

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.156 OF 2024
WITH
INTERIM APPLICATION NO.1201 OF 2024
WITH
INTERIM APPLICATION NO.1202 OF 2024

Rajesh Ramchandra Karape
age 35 years, Occ: Driver
Residing at Kala Chowki, Mumbai
Behram Marg, Mumbai – 400 008.

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Niranjan Mundargi a/w Mr. Santosh Musale:	Advocate for Applicant.
Mr. V.N. Sagare:	APP for State.

CORAM : S. M. MODAK, J.
DATE : 30th APRIL 2024

ORAL JUDGMENT:-

1. Heard learned Advocate Shri Mundargi at great length and also learned APP at great length.
2. Even though this Revision was argued initially on the point of suspension of sentence, when both have read the evidence, by consent

it was decided to decide the revision finally only at the admission stage.

3. In this case, three vehicles were involved. Two are Qualis Jeeps whereas third vehicle is luxury bus. There are two deaths of occupants of the Qualis Jeep bearing **No.MH-01-GA-4289**. Apart from those two ladies, the Applicant – Accused was the Driver and P.W.6 – Anant Dhanawade was the co-passenger. Whereas, another Qualis Jeep **No.MH-04-BQ-760** was driven by P.W.5- Balu G. Sonawane whereas luxury **Bus No.MH-07-T-9797** was driven by P.W.7 – Mayur Sawant.

4. Both these Qualis Jeeps are proceeding from Mumbai to Goa whereas, Luxury bus was coming from direction of Goa to Mumbai. The accident took place at village Karnali. Intimation was given to Vadkhal Police Station by P.W.5- Balu Sonawane and entry was taken in accidental death register and thereafter, it was investigated by P.W.8 – ASI – Rajaram Pawar. During an inquiry, he found that the present Applicant was rash and negligent and responsible for causing death of two of the occupants of his own jeep. He has filed complaint under Sections 304A, 279, 337, 338 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988. The Applicant was charge-sheeted.

5. He has denied committing any offence. During trial, the prosecution in all examined 8 witnesses. They are as follows:-

1.	P.W.1 – Vijay Dhotre	Spot Panchanama	Page 79
2.	P.W.2 – Vidya Salvi	Inquest Panchanama about deceased Pranjali Dhanawade.	Page 85
3.	P.W.3 - Ashwini Ninad Adsule	Inquest panchnama of the dead body of Radhika Dhanwade.	Page 86
4.	P.W.4 – Sandesh Hodawadekar	Who is passenger from the Qualis Jeep driven by the first informant.	Page 87
5.	P.W.5 – Balu Sonawane	First informant driver of the Qualis Jeep No.MH-04-BQ-760.	Page 89
6.	P.W.6 – Anand Dhanawade	Occupant of Qualis Jeep driven by the Applicant – Accused.	Page 94
7.	P.W.7 – Mayur Sawant	Driver of the Luxyry Bus No. MH-07-T-9797.	Page 96
8.	P.W.8 – ASI Rajaram Pawar	Investigating Officer	Page 100

6. The defence of the accused can be deciphered from the line of cross-examination as well as after reading the answers given in 313 statement. Apart from that he gave evidence on oath.

Defense of accused

7. Learned APP submitted that there is variance in the manner of accident stated in Question No.32 page 78 on one hand and the

manner of accident deposed by the Applicant in his evidence on the other hand. I have perused both of them. It is as follows:-

- (i) While answering Question No.32 the Applicant tried to explain that he was driving this Qualis jeep on right side of the road but the luxury bus coming from opposite direction came on wrong side and gave a dash to his jeep.
- (ii) **During his evidence**, he has taken a different stand. **He has stated the following facts:-**
 - a. About proceeding from Mumbai to Goa, he has confirmed it.
 - b. About the spot at village Karnali at early hours of morning at 3.30 am, he has confirmed. He tried to give an explanation that his jeep got a bump in the ditch on the road and it has resulted into bursting of tire and at that time luxury bus coming from opposite direction gave a dash to his jeep.
 - c. He has tried to suggest that it is the bus driver who gave a dash and it was pure accident and it was due to bursting of the tire. About second dash he has also explained his

jeep turned on the spot and the Qualis Jeep (driven by P.W.5) gave a dash to backside door.

