



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 177 OF 2022

APPLICANT

Omprakash s/o Munnalal Deshmukh,

VERSUS

NON-APPLICANT

State of Maharashtra,
Through Police Station Officer,
Police Station, Warora,
Tah. Warora, District Chandrapur

Mr. Sahil Umredkar, counsel for applicant.

Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 03/02/2025

ORAL JUDGMENT :

1. Heard.

2. **Admit.** Heard finally with the consent of learned counsels appearing for the parties.

3. The applicant is challenging the judgment and order dated 24/03/2015 passed by the 2nd Judicial Magistrate First Class, Warora, in S.C.C. No. 420/2011, which is confirmed by the Additional Sessions Judge, Warora, in Criminal Appeal No. 10/2015, by which the applicant is convicted of the offence

punishable under Sections 279, 337, and 304-A and sentenced to suffer R.I. for three months and fine of Rs. 1,000/- for the offence punishable under Section 79; in default further R.I. for one month for the offence punishable under Section 337 and fine of Rs. 500/-. Further the offence punishable under Section 308, R.I. for one year and fine of Rs. 5,000/-. The fine amount is already paid by the present applicant.

4. As per the case of the prosecution, the informant Babulal Bhauraoji Atram was residing at Warora and Khuhi for labour work. Deceased Kishor Gawali was his friend. On 06/06/2011 at 12.13 p.m., he and Kishor Gawali were proceeding for labour work by walk, while they reached in front of Hotel City Point Warora. At that time, a truck bearing No. MH-34/AP/4157 came from the backside of the gate and gave dash to them. Due to which, he as well as his friend sustained the grievous injuries, and during the treatment, his friend Kishor succumbed to death. On the basis of the said report, police have registered the crime vide crime No. 103/2011 for the offences punishable under Sections 279, 337, and 304-A of IPC. During the investigation, the I.O. has also drawn the spot panchahnama and collected the details of the

vehicle by issuing a letter to R.T.O. He also seized the vehicle involved in the accident, and after the completion of the investigation, the charge sheet was filed.

5. Heard learned counsel for the applicant as well as learned APP for the State. Learned counsel for the applicant submitted that as far as the aspect of rash and negligent driving is concerned, there is absolutely no evidence; even the identification of the accused as a driver is not established by the prosecution. Learned trial Court as well as learned Sessions Court has not considered the same and wrongly convicted the applicant. He submitted that the trial Court framed the charge against the accused vide Exhibit 28, and in support of his prosecution, the prosecution has examined in all seven witnesses. None of the witnesses have stated that in what manner the vehicle was driven, whether it was in a speed or without taking due care and caution. Thus, aspect of the negligence itself is not proved by the prosecution as far as the involvement of the present applicant as a driver is also not established. When the applicant has applied for the return of the vehicle on Supatnama, he is arrested. Thus, at the relevant time, it was the present applicant, who was driving

the said truck itself is not established by the prosecution, and therefore, the conviction of the present applicant is not sustainable.

6. Learned APP strongly opposed the said contention and submitted that evidence of the informant, who is the eyewitness of the said incident himself, has established that it was the present applicant who was driving the said truck, and after the incident, he eloped from the spot of the incident. Thus, sufficient evidence is on record to show that it was the applicant who driven the vehicle in a rash and negligent manner and thereafter eloped from the spot of the incident. The statements of the witnesses and their evidence sufficiently show that the vehicle was driven in a rash and negligent manner and gave dash informant and the deceased backside, in which the death of the deceased is caused. In view of that, the judgment of the trial Court and the Additional Sessions Judge is proper, and no interference is called for.

7. After hearing both sides, I have perused the evidence. P.W. 1 is an eyewitness of the said incident, who has narrated the incident on the day of the incident at about 12 to 12.30 pm. when they were proceeding by walk, at that time, the incriminating truck

came from the backside and gave dashed to them. Due to which, the deceased succumbed to the death, and he has sustained the injuries. This cross-examination shows that he has not stated before the police by lodging the report that it was the present applicant, who was driving the truck, at the relevant time.

