



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 93 OF 2003

Mr. Ramesh Dattatray Tapase Applicant
Adult, Occ. Service, (Orig. Accused
R/o. Eklahre, Murbad, Dist. Thane. No.1)

Versus

The State of Maharashtra Respondent
(Kalyan Taluka Police Station)

Mr. Girish Kulkarni, Sr. Advocate a/w. Mr. Mayur Tamore and
Mr. Abhishek Kunchikar for the Applicant.

Mr. S.R. Agarkar, APP for the Respondent – State.

CORAM: SHYAM C. CHANDAK, J.

**RESERVED ON : 05th DECEMBER, 2025
PRONOUNCED ON : 30th JANUARY, 2026**

JUDGMENT :-

. Present Revision Application challenges the correctness, legality and propriety of the Judgment and Order dated 15/02/2003, passed by the Court of the learned III Additional Sessions Judge at Kalyan, in Criminal Appeal No.1/1997. Thereby, said Appeal was dismissed upholding the Judgment and Order dated 31/12/1996 passed by the Court of the learned III Joint Judicial Magistrate First Class at Kalyan, in Criminal Case No.2809/1992 whereby the Applicant/Original Accused No.1 was convicted for the offence punishable under Section 304A of IPC and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.3,000/- i/d to suffer one month simple imprisonment.



2. Heard Mr. Kulkarni, learned Senior Counsel for Applicant and Mr. S.R. Agarkar, the learned APP for the Respondent – State. Perused the record.

3. The prosecution story was that, on 18/10/1992, PW-2 Kairunissa Abdul Rehman alongwith her grand-daughter Rubina boarded in the ST Bus No. MTO 8906, going from Birla Gate to Dahagaon-Poi. The bus was driven by Shri. Ashok Khandu Walve, Original Accused No.2 (“**A-2**” for short). The Applicant was present on duty as a conductor in the bus. At about 04:45 p.m., the bus stopped at village *Kamba* and the passengers were alighting from the bus. PW-2 and Rubina were the last persons who were alighting from the bus. However, the Applicant rang the bell hastily when PW-2 and Rubina were alighting from the bus. Therefore, the bus was started by A-2. As a result, PW-2 fell on the road. The door of the bus struck against Rubina and she also fell on the road. Consequently, Rubina came under the rear wheel of the bus, sustained serious injuries and died on the spot. Yet, the ST bus went ahead.

4. PW-4 Junjarrao Maruti Mane was directed to investigate the accident registered as MA No.28/1992. Immediately, PW-4 Junjarrao went to the spot and enquired with the persons who had gathered there including PW-2. He then recorded the Spot panchanama, Inquest Panchanama and referred the body for post-mortem examination.

5. On 21/10/1992, PW-4 filed a complaint/report wherein he narrated the incident as stated above, alleging that, at the time of the accident, before all the passengers could alight from the bus,



the Applicant negligently rang the bell and the bus driver drove the bus in a rash and negligent manner. Consequently, Rubina fell down from the bus and died due to coming under the wheel. The report was registered at FIR bearing C.R.No.124/1992 under Sections 279 and 304A of IPC and Section 184 of the Motor Vehicles Act against the Applicant and A-2. On completion of investigation, the charge-sheet came to be submitted against them for the said offences.

6. The learned Magistrate framed the charge of the alleged offences. The Applicant and the co-accused did not plead guilty to the charge and claimed to be tried. In order to bring home the charge, the prosecution examined four witnesses including PW-1 Iqbal Ali Shaikh (father of Rubina), PW-2 Kairunissa Abdul Rehman (grand-mother of Rubina), PW-3 Madan Rajaram Mhaskar (a passenger in the bus), and PW-4 Junjarrao Maruti Mane (investigating officer/complainant).

7. On considering the oral and documentary evidence on record, the trial Court convicted the Applicant and sentenced him as stated in paragraph 1 above, however, acquitted the A-2. The Applicant's Appeal, questioning his conviction and sentence, met with dismissal as the Appellate Court agreed with the findings and conclusion recorded by the trial Court leading to the conviction and the sentence.

8. Mr. Kulkarni, the learned Senior Counsel submitted that the evidence produced against both the accused was same. A-2, the bus driver and the Applicant both were acquitted of the charge of Section 279 IPC and the A-2 was acquitted of the charge under



Section 304A IPC. He submitted that the offence of Section 304A IPC was alleged only because the bus was driven in a rash and negligent manner leading to the accidental death of Rubina. He submitted that if the driver cannot be held guilty of rash and negligent driving, based on the same evidence, the Applicant cannot be convicted for the offence of Section 304A. Mr Kulkarni, the learned Senior counsel submitted that no map of the scene of offence was recorded. According to the prosecution, when PW-2 and Rubina had fallen down, Rubina had come under the left rear wheel of the bus. However, as admitted by PW-4, the door of bus was behind the left rear wheel of the bus. According to PW4, who had recorded Spot Panchnama, the bus was at different location and not at the spot. Therefore, the theory of the prosecution was highly improbable and equally unreliable that as the Applicant had rung the bell negligently while PW-2 and Rubina were alighting from the bus, Rubina fell off the bus and died due to coming under the wheel. Mr. Kulkarni, the learned Senior counsel urged that the trial Court failed to consider the aforesaid facts, circumstances and appreciate the evidence in its correct perspective. This error by the trial Court ultimately resulted in conviction of the Applicant. The Appellate Court also did not appreciate the evidence with that angle and upheld the Judgment by the trial Court accepting its reasoning and findings. As such, the Judgment and Order passed by both the Courts below are not sustainable in law and are liable to be quashed and set aside. As a result, the Applicant may be acquitted.

