

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

CRIMINAL REVISION APPLICATION NO. 574 OF 2019

Shrimant Ganpat Anuse

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Laxman K. Kalel :-	Advocate for Applicant.
Mr. H. J. Dedhia :-	APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 26th JULY 2024

P. C. :-

1. Heard learned Advocate for Applicant / convicted Accused and learned APP.

2. The Accused is convicted by the Court of Judicial Magistrate First Class, Kavthe Mahakal for an offence punishable under Sections 279, 304-A, 337 of the Indian Penal Code. He is a driver of a truck bearing registration number MH-10-Z-2701. He gave dash to

motorcycle bearing number MH-10-AH-1160 from backside. The pillion rider Uttam Maruti Babar died on the spot whereas the motorcycle rider Pandurang Maruti Babar - P. W. 4 got injured. His Medical Certificate is admitted by the Accused. The accident took place on 11th November 2009 at about 7:00 to 7:30 p.m. on Miraj-Pandharpur road. Information was given to Police Station by a car driver P. W. 3 Rajkumar Raghunath Desai. He was also travelling on the same road at the same time. Police Head Constable P. W. 1 - Sitaram Bhimanna Mali inquired into the accidental death and found the truck driver rash and negligent and charge sheeted him.

3. Before the trial Court four (4) witnesses were examined. They are as follows :-

- (i) P. W. 1 - First informant – Sitaram Bhimanna Mali
- (ii) P. W. 2 – Spot Panch – Tukaram Manik Patil
- (iii) P. W. 3 – Car driver – Rajkumar Raghunath Desai
- (iv) P. W. 4 – injured – Pandurang Maruti Babar

4. Before the trial Court the Accused took two defences. They are :-

- (i) The motorcycle driver hit the truck from backside. It is not accepted by the trial Court. The trial Court considered Spot

Panchnama. The description of damage to the motorcycle and the truck is given. There is no damage to the truck from backside.

- (ii) He took a defence that the truck was standing on the road and motorcycle gave dash from the backside. It was denied by P. W. 4 who is the injured and eye witness.

5. The question was raised about identity of the truck and driver. There are certain improvements made by P. W. 3 and P. W. 4. Even if they are excluded, other materials are sufficient to show the identity of the Applicant.

6. It is true that P. W. 3 has not stated before the Police “he has seen the truck number when he overtook his car.” This has to be excluded. Whereas P. W. 4 has seen the face of the driver as deposed during chief examination but this is by way of improvement. He has admitted it during cross-examination. Be that as it may. P. W. 4, who is injured eye witness, has disclosed the truck number as MH-10-Z-2701. During investigation Police have collected driving license of this Applicant. For two reasons it cannot be said that the identity of the Applicant is not established. They are as follows :-

- (i) Notice was given to the Applicant by P. W. 1 as per the provisions of Motor Vehicles Act. That was first opportunity to him to say that he was not driver. That case is not pleaded.
- (ii) The truck number is given by P. W. 4.
- (iii) Nowhere in cross-examination of P. W. 1, P. W. 3 and P. W. 4 questions are put that Applicant was not driving the truck. Such grounds cannot be taken in Revision because appreciation of evidence cannot be done in the Revisional jurisdiction.

7. Contention is raised that P. W. 1 is an Investigating Officer so also the first informant and that is why investigation is vitiated. It cannot be accepted for the reasons Firstly there was an accidental death. It's inquiry has to be conducted by a Police Officer and Secondly the fault of Applicant is disclosed and that is why he is charge-sheeted. Offence is registered only after initial inquiry.

8. I do agree that P. W. 3 and P. W. 4 have not said about the speed of the truck. So there is no evidence of rashness. However, certainly the Applicant cannot be said to be innocent because giving dash to motorcycle from the backside is nothing but careless approach in driving the vehicle without giving attention to the situation prevailing

at the site. Furthermore, the postmortem report is also admitted and inspection report of the truck is also admitted. No mechanical defect is noticed. There is conviction for three offences i.e. Sections 279, 337 and 304-A of IPC. All ingredients are proved. No reason to interfere in Revisional jurisdiction.

9. Hence, the Revision is accordingly disposed of and Revision Applicant is directed to appear before Court of Judicial Magistrate, Kavthe Mahakal on 26th August 2024. If Applicant will not appear, trial Court is at liberty to take necessary steps.

[S. M. MODAK, J.]

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