



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

CRIMINAL REVISION APPLICATION NO.162 OF 2017

Ziya Ul Moinuddin Siddiki
Aged about 49 years, Occupation – Nil,
R/o Babupeth Ward,
Chandrapur,
Tah. and District Chandrapur

...APPLICANT

VERSUS

State of Maharashtra,
through Police Station Officer,
Mul, Tahsil Mul,
District Chandrapur

...NON-APPLICANT

Mr. PH. Khobragade, Advocate for the applicant.
Ms S. Kolhe, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : JANUARY 17, 2025.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. The applicant is assailing the judgment dated 02/11/2012 in Summary Criminal Case No.434/2008 by the Judicial Magistrate First Class, Chandrapur and 3rd Additional Sessions Judge, Chandrapur in

Criminal Appeal No.122/2012 dated 01/09/2017 by which the applicant is convicted of the offence punishable under Section 279 of IPC and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/- in default to suffer simple imprisonment for one month. He is further convicted of the offence punishable under Section 304-A of the IPC vide Section 248(2) of Cr.P.C. and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- in default to suffer simple imprisonment for three months. The accused is further convicted of the offence punishable under Section 337 of IPC and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- in default to suffer simple imprisonment for one month.

3. Said conviction and sentence is confirmed by the 3rd Additional Sessions Judge, Chandrapur in Criminal Appeal No.122/2012 by dismissing the appeal.

4. The applicant has challenged the judgment of Judicial Magistrate First Class, Chandrapur as well as 3rd Additional Sessions Judge, Chandrapur by preferring this revision on the ground that both the Courts below have not considered that prosecution failed to prove the rash and negligent driving of the present applicant and erroneously convicted the present applicant. The another ground raised by the applicant is that the evidence as to the negligence is not appreciated in a

proper perspective and wrongly appreciated and applicant is convicted erroneously.

5. Learned Counsel for the applicant submitted that mere speed of the vehicle is not sufficient to ascertain that vehicle was rash and negligent while driving the same. As far as the evidence of the prosecution is concerned, the panch witness turned hostile and the other evidence i.e. evidence of PW-1 is not sufficient to show that the vehicle of the present applicant was driven in a rash and negligent manner. He submitted that there was a turn at the spot of incident and the vehicle of the injured was coming from the opposite side and they dashed against each other, and therefore, the accident took place. It is merely an accident. In view of that, no offence is made out against the present applicant.

6. He submitted that even the prosecution failed to examine, the Investigating Officer who would have thrown the light regarding the occurrence of the accident. Thus, rash and negligent itself is not proved by the prosecution, and therefore, the conviction deserves to be set aside.

7. In support of his contention he placed reliance on the decision of the Delhi High Court in the case of ***Abdul Subhan Vs. State***

[2007 CRI. L.J. 1089] wherein the Delhi High Court has considered the expression “high-speed” and held that non-examination of the Investigating Officer resulted in prejudice being caused to the accused. Testimony of head constable that accused was driving vehicle at high speed. Expression high-speed is an unclear expression. No evidence to conclusively indicate that accused was driving a vehicle in a rash and negligent manner. In view of that, the present application deserves to be allowed and the sentence imposed upon the applicant deserves to be quashed and set aside.

8. Learned APP strongly opposed the said contention and submitted that the evidence of the injured who is not cross-examined on the point of rash and negligent driving. The spot panchnama sufficiently shows that the vehicle came to the opposite side i.e. wrong side which resulted into an accident. Thus, principle of *Res Ipsa Loquitur* is applicable in the present case, and therefore, learned trial Court as well as learned Additional Sessions Judge have rightly considered that the applicant was rash and negligent and rightly convicted the applicant and no interference is called for.

