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Exh.19

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
73rd COURT, VIKHROLI MUMBAI.**

[Judgment under section 355 of Cr.P.C.]

- a. The serial number of the case : 1243/PS/2018
- b. The date of commission of offence : 10/08/2017
- c. The name of the complainant : State (Pant Nagar Police Station)
- d. The name of the accused : Hemant Nagesh Hatkar, Aged about 30 years, R/o Gauri Shankar Wadi No. 1, B Wing, 601, Datta Digambar CHS, Pant Nagar, Ghatkopar(E), Mumbai,
- e. The offence complained of or proved : Under section 279, 304(A) of the Indian Penal Code and for the offence p/u/s 134(a)(b) of the Motor Vehicle Act
- f. The plea of accused and his examination if any : The accused pleaded not guilty.
- g. The final order : The accused is acquitted.
- h. The date of such order : 27/08/2021
- i. The reasons for the decision : The reasons for the decision are as under :-

JUDGMENT
(Delivered on 27/08/2021)

The accused is facing trial for the offence punishable under section 279, 304(A) of the Indian Penal Code and for the offence punishable under section 134(a)(b) of the Motor Vehicle Act.

2] In short case of prosecution is as under :

On 10-08-2017 at about 12.00 noon the deceased namely Mudrika Harishchandra Kamble, Age 60 years was attempting to cross Eastern Express Highway going towards Mumbai, near Chembur Central Gate, Kamraj Nagar. At that one unknown vehicle gave dash to her. During the incident she sustained serious head injury. Sunita Lahu Ghodke one of the relative of deceased Mudrika Kamble, and peoples gathered there shifted her to Rajawadi Hospital. Thereafter she was shifted to the Rubi Hall Clinic, Pune. Sunita Lahu Ghodke lodged report about the incident in the Pant nagar police station.

3] On the basis of report lodged by Sunita Lahu Ghodke crime bearing no. 314/2017 is came to be registered against unknown person for the offence punishable under section 279, 337, 338 of the Indian Penal Code and for the offence punishable under section 134(a)(b) of the Motor Vehicle Act and investigation started. On 13-08-2017 the injured namely Mudrika Harishchandra Kamble succumbed to the injuries. Hence offence p/u/s 304(A) of IPC is came to be added in the said crime. During the course of investigation it is revealed that at the time of incident the accused was riding on Honda Activa Motorcycle bearing number MH-03-BQ-2574 and he gave dash to Mudrika Harishchandra Kamble by doing rash or negligent driving. Hence charge-sheet is came to be submitted against the accused for the offences punishable under section 279, 337, 338, 304(A) of the Indian

Penal Code and for the offence punishable under section 134(a)(b) of the Motor Vehicle Act.

4] My Ld. Predecessor explained the particulars(Exh. 6) of the offences punishable under section 279, 304(A) of the Indian Penal Code and for the offence punishable under section 134(a)(b) of the Motor Vehicle Act to the accused and recorded his plea. The accused pleaded not guilty and claimed to be tried.

5] Points for determination, my findings thereon along with reasons stated thereto are as under.

Sr. No.	POINTS	FINDINGS
1]	Does the prosecution proves that the accused drove Honda Activa Motorcycle bearing number MH-03-BQ-2574 on a public road in rash and negligent manner endangering human life or personal safety of others?	.. In the negative.
2]	Does the prosecution proves that the accused caused death of Mudrika Harishchandra Kamble by doing rash or negligent act not amounting to culpable homicide	.. In the negative.
3]	Does the prosecution proves that the accused being the driver motor vehicle involved in the accident left the spot without giving medical aid to the injured and also failed to report the incident to the nearest police station?	.. In the negative.
4]	What order ?	As per final order.

REASONS

As to point No.1 to 3 :

6] In order to establish its case the prosecution examined the informant PW. NO. 1(Exh. 7). In documentary evidence prosecution

placed on record FIR (Exh.8). The Post Mortem Notes (Exh.12), Spot Panchnama (Exh.13), Inquest Panchnama(Exh. 14) placed on record by the prosecution are admitted by the defence. Thus it is clear that the defence has not raised any dispute about the death of Mudrika Kamble in road accident on Eastern Express Highway near Chembur Central.

7] The informant states in her evidence that on 10-08-2017 at about 12.00 noon she was proceeding on service road at Chembur Central. At that time she saw crowd gathered on the Eastern Express Highway. She went near the crowd and noticed that Mudrika Kamble, mother in law of her nephew Rajni Kamble was lying there in injured condition. There was head injury to her. She shifted Mudrika Kamble to Rajawadi Hospital. Mudrika Kamble sustained injury due to the dash given by unknown vehicle. Thereafter she lodged report Exh. 8. After two days of the incident Mudrika Kamble died in Modi hospital, Pune.

8] Evidence of the informant makes clear that the she is not the eye witness of the incident. Her evidence is not useful to ascertain the manner in which Mudrika Kamble sustained injury. In fact any of eye witness is not available to the prosecution. Hence it is clear that there is no ocular evidence regarding the incident in question.

9] Spot panchnama (Exh. 13) shows that the incident was took place on Eastern Express Highway proceeding towards Mumbai. From the spot of incident at the distance of 35 feet towards Eastern side there was a footpath. From the spot of incident the road divider was at the distance of 15 feet. That it means the incident was took place in the middle of road when deceased Mudrika Kamble was trying to cross the road. It is question of common knowledge that pedestrians are not supposed to cross eastern express highway unless there is zebra crossing. There is nothing on record which makes clear that at the spot of incident there was a zebra crossing.

10] Even if it is considered that Mudrika Kamble sustained

head injury due to the dash given by a vehicle proceeding on the road in a rash or negligent manner then also the accused cannot be connected with alleged offence. The prosecution has not placed on record any evidence to show that the accused gave dash by his vehicle to Mudrika Kamble. The prosecution has also not placed on record any material on basis of which the accused was connected with alleged offence. In the circumstance it is clear that prosecution has failed to establish that accused drove his motor vehicle on a public road in rash and negligent manner endangering human life or personal safety of others and thereby caused death of Mudrika Kamble and also failed to provide her medical assistance and to report the matter to the nearest police station. Hence I answer point no. 1 to 3 in the negative.

As to point No.4 :

11] In view of negative finding of point no. 1 to 3 the accused will have to be acquitted. Hence I answer point no. 4 accordingly and pass following order.

ORDER

- A] The accused is acquitted of the offence punishable under section 279, 304(A) of Indian Penal Code and 134(a)(b) of Motor Vehicle Act vide section 255(1) of Criminal Procedure Code.
- B] Bail bonds of the accused are cancelled.
- C] He is set at liberty.

Date: 27/08/2021

Sd/-

(S. S. Parave)
Metropolitan Magistrate,
73rd Court, Vikhroli, Mumbai