deceased, P.W.3-Vasant Shende an eyewitness, P.W.4-Gowardhan Chiwande I.O., P.W.5-Rakesh Chahare, P.W.6-Ankush Wakulkar and P.W. 7-Jankiram Raut are friends and classmates of the deceased Sahadev. The accused denied their involvement in the above said offences in the statements recorded under Section 313 of the Code of Criminal Procedure.

6. After examining the oral and documentary evidence, the learned trial Court vide judgment and order dated 07/12/2017 convicted the accused Ravindra Suresh Madavi-applicant No.1 for the offence punishable under Section 279 of the Indian Penal Code and Section 184 of the Motor Vehicles Act and sentenced to suffer rigorous imprisonment for three months and shall also pay a fine of Rupees One Thousand and in default to undergo simple imprisonment for one month. He is also convicted for the offence punishable under Section 304-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and also to pay fine of Rupees Two Thousand in default to undergo simple imprisonment for fifteen days. Accused Ravindra is further convicted for the offence punishable under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 and he is sentenced to suffer

rigorous imprisonment for one month and to pay fine of Rupees Five Hundred in default to undergo simple imprisonment for five days.

7. Whereas, the accused No.2-Sanjay Pandurang Madurwar/ applicant No.2 is convicted for the offence punishable under Section 5 read with Section 180 of the Motor Vehicles Act, 1988 and sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rupees Two Thousand, in default to undergo simple imprisonment for fifteen days.

8. The applicants carried the appeal against the said judgment and order dated 07/12/2017, which came to be dismissed vide impugned judgment and order dated 14/09/2021, which is impugned in the present revision.

9. I have heard the learned counsel for the respective parties.

10. Shri Amol Jaltare, learned counsel for the applicants submits that the prosecution failed to bring on record sufficient evidence to prove that the accused No.1 was driving the tractor in rash and negligent

manner and further he was responsible for the alleged accident.

11. He submits that if the oral testimonies of the prosecution witnesses are considered in right perspective, there is no eyewitness to the incident and therefore, in absence of any evidence that the accused No.1/ applicant No.1 was driving the tractor or he was driving in rash and negligent manner, the conviction is erroneous.

12. It is submitted that similarly the conviction of the applicant No.2 under Section 5 read with Section 180 of the Act of 1988 is erroneous and liable to be quashed and set aside.

13. On the other hand, the learned A.P.P. Shri Thakre submits that there are concurrent findings of both the Courts below on the fact that the applicant No.1 was driving the vehicle and he was driving it in rash and negligent manner. He submits that considering the scope of jurisdiction of the Revisional Court, this Court may not interfere with the concurrent findings only because the second view is possible.

14. The learned A.P.P. submits that in view of the evidence

brought on record by the prosecution and examining the same, as both the Courts below have found the evidence sufficient to rest the conviction on it, no legal infirmity or illegality is committed by both the Courts below in convicting both the accused. Accordingly, he prays for dismissal of the present revision application.

15. In the backdrop of the rival submissions of the parties, I have perused the record, judgments and orders of both the Courts below.

16. Before examining the present revision application and the submissions of the rival parties on merit, I am of the opinion that it would be proper to reiterate the law as regards the scope of revisional jurisdiction.

17. The Hon'ble Supreme Court of India in the case of *State of Maharashtra ..vs.. Jagmohan Singh Kuldip Singh Anand*, reported in (2004) 7 SCC 659, has held thus :

“22. The Revisional Court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in

aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court.”

It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

23. *On this aspect, it is sufficient to refer to and rely on the decision of this court in Duli Chand vs. Delhi Admn. in which it is observed thus :- (SCC p. 651, para 5)*

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

in the case of *Malkit Singh Gill vs.. State of Chhattisgarh*, reported in **AIR 2022 SC 3283**, has held thus :

“9. This Court in the case of ‘Manju Ram Kalita vs State of Assam - (2009) 13 SCC 330: (AIR 2009 SC (supp) 2056’, while dealing with the scope of reappreciation of evidence by higher Court in criminal revision, observed in paragraphs 9, 10 and 11 of the judgment as under :

“9. So far as Issue 1 is concerned i.e. as to whether the appellant got married with Smt Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.

10. ...

11. Thus, it is evident from the above that this Court being the fourth court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material. Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this count is required to be interfered with.”

