

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

**REVISION APPLICATION NO. 140 OF 2015
ALONGWITH
CRIMINAL APPLICATION NO. 127 OF 2015
IN
REVISION APPLICATION NO. 140 OF 2015**

Somnath Bhimrao Andhale
Age : 37 years,
Occupation : Truck driver,
residing at Khambale, Taluka Sinnar,
District Nashik ...Applicant

Vs.
The State of Maharashtra
Through the Police Inspector
Nashik Road Police Station,
District Nashik ...Respondent

Mr. Sarfaraj J. Shaikh i/by Mr. Sachin S. Gite - Advocate for the
Applicant

Mr. Avinash Kamkhedkar - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 19th JANUARY 2024

JUDGMENT :-

1. Heard learned Advocate for the Applicant-convicted
accused and learned APP.
2. The Court of the Judicial Magistrate, Nashik as per
Judgment dated 09/04/2009 was pleased to convict the accused
for the offence punishable under Sections 304(A), 279 of the

Indian Penal Code and under Sections 184, 134 read with 177 of the Motor Vehicles Act. The punishment is as follows:-

- a) Rigorous imprisonment for six months and fine of Rs. 2000/- for the offence punishable under Section 304(A) of the Indian Penal Code.
- b) Rigorous imprisonment for three months and fine of Rs. 500/- for offence punishable under Section 279 of the Indian Penal Code and
- c) For offence punishable under Sections 184, 177 of the Motor Vehicles Act, there is fine of Rs. 500/- and 100/- respectively.

3. This judgment was confirmed by the Court of the Additional Sessions Judge, Nashik in Criminal Appeal No. 73 of 2009 on 26/02/2015. The present Revision application is filed by the Applicant. This Court as per Order dated 08/10/2015 has refused to suspend the sentence. This revision is not admitted. So by consent, this revision is taken for final disposal at an admission stage. This is revision application, the scope is limited. Appreciation of the evidence is not permissible, if inadmissible evidence is considered or admissible evidence is not considered, then findings can be set aside.

4. With assistance of both of them, when I have gone through the evidence of the seven witnesses and the findings of

both the Courts below, I do not find any merit in this revision. So revision is dismissed.

5. The deceased-Vishwanath Sukhdeo Salve and his mother Kaushalyabai-PW No. 3 were returning home on 10/12/2003, when they came near Eklahara main gate at about 8.30 p.m., one truck came in great speed from Eklahara gate and dashed her son Vishwanath Sukhdeo Salve from the back side. He fell down. One wheel of the truck, skid over the head of the deceased. He died on the spot. The persons in the vicinity stopped the truck. The truck No. is MH-15/G-4581.

6. Intimation was given to Nashik Road Police Station and entry is taken in motor accident register. Inquiry was handed over to Police Head Constable Yashwant Bachhav. He carried out spot panchnama and recorded the statements. He also issued notice under Section 209 of the Motors Vehicles Act and then registered an offence against the accused. Further investigation was carried out by PW No. 6-PSI Vishnu Avhad. He filed charge-sheet. Following are the seven witnesses examined:-

a)	PW No. 1	Jabir Ismaile Kureshi	Exh. 17	spot panch	he has not supported
b)	PW No. 2	Mohan Nimbalkar	Exh. 26	Eye witness	supported

c)	PW No. 3	Kaushalyabai Sukdeo Salve	Exh. 32	Mother of the deceased	supported
d)	PW No. 4	Akil Sayed	Exh. 33	Eye witness	Not supported
e)	PW No. 5	Yashwant Bachhav	Exh. 34	PHC	Investigating Officer
f)	PW No. 6	Vishnu Avhad	Exh. 37	PSI	Investigating officer
g)	PW No. 7	Prabhakar Sahebrao Waghmare	Exh. 39	Eye witness	Not supported

7. There are certain admitted documents, they are as follows:

a) Inquest panchnama at Exh. 16

b) Post Mortem report at Exh. 31.

8. It is true that every accident is not traffic offence. If the driver of the vehicle drives the vehicle rashly and negligently without paying attention to situation prevailing at the spot, it is an offence. The following factors needs to be considered :-

a) What is evidence about the spot?

b) Whether there is evidence of the eye witnesses available?

c) Whether vehicle is driven by the accused?

9. Even though the spot panch has not supported, the spot panchnama is duly proved through PW No. 5-PHC Bachhav. Both the Courts below have correctly appreciated the same.

There was blood and flesh lying on the spot of the incident. So also the front side wheel of the truck was smeared with the blood and flesh.

10. An attempt is made on behalf of the Applicant to submit that the blood and flesh was smeared at the back side of the truck and hence the driver cannot be held responsible. One does not know how the things will take place after dash is given by the truck from the back side. This argument is not available.

11. The trial Court has discussed about the evidence on the point of the spot in para no. 15. Whereas the Appellate Court has discussed about the evidence on the point of the spot in para no. 11. They have correctly appreciated that evidence.

12. It is true that PW No. 4 and PW No. 7 were examined as eye witness but they have not supported the case of the prosecution. So we have only the evidence of the PW No. 2-Mohan and PW No. 3-Kaushalyabai.

13. It is true that Kaushalyabai has not stated who was driver of the truck. According to her, the driver ran away from the spot. However her evidence is clear on the point of manner of the accident. The truck driver gave dash from the back side and ran over neck of her son. Whereas evidence of the Mohan is on the similar line. Even he has given the truck number.

Mohan has said that he caught the truck driver whereas mother has said that truck driver ran away. Whether there is inconsistency in the prosecution witnesses? Prima-facie, even it may find that it is inconsistency but when evidence is perused in detail, we find that from the spot, the truck driver tried to run away and PW No. 2-Mohan caught him after the truck driver had gone at some distance. This is not inconsistency. Even PW No. 5- Yashwant said that truck driver ran away from the spot, he is not eye witness.

14. Reliance is placed on the observations in case of **Shri Madhukar Gaurishankar Swami Vs. State of Maharashtra**¹. This Court has set aside the conviction. Eye-witnesses have deposed that the truck was driven in high speed it does not indicates that he was rash and negligent. It is true that rashness or negligence need to proved independently.

15. In this case, dash was given from the back side. It is but natural for the truck driver to see whether any pedestrian is walking on the road in front of the truck when he is giving dash from the back side. What it indicates that he is not driving the truck in the normal speed. How the truck driver can give dash from the back side, unless he is rash and negligent. The fact

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that dash was given from the back side itself indicates that he has not taken proper precaution in the driving on the said road. So the trial Court in para no. 15 has given the reasoning on the point of rashness and negligence driving. Whereas the Appellate Court has discussed about this evidence in para no. 11 and para nos. 18 and 19. I do not find any reason to disagree with those findings.

16. About the Applicant driving the truck, the evidence of the PW No. 2 is sufficient. He caught him at the spot. So all the parameters are true. There is no illegality. The facts of this case are different from the facts involved in the case of **Madhukar (Supra)**.

17. There is no merit in this revision. Hence it is dismissed.

18. Accordingly, interim application, if any, is disposed of.

[S. M. MODAK, J.]