

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.128 OF 2024

Chandrakant Tukaram Salunkhe

Age : 54, Occ.: Driver,

Residing at : Lane No.1, Sahar Road,

Koldongri, Andheri East

Mumbai – 400 059.

(At present Taloja Central Jail)

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. Gaurav Parkar i/b. Shantanu Kadam, Advocate for the Applicant.

Mr. V.N. Sagare, APP for Respondent - State.

CORAM : S. M. MODAK, J.

DATE : 8th MARCH 2024

JUDGMENT :-

1. Urgent circulation is sought because the Applicant is taken in custody in pursuance to the conviction of the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code (for short “IPC”) and under Sections 184 and 134 of the Motor Vehicles Act. The reason for urgent circulation is duration of the sentence. He was convicted by the Court of J.M.F.C. The following is the conviction and fine :-

- (i) For offence under Section 279 of IPC, sentence is three months and fine of Rs.1,000/-.
- (ii) For offence under Section 338 of IPC, sentence of one month and fine of Rs.1,000/-.
- (iii) For offence under Section 184 of Motor Vehicles Act, fine of Rs.1,000/-.
- (iv) For offence under Section 134 of Motor Vehicles Act, fine of Rs.1,000/-.

2. There is no direction for running of substantive sentence concurrently. This conviction was challenged by way of an Appeal and the Appeal was dismissed. Specific direction was given by the appellate court to undergo substantive sentence concurrently.

3. That is why, it is submitted that the total duration of the substantive sentence comes to only three months and the Appellant is taken into custody on 14th February 2024.

4. Reliance is placed on the observations by the Hon'ble Supreme Court in the case of Atul @ Ashutosh vs. State of Madhya Pradesh (Cri. Appeal No.579 of 2024). The Supreme Court has favoured suspension of sentence if fixed term sentence is there and appeal is not

likely to be heard before completing the entire period of sentence.

5. When these submissions are made, I have asked learned Advocate Shri Parkar whether he is ready to go on with the matter finally. He has filed notes of evidence. Even learned APP is ready. So let Mr. Parkar start with the arguments. If during the course of the arguments it is revealed that it could not be heard for some reason then he can press for suspension.

Lateron

6. Accordingly, I have heard learned Advocate Shri Parkar and learned APP for final disposal. Mr. Parker has invited my attention to the evidence of following witnesses:-

1.	Pankaj Narayan Vanage (P.W.1)	Injured
2.	Hemant Vishnu Dhakras (P.W.2)	Spot Panch
3.	Yashwant Krishnaji Mirwankar (P.W.3)	Eye witness
4.	Ramakant Bhaskar Gaikwad (P.W.4)	Injured
5.	Prashant Bhikaji Patil (P.W.5)	Witness – Driver of Vikram auto-rickshaw
6.	Subhash Krishna Sonawale (P.W.6)	Investigating Officer

7. He also invited my attention to the findings given by the trial Court as well as by the Appellate Court. Applicant is prosecuted for driving his three wheeler auto-rickshaw rashly and negligently and

instrumental for causing hurt to motor cycle driver. P.W.1 – Pankaj Vanage, and P.W.4 – Ramakant Gaikwad who was pillion rider. He is charge-sheeted for the said acts of rash and negligent driving which took place on 1st August 2010 at about 5.30 pm on Khopoli Pen road.

As per the evidence, three vehicles are involved. They are as follows:-

- i) 3 wheeler auto-rickshaw No. MH-06/X-1389 driven by the Applicant – accused proceeding to Khopoli from Pen Vavoshi.
- ii) Motorcycle No.MH-2/UA-8779 driven by P.W.1- Pankaj Vanage coming from Pen - Khopoli road to Vavoshi Pen i.e. opposite direction.
- iii) Vikram auto-rickshaw driven by P.W.5 – Prashant Patil.

8. We have got three versions about the accident which are available. They are as follows: –

- (a) One is the version of the prosecution brought on record through two injured - P.W. 1 – Pankaj Vanage and P.W.4 - Ramakant Gaikwad.
- (b) the Applicant attempted to bring on record his own version of the accident.

(c) version about the accident deposed by P.W.3 –
Yashwant who is passenger in Vikram auto-rickshaw
and by P.W.5 – Driver of Vikram auto-rickshaw.

9. There is no much dispute as to injuries caused to P.W.1 and P.W.4. The trial Court, in paragraph 19, has discussed about those injuries. There is also medical certificate at Exh.19. Now, the point raised in this Revision is only about failure of the prosecution to prove the act of rash and negligent driving by the Applicant. Mr. Parkar tried to bring to my notice certain answers given by the witnesses and absence of corroboration in between them. I can certainly consider them only if I find that the findings are perverse or they are arrived at by ignoring a piece of evidence or by wrongly invoking the provisions of Evidence Act. Because there is concurrent finding of fact and there are limitations on the powers of the Revisional Court.

10. It is true that in vehicular accident, the testimony of the eye-witness is important. However, the Court is not expected to be over influenced by this oral testimony because on some occasion the victim of the accident used to exaggerate few of the facts or the improvements

in the original version. For this reason, it is expected from the Court to assess their evidence on the basis of the available materials either in the form of the spot panchanama or the evidence of independent witnesses. It is true that the accused is not expected to prove his defense beyond reasonable doubt. By way of cross-examination, he can bring on record few of the facts thereby suggesting that accident has not taken place in the manner deposed by the witness. In this case also Applicant has contended before the trial Court as follows :-

Defense of Accused

- a. Motorcycle driven by P.W.1 overtook Vikram auto-rickshaw driven by P.W.5 and gave a dash to his 3 wheeler auto-rickshaw from front side and he is not responsible for the accident.