19. From the above observations of the Hon’ble Supreme Court of

India, it is evident that if the Courts below have recorded finding of fact, the question of reappreciation of the evidence by the third Court does not arise unless it is found to be totally perverse. The higher Court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. The Court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.

20. In the teeth of the above referred well settled principle of law, I revert back to the evidence led by the prosecution.

21. P.W. 5-Rakesh Chahare, P.W. 6-Ankush Wakulkar and P.W. 7-Jankiram Raut are the classmates of the deceased Sahadev. It has come in the evidence of P.W.5-Rakesh that the deceased Sahadev on the date of the incident, along with his classmates were going to the house of maternal uncle of Pankaj Wakulkar for drinking water. He has further stated that a tractor was coming from the opposite direction in a high speed and gave dash to the cycle of Sahadev.

22. It is stated that due to which the front large wheel of the tractor went on his head and the deceased sustained severe injuries on his head

and he died.

23. P.W.5 – Rakesh Chahare has undoubtedly stated that the deceased Sahadev had died as the front wheel of tractor had gone over his head. There was only one tractor on the public road when the said accident had occurred.

24. P.W. 6 Ankush Wakulkar is also a relative of deceased Sahadev. He has stated that after repairing the cycle of deceased Sahadev, they went towards the house of his maternal uncle. According to him, at about 03:00 to 04:00 p.m. accused No.1 was coming on the tractor and he was in a speed therefore, the witness and other cyclists took their sides. The deceased Sahadev was behind them and it is claimed by the witness that the tractor gave dash to the cycle of Sahadev, due to which he fell down and died on the spot as the front wheel of the tractor went over his head. This witness has identified accused No.1 in the Court also.

25. PW-6 has denied that due to the height of the cycle, the deceased Sahadev could not properly balance it. He has also denied that

he had not seen the driver of the tractor.

26. The witness P.W. 7-Jankiram Raut in his evidence stated that accused No.1 was driving the tractor in a high speed and gave dash to the cycle of Sahadev at about 03:00 to 04:00 p.m. on 19/11/2011.

27. From the above said oral evidence adduced by the prosecution, it is quite clear that there are at least three eye witnesses who have seen accused No.1 driving the tractor on the public road near the spot of the accident. They have also stated that accused No.1 was in high speed.

28. The above said oral as well as documentary material indicate that the involvement of accused No.1 in driving the tractor is unmistakable.

29. The applicant/accused in their statements under Section 313 of the Cr.P.C. have flatly denied their role in the offences.

30. Similarly, in giving suggestions to the three prosecution

witnesses, the accused have tried to show that the deceased Sahadev himself was at fault in the said accident and that there was a slope on the road, due to which the said Sahadev could not control the speed and balance of his cycle.

31. From the above said discussion, it is quite clear that the tractor driven by accused No.1 was not in a slow or moderate speed. Thus, no error or perversity committed by both the Courts below in recording the finding of fact that the accused No.1 was driving the vehicle in rash and negligent manner.

32. Now, moving to the further submission of the appellant as regards the applicant No.2, who is the owner of the tractor. After going through the discussion made by both the Courts below, I am of the opinion that both the Courts below rightly convicted the applicant No.2 for the offence punishable under Section 5 read with Section 180 of the Motor Vehicles Act. However, considering the overall circumstances and the role of the applicant No.2 and the fact that the applicant has already undergone 18 days rigorous imprisonment, I am of the considered view that the sentence should be reduced to the sentence he has already undergone. Accordingly, I pass the following order:

- i) The Revision Application is partly allowed.
- ii) The impugned order dated 07/12/2017 passed by Judicial Magistrate First Class, Gondpipari, District : Chandrapur Summary Criminal Case No.08/2012 and impugned order dated 14/09/2021 passed by Additional Sessions Judge, Chandrapur in Criminal Appeal No.02/2018, convicting the applicants, is hereby confirmed with following modifications:

The sentence awarded to the applicant No.2-Sajay Pandurang Madurwar by the Judicial Magistrate First Class, Gondpipari, District : Chandrapur in Summary Criminal Case No.08/2012 and confirmed by the Additional Sessions Judge, Chandrapur in Criminal Appeal No.02/2018, is hereby modified to the extent accused No.2 is sentenced to suffer imprisonment for eighteen days and he shall pay fine of Rupees Two Thousands and in default, he should suffer simple imprisonment for fifteen days.

The Revision Application stands **disposed of** in the above terms.

Pending Criminal Application(s), if any, shall stand disposed of.

(ANIL S. KILOR, J)