Prosecution case

8. As against this, the prosecution case is that the accused – Applicant drove his Qualis jeep in rash and negligent manner. It is in the following manner:-

- (a) He overtook firstly the Qualis Jeep driven by P.W.5.
- (b) He was about to overtake a truck, at that time, he came on right hand side but he has not estimated that he could overtake the truck and not estimated that there will not be a dash to luxury bus coming from opposite direction.

So that is why the prosecution evidence suggest that proper care and precaution is not taken by the Applicant in the sense that he can safely overtake the truck that is why, prosecution evidence suggest that he was rash while driving. That is why, he dashed to luxury bus which is also evident from the deposition of the bus driver P.W.7 – Mayur Sawant. Even though after turning the Qualis Jeep driven by the Applicant backside Qualis Jeep driven by P.W.5 gave a dash to rear side door behind the driver.

9. So even though there was a dash by Qualis Jeep driven by P.W.5, the prosecution evidence suggests that if the applicant could have avoided his collision then the second collision might not have taken place. Even the prosecution evidence want to suggest that that is why it is rash driving of the Applicant which has indirectly resulted into further collision and consequently death of two ladies.

10. Learned Advocate Shri Mundargi submitted that in fact there is a different version given by the prosecution witnesses :-

- (i) By the first informant PW 5 and by the passenger of that jeep which is P.W.4.
- (ii) Second version is given by luxury bus driver and
- (iii) Third version is given by the Applicant himself and by P.W.6 – Anant Dhanawade.

11. I have gone through their evidence minutely. Even both the sides have invited my attention to the findings given by the trial Court as well as Appellate Court. After going through the evidence, I do not find that the variance as suggested is of such a kind so as to give benefit of doubt to the Applicant. This variance can be said to be a natural variance. After reading their evidence, **it can be said that the accident**

took place in following manner:-

- (a) P.W.4 and P.W.5 were travelling in Qualis jeep having registration No.MH-01-BQ-760. Both have deposed that P.W.5 was a driver. Both have deposed that one Qualis jeep overtook their jeep (this is nothing but jeep driven by the Applicant).
- (b) That Qualis jeep was trying to overtake the truck and at that time, Qualis jeep gave a dash to bus coming from opposite direction.
- (c) Whereas, luxury bus driver has given slightly different version. He has referred only two Qualis Jeeps i.e. MH-01-GA-4289 driven by the Applicant and another Qualis Jeep bearing No.MH-04-BQ-760 (driven by the first informant). According to him, Qualis jeep driven by the Applicant was trying to overtake another Qualis jeep (not a truck) and in that exercise, that offending Qualis Jeep dashed his luxury bus from the front side.
- (d) He has also explained how there was a dash in between two Qualis jeeps thereafter. The offending Qualis jeep

whirled around and gave a dash to another Qualis jeep.

- (e) Whereas, the occupant of Qualis jeep driven by the Applicant had also given evidence. He is P.W.6. He has not seen the accident because at that time he was sleeping. After the accident when he woke up then he realised about injuries sustained by them. During that accident, his mother, wife both sustained injuries and they have succumbed to those injuries.

12. Ultimately, the version of the driver of the Qualis jeep driven by first informant and his passenger is important as against version given by the bus driver. The trial Court and the Appellate Court have considered all this evidence. It is a fact that the accident took place at about 3.30 am on 27th April 2012. The fact of driving the offending vehicle by the Applicant is not disputed. In fact, he himself deposes that the stand taken in his evidence by the Applicant about bursting of tire. However, it is unsubstantiated version.

13. Even though learned Advocate Shri Mundargi tried to point out the report of examination of the offending vehicle by RTO during the evidence it was not proved. He has filed it along with the copy of

charge-sheet. Now, it is true that it is the responsibility of the prosecution to examine the vehicles involved in the accident to rule out any other possibility that rash and negligent driving by the accused persons. When the defense of bursting of tire was taken, Applicant could have examined the person from the RTO Department who has inspected the vehicle. Even the Applicant does not say that there was some mechanical defect in the vehicle. He attributes the bursting of tire due to bump and not due to mechanical defect.

