

(1997) 06 BOM CK 0011

In the Bombay High Court

Case No : Criminal Revision Application No. 182 of 1991

Gulab Tarasaheb Atar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-06-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 304

Citation : (1998) BomCR(Cri) 351

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : T.E. Mane, for the Appellant; J.S. Pawar, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Heard Counsel for the parties, perused the record and proceedings and the impugned judgment. The concurrent finding of fact which is being sought to be assailed in the present revision, which is directed against the conviction of the petitioner for an offence punishable u/s 304-A I.P.C., is that on 5-10-1984 at about 8.30 p.m. as a consequence of his rashly and negligently driving ST. Bus No. M.T.D. 8971 a little ahead of Valsang bus stand an accident between the said bus and a scooter which was coming from the opposite direction took place, as a consequence whereof all the four persons who were riding on the scooter died; two on the spot and two later on. After the usual F.I.R., investigation etc. the petitioner, hereinafter referred to as the applicant, was tried and convicted for an offence punishable u/s 304-A I.P.C. His appeal was also dismissed.

2. I find that the concurrent finding of fact recorded by the courts below is based on good evidence. It is admitted by the applicant that he was driving the ST. bus in question. After the accident he went and gave information about the accident to the police. Hence the only question which survives is whether he was driving the said bus rashly and negligently and for that we have the evidence of three

eyewitnesses viz. P.W. 1 Nabilal, P.W. 2 Somshankar and P.W. 3 Saleem. All of them have stated that he was driving the bus at a very high speed and did not even stop it at Valsang bus-stop.

I have gone through the said evidence and I find that the courts below acted correctly in accepting it.

There are two other circumstances which show that the applicant was driving the S.T. bus rashly and negligently; (a) the panchanama of the place of the incident shows some markings of dragging at the place of the incident and also on the scooter; and (b) the evidence of P.W. 1 Nabilal, and P.W. 2 Somshankar is that when they came to the spot they found the scooter entangled in the front wheel of the bus.

3. In my view the appraisalment of the evidence by the courts below is proper and since in my revisional jurisdiction I do not sit as a third Court of fact I am accepting the said appraisalment. I also find that there is no illegality in the impugned order.

4. For the said reasons I find that the conviction of the applicant has been rightly recorded for the offence u/s 304-A I.P.C.

5. Coming to the question of sentence I find that in this case four members of a family have been killed as a consequence of the rash and negligent driving of the bus by the applicant. Bearing this in mind the applicant's sentence of 6 months S.I. and fine of Rs. 500/- in default to suffer S.I. for 1 month cannot be said to be excessive. In fact it errs on the side of leniency.

6. In the result this revision petition is dismissed and rule is discharged. The applicant is on bail. He shall be taken into custody forthwith to serve out his sentence.

7. Petition dismissed.