9. Mr. Agarkar, the learned APP, on the other hand, contended that the trial Court as well as the Appellate Court have appreciated the prosecution evidence on record as required in law and then arrived at the conclusion that the Applicant was guilty of the



negligence leading to the accidental death of Rubina. As such, there is no merit in the Revision.

10. I have considered these submissions. In this regard, the testimony of PW-2 Kairunissa is very important. She has categorically deposed that at the relevant time, when the bus had arrived at the *Kamba* bus stand, the other passengers had alighted from the bus. PW-2 deposed that when she and Rubina were alighting from the bus, the latter had held her right hand. She had just taken two steps down. However, the Applicant rang the bell. Consequently, she and Rubina fell down, and Rubina came under the wheel of the bus, which was to the side of the conductor. Yet, the bus did not stop. PW-2 deposed that due to the accident, Rubina had sustained serious injuries. Her nose and mouth were bleeding and brain matter had come out of the skull. PW-2 deposed that the bus then stopped at some distance. People who had gathered there, brought the Applicant and the bus driver at the spot of occurrence. PW-2 identified the Applicant. Police recorded her statement as per her narration. She deposed that Rubina was five years old.

11. PW-1 Iqbal Ali Shaikh is the father of Rubina. He deposed that after getting information of the accident, he went to the spot and saw the scene of occurrence. PW-3 had informed him that the accident had occurred when she was alighting from the bus.

12. PW-3 Madan Rajaram Mhaskar deposed that, at the time of the accident, he was travelling in said bus. When the bus stopped at *Kamba* bus stand, he got down there and stood at a distance of 20-25 feet. At that time, he had heard the crash of accident. He



went there but only to see that Rubina was lying dead on the ground. He then went to the house of PW-1 and informed him about the incident.

13. PW-4 Junjarrao Maruti Mane, the Investigating Officer deposed that, at the relevant time, A-2 had informed the police station that the deceased got injured due to the dash by the bus at *Kamba ST* stand. In this regard, PW-4 has referred the accident report (Exh.31). Thereafter, investigation was handed over to him. During investigation, he recorded the Spot Panchanama (Exh.22), Inquest Panchanama (Exh.21) and referred the body for post mortem. He then recorded the statement of the witnesses and collected the post mortem report (Exh.24). Lastly, he filed the report (Exh.34) of the accident. PW-4 deposed that, at the time of the accident, the Applicant had rung the bell and the A-2 had driven the ST bus in a rash and negligent manner but without ensuring whether all the passengers had got down from the bus or not. Hence, he submitted the charge-sheet.

14. The said testimonies of PW-2 and PW-4 clearly established that when PW-2 and Rubina were alighting from the bus, all of a sudden, the Applicant had rung the bell. Therefore, the A-2 had driven the bus. As a result, Rubina got released from the hand of PW-2. At that very juncture, PW-2 fell down from the bus and Rubina got struck to the bus and she also fell down. The aforesaid facts clearly indicate that before ringing the bell and signalling the A-2 to drive the bus forward, the Applicant did not ensure that PW-2 alongwith Rubina had safely alighted from the bus. Consequently, Rubina was first struck to the bus and fell down. The post mortem-report recorded that Rubina's death was caused due to head injury, i.e., fracture of the skull. She had also suffered



an injury to the neck. The post mortem-report does not mention of any crush injury due to coming under the wheel of the bus. Thus, this is a clear negligence on the part of the Applicant. Therefore, the trial Court as well as the Appellate Court both have rightly held that the accidental death of Rubina is attributable to the said negligent act of the Applicant and therefore, he was guilty of the offence punishable under Section 304A of IPC.

15. No doubt, the driver of the bus A-2 has been acquitted on the basis of the same evidence. Nevertheless, the Applicant cannot derive any benefit from that acquittal, because the charge against both the accused was of driving the bus in a rash and negligent manner. However, it is amply clear from the evidence that A-2 had driven the bus because the Applicant had signalled him for that by ringing the bell. Had no bell been rung by the Applicant, the A-2 would not have moved the bus forward, and in that case, the accident would not have occurred. As such, and in view of the provisions of Section 464 of the Cr.P.C., the charge cannot be held to be defective, nor can it be said to have caused any prejudice to the Applicant.

16. In the backdrop of above, there is no merit in the Revision Application and it is liable to be dismissed.

17. In the alternative, Mr Kulkarni, the learned Senior counsel submitted that, at present, the Applicant is retired. The accident is more than 30 years old, and since then the Applicant has faced this prosecution. This has burdened the Applicant both economically and mentally. Now the Applicant is about 70 years old. He has to shoulder various family responsibilities while



coping with his old age, and health problems. He, therefore, submitted to reduce the sentence. I have found substance in these submissions by Mr Kulkarni. Therefore, and having regard to the sentencing policy, I deem it appropriate to modify the sentence while upholding the conviction.

18. In view thereof, the conviction recorded by both the Courts is maintained, however the sentence needs to be modified as below:-

- (i) Criminal Revision Application is partly allowed.
- (ii) Conviction of the Applicant under Sections 304 A of the I.P.C., in Criminal Case No.2809/1992, recorded by the by the Court of the learned III Joint Judicial Magistrate First Class at Kalyan, is maintained. Instead of sentencing the Applicant as directed by the trial Court and upheld by the Appellate Court, he is sentenced for the said offence to suffer Rigorous Imprisonment for a period of 3 months and to pay fine of Rs.3,000/-, in default to suffer simple imprisonment for one month.
- (iii) Bail bonds of the Applicant shall stand surrendered.
- (iv) Criminal Revision Application is disposed of.

(SHYAM C. CHANDAK, J.)

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