



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

CRIMINAL REVISION APPLICATION (REVN) NO. 123 OF 2024

Shamrao S/o. Bhivaji Arma,
Age: 27 years, Occu – Driver,
R/o. Jivangatta, Tah. Etapalli,
Dist. Gadchiroli

....**APPLICANT**

....**VERSUS**....

State of Maharashtra,
Through Police Station Officer,
Police Station: Chamorshi,
Tah. Chamorshi, Dist. Gadchiroli

....**NON-APPLICANT**

Shri A.C.Jaltare, Advocate for applicant.
Shri N.S.Rao, APP for non-applicant/State.

CORAM : RAJNISH R. VYAS, J.

DATE: 22/09/2025

ORAL JUDGMENT

Heard Mr. Jaltare, learned counsel for the applicant and Mr. Rao, learned APP for the non-applicant/State.

2. By way of instant revision application, the applicant is taking exception to the judgment passed by the Trial Court as well as the Appellate Court convicting him for

commission of offence punishable under Sections 279 of Indian Penal Code (for short, "IPC) and directed him to suffer rigorous imprisonment for 2 months so also to pay fine. Default sentence is also imposed. The applicant is also convicted for commission of offence punishable under Sections 304-A of Indian Penal Code and was directed to suffer rigorous imprisonment for 6 months so also to pay fine, and default sentence is also imposed. The applicant is further convicted for commission of the offence punishable under Section 184 of the Motor Vehicle Act (in short, "M.V.Act") and directed to suffer rigorous imprisonment for 2 months and to pay fine, and default sentence is also imposed.

3. Unfortunate incident had happened on the eve of immersion of idol goddess Sharda. Two children who are deceased were sitting on the bonnet of tractor. The applicant accused who is residing in the same village was driving the tractor. According to the case of the prosecution, applicant drove the vehicle in rash and negligent manner which resulted into causing injuries and consequent death of the two

children by named Swapnil and Nadini who were 7 years and 8 years of age respectively at the time of incident.

4. In order to bring home the charge for the offence punishable under Section 279, 304-A of IPC and 184 of M.V.Act, the prosecution has examined in all eight witnesses. The witnesses who can be called as a star witnesses of the prosecution are PW-2 Maroti and PW-6 Namdeo. P.W. 2 Maroti Sontakke in his testimony has categorically stated that on the date of incident, the tractor was proceeding towards the lake for immersion of idol goddess Sharda, in which deceased were sitting. The accused by driving said tractor in a high speed gave dash to other tractor which consequently resulted into death. PW-6 Namdeo who was sitting beside the driver, has also narrated the incident in a similar manner.

5. In order to support the case of the prosecution, the learned APP for the State has relied upon the judgment passed in **Prabhakaran V/s. State of Kerala** reported in (2007) 14 SCC 269, more particularly para 5 and 6 which are reproduced below:-

"5. Section 304-A speaks of causing death by negligence. This section applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act.

6. A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not."

6. The learned APP is right in submitting that the negligence is the genus, of which rashness is the species. Taking this argument to the logical end, learned APP says that it was the duty of the driver to advise the children not to sit on the bonnet and by not doing so, he has driven vehicle in rash manner.

7. I have gone through the cross-examination of both these witnesses i.e. PW-2 and 6. Nothing has been brought on

record which would shake the testimony of these two witnesses by way of cross-examination and therefore, inference it can be said that these witnesses are reliable witnesses. The testimony of these two witnesses are considered by the Trial Court as well as the Appellate Court. While deciding the question of conviction in revisional jurisdiction, Court will have to consider whether there is any perversity of finding or as to whether any inadmissible evidence was taken into consideration. Both the Courts have rightly considered testimony of P.W. 2 and P.W. 6 and have awarded the sentence. I do not find any perversity in the findings given by the Courts below and therefore, the revision application is liable to be dismissed. Accordingly, the Criminal Revision Application (REVN) stands **dismissed**.

(RAJNISH R. VYAS, J.)