14. It is true that in this accident two ladies sitting on the backside in jeep driven by the Applicant have succumbed to the injuries. Their sitting position is explained by P.W.6 (page 94). He is occupant of that jeep only. Mr. Mundargi argued that it is not due to the collusion in between the bus and Qualis jeep driven by his client has resulted into death of these two ladies but there is every possibility that these two ladies have sustained injuries due to dash given by the Qualis jeep driven by P.W.5.

15. Ultimately, the Court has to consider the oral evidence as well as corroborative evidence in the form of the panchanama and the injuries caused. Even the fact that the Applicant even though at the front has

only received injuries. Whereas, two ladies sitting at backside succumbed to the injuries. Even he invited my attention to the findings given by the Appellate Court in paragraph 15 of the judgment. I have perused it. The Appellate Court has made certain comment about the contributory negligence of the driver of the Qualis jeep i.e. first informant. There are two aspects:-

- (a) driving by the present Applicant and
- (b) dash given by the Qualis Jeep driven by the first informant.

16. It is no doubt true that the dash given by the first informant is subsequent in time. Ultimately, the Court has to see why offending vehicle turned. It turned because that offending vehicle driven by the Applicant gave a dash to the luxury bus coming from opposite direction. There is every reason to believe that Applicant has driven Qualis Jeep by not paying attention to the situation on the spot at that time. It is important to note that at 3.30 am, there may not be light available. So simply because two ladies have died due to the dash given by Qualis Jeep driven by first informant, it cannot be said that the Applicant is not responsible. Certainly, it is his act which has culminated into second dash. So I am not inclined to consider that

factor in exonerating the Applicant. I do not find any illegality in the findings recorded by the trial Court and the Appellate Court.

17. Learned Advocate Shri Mundargi prayed for leniency. There can be interference in the judgment when we may find that the findings are perverse. It is nowhere pointed out that the findings are arrived at by considering inadmissible evidence or other admissible evidence is not considered. Merely because there is variance it cannot be a factor to label the findings as perverse. However, I am inclined to consider the prayer for leniency.

18. Mr. Mundargi submitted that the Applicant has got respect to the process of the Court and he has attended the trial Court and Appellate Court punctually. Even he has not avoided any attendance in the Appellate Court on the date of judgment itself. That is why, he was taken into custody immediately on 15th March 2024 when the Appeal was dismissed. He claims that there is no antecedents whereas learned APP submitted that no leniency can be shown when there are two deaths.

19. It is admitted fact that there is no appeal filed at any time by the State for enhancement of sentence either it is not pointed out. So I am

inclined to consider the prayer for leniency. It is also submitted that relatives of the deceased are compensated as per the relevant law. From 15th March 2012 the Applicant has remained in jail for almost 45 days. Even the Applicant has sustained injuries in that accident. So instead of asking the Applicant to undergo the remaining sentence for three months, I am reducing the sentence upto the period which he has already undergone. The Appellate Court has reduced the sentence from six months to three months. In view of that, the following order is passed:-

ORDER

- (i) Revision is partly allowed.
- (ii) The conviction for the offence punishable under Sections 304-A, 279, 337 and 338 of the Indian Penal Code passed by the J.M.F.C., Pen in R.C.C. No.7 of 2013 dated 15th October 2013 as confirmed by the Additional Sessions Judge, Raigad – Alibaug in Criminal Appeal No.185 of 2013 vide judgment dated 15th March 2024 is maintained.
- (ii) The sentence imposed by the Court of Sessions Judge, Alibaug is reduced from three months to the period which is

already undergone.

(iii) Jail authorities may be informed. He may be released from jail, if not required, in any other case.

20. Revision is disposed of.

21. In view of disposal of Revision Application, nothing survives in the Interim Applications and they are disposed of.

[S. M. MODAK, J.]