8. He further submits that he has not seen the present applicant driving the truck, but voluntarily, he stated that he has seen the present applicant elope from the spot of the incident. The PW-2 is the wife of the deceased. PW-3 is the father of the deceased, and PW-4 is the mother of the deceased, who have not witnessed the alleged incident. PW-5, Sanjay Nikhade, is the other eyewitness, who has stated that though he has witnessed the incident, but it was witnessed by him from a distance of 100 feet. Thus, as far as present applicant was driving the said vehicle has not stated by him. PW-6 Nitesh Parchake is the punch, who has only stated that police called him and obtained his signatures on the panchanama. PW-7 is the investigating officer, who has narrated about the investigation. As far as the fact that, at the relevant time, the present applicant was driving the vehicle, he has not investigated the same. He specifically admitted that the

informant has not stated the name of the present applicant as the driver of the vehicle, and he has not put the present applicant for the identification parade to establish that it was the present applicant who was driving the vehicle at the relevant time.

9. After going through the evidence, there is no dispute as to the fact that the accident occurred on the day of the incident, i.e. on 06/06/2011 at about 12:30 noon. The present applicant is the owner of the vehicle, which is established from the RTO receipt as well as other documents which are collected during the investigation. Admittedly, though informant has stated that he has seen the applicant running away from the spot after the escape, but he has not narrated this fact before the investigating officer while lodging the report. Except this statement, there is no other material collected or brought before the Court during the trial. The recitals of the spot panchanama also nowhere show any break marks or any other sign at the spot of the incident when he was drawn the spot panchanama.

10. Whether the act of the present applicant was rash or negligent, the trial Court has held the present applicant guilty. However, on going through the evidence, it reveals that except the

evidence of informant he has seen the present applicant jumping from the truck and eloping from the spot of the incident, none of the witnesses have stated that it was the present applicant who was driving the truck, i.e. also in a rash and negligent manner. The principles as to the rash and negligent driving has to be examined in the light of the facts and circumstances of each case. The negligence means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. The Court has to adopt another parameter i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person to care for the pedestrian on the road, and this duty attains a higher degree when the pedestrian happens to be children of tender age person. The 'culpable rashness' and 'culpable negligence' are two terms, 'Culpable rashness' is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the driver has

taken sufficient precautions to prevent their happening. The 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow. The imputability arises from the neglect of civic duty of circumspection. In such a case, the mere fact of accident is *prima facie* is not sufficient to show the negligence. The principle '*res ipsa loquitur*' is helpful to ascertain whether the driver of the vehicle is negligent or not. This maxim suggests that on the circumstances of a given case, the *res* speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct.

11. In the light of the above said observation, if the evidence in the present case, which is discussed earlier, is taken into consideration, there is admittedly nothing on record to show that it was the present applicant whose vehicle driven in a high speed, at the relevant time. At the same time, none of the witnesses have even uttered that the vehicle was either in a high speed or came at the wrong side or it was in a rash and negligent manner. None of the witnesses have stated that while driving the

vehicle, the driver of the vehicle has not taken due care and caution, and without observing the traffic rules, gave dash to the informant or the deceased.

12. There is no dispute as to the fact that the death of the deceased was caused due to the accidental injury, but as far as the application of Sections 279 and 304 are concerned, there should be some evidence on record to show that the vehicle was driven by its driver in a rash and negligent manner, without observing the traffic rules. Merely because a vehicle is in a speed is also not a criteria to held that the vehicle was driven in a rash and negligent manner. What is to be seen is whether due care and caution are taken by the driver or not by driving the vehicle.

13. The privy council in the case of *Empress v. Idu Beg*, (1881) ILR 3 All 776 in which it is observed that meaning of ‘criminal rashness’ and ‘criminal negligence’ is explained as :

“criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused. The criminality in such a case lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal

negligence under Section 304A is gross and culpable neglect or failure to exercise that reasonable and proper care and to take precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances attending the charge, it was the imperative duty of the accused person to have adopted.”

14. In the light of the above observation, if the facts of the present case are taken into consideration admittedly, the finding of the trial Court as well as the Appellant Court is without considering that there is no evidence as to the rash and negligent act of the present applicant. In fact, it is not establish that present applicant was driving the vehicle at the time of incident. Thus, the charge against the accused is that he was driving the truck at the relevant time, itself is not establish by the prosecution and therefore, revision deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The criminal application is hereby allowed.
- b] The concurrent finding of the trial Court as well as the Sessions Court holding the present applicant guilty of the offence punishable under Sections

279, 337 and 304(A) is hereby quashed and set aside.

- c] The applicant is hereby acquitted from the charges punishable under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860.
- d] The bail bond stands cancelled.

15. The revision application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]