This defense needs to be tested from the answers given by the witnesses during the cross-examination. So also there is one more factor which needs to be considered. It is the nature of injuries caused to the witnesses and injury if any, caused to the accused.

11. In this case, it is neither the case of the prosecution nor put forth

by the accused that he sustained some injury during the accident. Fact is otherwise. There are injuries caused to two persons on motorcycle.

On this background, I have read the evidence of P.W.1, P.W.3, P.W.4 and P.W.5.

Evidence of witnesses to the Accident

12. It is true that there is some inconsistency in the evidence of P.W.3 on one hand and P.W.5 on the other hand. It is for the reason that **P.W.3** who was passenger in Vikram auto-rickshaw has deposed “the rickshaw driven by the Applicant gave dash to motorcycle which is proceeding in front of their auto-rickshaw”. He mean to say the motorcycle was in front of them proceeding towards Pen – Vavoshi side whereas the offending auto-rickshaw was coming from the opposite side. It is true that he has not deposed the name of the Applicant. It is but natural. According to him, the auto-rickshaw driver and others ran away.

13. He was cross-examined on few of the portions from his police statement. He has disowned that portion however, it was not proved through the Investigating Officer – **P.W.6**. Mr. Parkar admits this fact.

The Applicant wants to bring on record few of the facts stated by this witness to the Police. The witness has stated “*due to the dash by the three-wheeler auto-rickshaw their Vikram auto-rickshaw was taken from the road to the side lane*”.

14. Learned Advocate Shri Parkar heavily relied on one admission given by him during cross-examination. He has stated :-

“पोलिसांना मी पंकज वानगे यांची मोटार सायकल माझे रिक्षास ओव्हरटेक करून गेल्याचे सांगितले होते”.

15. According to Mr. Parkar this admission supports the version about the accident given by his client. According to him, this was not considered by both the Courts below. This question was not put by way of improvement in Police statement but it was put by way of suggestion.

16. My attention is invited to paragraph 11 in the trial Court judgment. I have read it. Merely on this admission by P.W.3, the entire findings cannot be set aside. The Court needs to see other evidence also. On the other hand, the evidence given by the driver of the Vikram auto-rickshaw - **P.W.5** is silent as to how the accident took

place and who is responsible for the same. He simply stated that the accident took place in between rickshaw and motorcycle. During the cross-examination, he admits that he had not seen the accident whereas, the trial Court has discussed about his evidence in paragraph 13. If both the evidence are perused together there is a reason to believe that either of them are not deposing all correct facts. It is either P.W.3 passenger or P.W.5 Driver.

Other Witnesses

17. Even if their evidence are kept aside we have got evidence of P.W.1 and P.W.4 both are injured. So I have read their evidence. Both of them have stated about the manner of the accident i.e. to say their motorcycle was proceeding towards Vavoshi and offending auto-rickshaw bearing No.MH-02-AU-8779 came from Pen side i.e. opposite side. Both have stated that the rickshaw driver came on wrong side and dashed the motorcycle. Unfortunately, the testimony of P.W.1 was not challenged during the cross-examination. No cross was conducted as the learned Advocate for the Applicant was not present.

18. Whereas, another injured P.W.4 had also given details of the accident. It is true that he has admitted it was rainy season. When I

have read his cross-examination the version put up on behalf of the Applicant was not seriously put to him and no answers were elucidated to support that theory. The theory “*motorcycle driver overtook Vikram auto-rickshaw and dashed auto-rickshaw driven by the accused*” and that is how it was pure accident and not rash and negligent driving by him. If this is the evidence it cannot be said that the Applicant was successful in pointing out it is not he but motorcycle driver was responsible for the accident. The prosecution has proved the rash and negligent driving of the Applicant. In fact, this can be said to be the case of negligent driving in the sense the rickshaw was driven by overlooking the situation at the spot. So, I do not find any reason to interfere in the findings. There is no perversity. The conviction needs to be maintained.

Sentence

19. On the point of sentence, the learned Advocate Shri Parkar submitted that he was taken into custody on 14th February 2024 and upto now, he has undergone sentence of 23 days. It is submitted that considering the age of the Applicant and no antecedents, let sentence be reduced to the period already undergone. It is told that he has

already deposited the amount of fine. If it is not deposited, he will have to undergo the imprisonment in default of payment of fine. I am inclined to accept his contention. In view of that, the following order is passed:-

ORDER

- (i) Revision is partly allowed.
- (ii) Conviction for the offences under Sections 279, 337 and 338 of the Indian Penal Code and Sections 184 and 134 of Motor Vehicles Act is maintained.
- (iii) Sentence imposed on the Applicant by the Court of J.M.F.C, Khalapur in R.C.C. No.726 of 2010 dated 16th January 2014 for the offences under Sections 279, 337 and 338 of the IPC is reduced from three months and one month to the period which he has already undergone.
- (iv) Applicant - Chandrakant Tukaram Salunkhe be released from the jail by confirming that amount of fine is already deposited.
- (v) If it is not deposited, the Applicant is at liberty to deposit it before the trial Court.

- (vi) In respect of the fine, if it is not deposited, then he be released from jail after undergoing the default sentence.
- (vii) All parties to act upon an authenticated copy of this order.

[S. M. MODAK, J.]