

(1979) 07 BOM CK 0024**Bombay High Court****Case No:** Criminal Revision Application No. 16 of 1979

Ramchandra Tukaram Losawar

APPELLANT

Vs

Lakhmir Singh and Another

RESPONDENT

Date of Decision: July 3, 1979**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 123
- Penal Code, 1860 (IPC) - Section 304A

Hon'ble Judges: S.C. Pratap, J**Bench:** Single Bench**Advocate:** A.G. Godamgaonkar, for the Appellant; C.R. Menon, accused No. 1 and V.V. Kamat, Public Prosecutor, for the Respondent**Final Decision:** Dismissed**Judgement**

S.C. Pratap, J.

This revision application is directed against the order of acquittal dated 13th August, 1978, passed by the learned Judicial Magistrate, First Class, Nanded, in Criminal Case No. 300 of 1977.

2. Original prosecution against the accused was one u/s 304-A of the Indian Penal Code as also u/s 123 of the Motor Vehicles Act. The prosecution case was that the accused caused the death of one Sham, the son of the petitioner herein, on the morning of 5th December 1976 as a result of rash and negligent driving of his truck bearing No. MHG 6890. Further case of the prosecution was that the accused was driving the said truck without registration. Considering the evidence on the record, the learned trial Magistrate came to the conclusion that the prosecution failed to prove either that the accused was driving in a rash and negligent manner at the relevant time or that he was driving his truck without registration. The accused was consequently acquitted.

3. In this revision application preferred by the father of the deceased Sham, Mr. A.G. Godamgaonkar, the learned Advocate for the petitioner, contended that this was a case where the matter deserves to be sent back to the learned trial Magistrate for re-appreciation of the evidence and a fresh decision in light thereof. Mr. C.R. Menon, the learned Advocate appearing for respondent No. 1 accused, strenuously, opposed the above submission. The learned Public Prosecutor for the State, Mr. V.V. Kamat, submitted before the Court that the impugned decision of the learned trial Magistrate was correct and this was not a case where any remand is called for.

4. Going through the record, I find myself unable to accept the submission of Mr. Godamgaonkar, the learned Advocate for the petitioner. The learned trial Magistrate has considered the evidence of all the prosecution witnesses as also the evidence of the defence witness, one Chunilal. The learned trial Magistrate has given his own reasons for not accepting the evidence of the prosecution witnesses as enough for establishing the charge against the accused.

5. Considering the said evidence, I am also of the view that the end conclusion reached by the learned trial Magistrate is correct. There is no cogent material to come to a positive finding against the accused that he was at the relevant time driving the truck in question in a rash and negligent manner and that it was his rash and negligent driving that caused the accident in question resulting in fatality. Indeed, evidence of the prosecution witnesses indicates that the truck was not being driven rashly and negligently. The prosecution evidence further indicates that the deceased himself appeared to be sitting rather carelessly on a public road. He was on a bicycle with his legs stretched out on the otha of a temple. Evidence further indicates that the truck had already passed by the said bicycle and that it was the rear part of the truck that appears to have dashed against the bicycle resulting in the accident in question. One of the prosecution witnesses, Madhav, states that he was actually standing at a distance of 60 away from the scene of the accident. Another prosecution witness Gowri Shankar, states that he first heard a cry of a lady and thereafter he turned and saw the accident. Evidence of defence witness Chunilal shows that actually the day in question was the day of darshan festival and that the truck was being driven slowly. He further states that the deceased came from behind on a bicycle and dashed against the truck. The evidence and circumstances thus indicates that it is difficult to come to a conclusion against the accused regarding the allegation of the prosecution that he was at the relevant time driving the truck in a rash and negligent manner. It is, therefore, not possible to set aside the order of acquittal passed by the learned trial Magistrate and remand the case back to him.

6. On the question of the accused alleged to be driving his truck without registration evidence on the record does not support the case of the petitioner. On the contrary, the registration certificate of the truck bearing No. 188663 dated 31st December, 1976 has been produced in Court. The petitioner has, no doubt, in his revision

petition, stated that the actual number to the truck was given on 5-12-1976 and that the fitness certificate was given on 8-12-1976. Even assuming that is so, the petitioner himself states in his petition that the registration fee had already been paid to the R.T.O. Nagpur. The truck appears to be a brand new truck purchased and it is not possible to hold that a brand new truck was driven on the road without even a temporary registration number. What must have happened in all probability is that a temporary registration No. must have been given the requisite charges were paid to the authorities prior to 5-12-1976 and it is only the formalities following thereafter that took some time. The learned Magistrate has, on this aspect also, rightly acquitted the accused.

7. In the result, I see no reason to interfere with the order of acquittal passed in favour of the accused by the learned trial Magistrate. This revision application challenging the said acquittal, therefore, fails and the same is dismissed.

8. Rule discharged.