

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

CRIMINAL REVISION APPLICATION NO.260 OF 2023

Dnyaneshwar Rupchand Rajput	 Applicant
Versus	
The State of Maharashtra	 Respondent

**.....
WITH
INTERIM APPLICATION NO.2978 OF 2023
IN
CRIMINAL REVISION APPLICATION NO.260 OF 2023**

Ms.Kinjal Khandelwal, Advocate a/w. A. Maurya i/b. S.G.
Rajput, for the Applicant.
Mr. Yogesh Y. Dabke, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th OCTOBER, 2023

P.C. :

1. Leave to amend to add the legal heirs of Umesh @ Sagar Surate and Pavan Sonawane as party Respondents. Amendment shall be carried out within a period of eight weeks from today.
2. Heard Ms.Kinjal Khandelwal, learned counsel for

the Applicant and Mr. Yogesh Dabke, learned APP for the Respondent-State.

3. The Applicant was the original accused in S.C.C. No.1499/2011 before the Judicial Magistrate, First Class, Court No.6, Malegaon. The trial Court, at the conclusion of the trial, convicted the Applicant for commission of the offence punishable under Sections 304-A, 279 and 338 of IPC as well as under Section 134(b) read with 177 and 184 of the Motor Vehicles Act. He was acquitted from commission of the offence punishable under Section 427 of IPC. The major sentence imposed on him was RI for nine months for the offence punishable under Section 304-A besides imposition of fine of various amounts under different heads. The substantive sentence under different heads were directed to run concurrently. The fine amount of Rs.3,000/- was directed to be paid to the legal heirs of the deceased Umesh @ Sagar Surate and Pavan Sonawane.

4. The Applicant challenged that order by way of Criminal Appeal No.38/2014 before the Additional Sessions

Judge, Malegaon. Said appeal was dismissed vide order dated 2.8.2023.

5. The prosecution case is that the first informant Daga Marathe was driving the rickshaw carrying passengers from Malegaon to Chalisgaon on 14.3.2011. Near Malegaon diversion he saw one Indica car was overtaking a truck. The car dashed into his rickshaw directly. The rickshaw turned upside down and fell on the left side of the road. He suffered injuries. One Umesh @ Sagar Surate died at the spot. The other injured Pavan died after few days. After the accident an offence was registered vide MAR No.42/2011 at Malegaon Taluka Police Station.

6. The investigation was carried out. It is the prosecution case that the Applicant was driving that car. During trial the prosecution examined five witnesses. Four of them were the passengers of the rickshaw and PW-5 Police Constable Sanjay Pawar had investigated the offence.

7. Learned counsel for the Applicant submitted that the prosecution has failed to prove the case against the

Applicant. The report of the vehicle inspection i.e. of the car is not brought on record. The Vehicle Inspector is not examined. Therefore, it cannot be assumed that the accident took place because of negligence of the Applicant. She further submitted that the rickshaw driver was carrying passengers more than capacity and permissible number of passengers. Two passengers were sitting on either side of the rickshaw driver. Thus he was not in control of this rickshaw and, therefore, the accident has occurred.

8. Learned APP opposed these submissions. He submitted that it is quite clear from the evidence on record that the accident had occurred because the car was overtaking the truck in a rash, negligent and dangerous manner. There was no other reason for the accident to have occurred.

9. I have considered these submissions. I have perused both the impugned judgments and I have also perused the evidence of the witnesses, which is annexed to this application. The first witness was the first informant

Daga Marathe. He was declared hostile, but, he has narrated the incident as to how the incident took place. According to him, the accident involved a Indica Car and his rickshaw. PW-2 Komal Dhiware was a passenger in the rickshaw. He has described the incident. He identified the Applicant in the Court. At the time of recording of his evidence he was 18 years of age on 17.5.2013. The incident had taken place two years prior to his recording of the evidence. PW-3 Shani Daunde was another passenger. He was injured in the incident. He identified the Applicant in the Court for the first time. PW-4 Mayur Changle was also one of the passengers. He was declared hostile. PW-5 Police Constable Pawar was the investigating officer. He accepted that the car in question was a Maruti Car and one Vishwajeet Dhone was its owner. He accepted that he has not recorded the statement of Dhone that the present Applicant was the driver of the said vehicle. He also accepted that the Applicant was working in the Mumbai Municipal Corporation.

10. This entire evidence shows that there is some

doubt about whether the car in question was an Indica Car or a Maruti Car. However, the crucial question is about the identity of the driver. All the witnesses have deposed that the accident had occurred in a very short span of time. From the evidence it is clear that it was very difficult for the witnesses to have observed the driver of the car.

11. The vehicle did not stop at the spot. The driver was not caught at the spot. No test identification parade was held. The car was not registered in the name of the present Applicant. There is no linking evidence to show that on that particular day the car was in his possession and that he was driving the car. Though the two witnesses have identified the Applicant in the Court, their evidence was recorded after two years from the date of incident.

12. The Applicant is in custody since 2.8.2023. Thus he has completed more than two and half months of his substantive sentence out of the sentence of nine months.

13. Considering this discussion, the Revision Application needs to be admitted and the Applicant deserves

to be released on bail. Hence, the following order:

:: O R D E R ::

- i. Revision Application is admitted. Call R & P
- ii. During pendency and final disposal of Revision Application, the Applicant is directed to be released on bail on his executing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount. Interim Application No.2978/2023 is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
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PRADIPKUMAR
PRAKASHRAO
DESHMANE
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