9. I have perused the material on record especially the evidence of PW-1 who is the injured witness. His evidence shows that on the day of incident i.e. on 03/07/2008 at about 9.15 PM he along with

his friend was travelling from Mul to Chimur in vehicle Mahindra Max Pick-up bearing No.MH-34-EN-5691 and the vehicle was driven by his friend. When their vehicle was near Chitewar Shiwar at the relevant time, the truck bearing No.MH-29-M-0077 came from the opposite side in a high speed and gave dash to their vehicle, and therefore, their vehicle turtled down and he sustained the injuries. His evidence shows that his vehicle was at the left side of the road at the time of incident. He further stated that his friend who was driving the tempo has also sustained the injuries and on the basis of the report, the crime was registered. Though he is cross-examined, it came in the cross-examination that at the spot of accident there was a turning. He also admits that accident took place at the spot where it was an ascending direction and the vehicle of the injured was coming on descending direction while the truck was to the ascending direction. The rest of the cross-examination is in a denial form. PW-2 – Vikas Kawduji Bankar is the brother of the deceased. PW-3 - Milind Yadav Ghonmale who acted as a panch on the spot panchnama who has not supported the prosecution case and left loyalty towards the prosecution case. PW-4 is the Medical Officer who narrated about the injuries sustained by the injured Krushna as well as the accused Ziya Ul Haq both have sustained injuries in the said accident.

10. Whether the act of present applicant was rash or negligent, the trial Court has discussed the principles as to the rash and negligent driving and observed that rash and negligent driving has to be examined in the light of the facts and circumstances of given case. He further observes that '**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. He further observes that 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 happen to be children of tender years. He further refers the '**culpable rashness**' and '**culpable negligence**' and observes that '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 actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). 'Culpable negligence' is acting without the consciousness that the illegal and mischievous effect will follow, but in

circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. 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, he also discussed the evidence and observes that the evidence of the injured Krishna also remains un-shattered during cross-examination. He denied that the road where accident occurred was full with ditches. He denied that their vehicle was in a high speed and went wrong side of road and observes that mere denial and suggestions there is no other material brought on record to falsify the version of the informant/injured. He further observes that on careful scrutiny of the spot panchnama-Exh.14 and the sketch map shown in the spot panchnama, it is seen that the road is proceeded from north to south. The road is of 20 feet width. The deceased Prashant along with the injured Krishna were proceeding from south to north and the accused with his truck was coming from north to south. The said road has tar road at its both sides. The accident occurred

at the west side of the main road. It is clearly seen that the vehicle of the deceased and the injured was, on the proper side i.e., at the left side of the road proceeding from south to north. But, the truck of the accused is came at the wrong side i.e., of the right side of the road exactly in front of vehicle of the deceased and gave dash. Due to dash the vehicle of the deceased skidded outside the main road. The circumstances of the accident clearly shows that the accident occurred at the wrong side of the truck. It means the accused truck driver drove his truck at the wrong side of the road which resulted in an accident.

12. This observation clearly attracts the principle of the latin maxim '*res ipsa loquitur*' which means things speaks for itself which is clearly applicable to the facts of this accused. The accident and the spot of accident being admitted and in view of the manner of driving of the accused as deposed by Krishna shows that there was no error of judgment on the part of the accused, but, it was his negligence to follow the traffic rules and the rashness of driving fully loaded vehicle at wrong side that too in high speed resulted into an accident. The Sessions Judge while dismissing the appeal appreciated this fact and the concurrent finding of both the Courts shows that it was the applicant who was negligent while driving the vehicle and the accident occurred due to rash and negligent driving of the present applicant as he has driven the vehicle in a negligent manner and drove to the wrong side and gave

dash to the vehicle which was coming from the opposite side and was maintaining its side. As far as the rash and negligent act is concerned, the meaning of criminal rashness and criminal negligence is explained by 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.”

13. 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 consistent which shows that the applicant was rash and negligent in driving, and therefore, the said accident occurred. It is not only supported by the oral evidence but also supported by the spot panchnama which is admitted by the defence.

14. In view of that, there is no reason to interfere with the concurrent finding which is recorded by both the Courts below, and therefore, the revision is devoid of merits and liable to be dismissed.

15. Accordingly, the revision is dismissed.

16. The applicant shall surrender himself before the Superintendent of District Prison, Chandrapur to undergo the sentence.

(URMILA JOSHI-PHALKE, J.)

**Divya*