

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION NO. 762 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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| Approved for Reporting |  | Yes | No |
|                        |  |     |    |

PRATAPBHAI LAKDHIRBHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES(2034) for the Applicant(s) No. 1

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 01/04/2026****JUDGMENT**

- 1) By way of present revision application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, the applicant has prayed for quashing and setting aside the judgment and order of conviction and sentence dated 25.04.2008 passed by the learned JMFC, Mahesana, in Criminal Case No.3744 of 1989, whereby, the trial Court has been pleased to hold the applicant guilty for the offence punishable under Section 279 of IPC and sentenced to undergo simple imprisonment of six months and also directed to pay fine of Rs.1,000/-, for the offence under Section 304-I of IPC, sentenced to undergo simple imprisonment of one year and fine of Rs.1,000/-, for the offence under Section 337 of IPC, sentenced to undergo simple imprisonment of six months and and fine of Rs.500/- and for the offence under Section 338 of IPC, sentenced to undergo simple imprisonment of one year and fine of Rs.1,000/-, which is confirmed by learned Additional Judge, Mahesana, in Criminal Appeal No.25 of

2008 vide order dated 06.12.2008.

- 2) Heard Mr.Patel, for HL Patel Advocates, for the applicant – accused and Mr. Rohan Raval, Id. APP for the respondent – State.
- 3) Brief facts of the prosecution case are that the complainant and the accused are the same person. The complainant was working as a jeep driver in the Gujarat Water Resources, Sub-Division at Harij and was driving a jeep bearing RTO Registration No. G.A.Q.-5707. On 21.07.1989 at about 3:30 p.m., he along with his supervisor Shri I.D. Pathan going from Harij to Mehsana to buy a battery for the vehicle and when they 1 km away from Panchot, at that time, one person riding a scooter was coming from the opposite direction from Mehsana. Upon seeing the scooter, the accused assumed that the rider was coming from the wrong side of the road and, therefore, turned the jeep towards the right side, resulting in a collision with the scooter on the left side of the jeep, causing the scooter to fall on its side. Thereafter, the jeep was stopped at a distance of about 15 feet. When the accused got down, he noticed that person travelling on the scooter had sustained head injuries. He immediately shifted them in the jeep and took them to Mehsana Civil Hospital for treatment. Pursuant thereto, FIR being I-C.R. No. 224/1989 dated 21.07.1989 came to be registered for the offences punishable under Sections 279, 304-A, 337 and 338 of the Indian Penal Code and Sections 112 and 116 of the Motor Vehicles Act.
- 4) Learned counsel for the applicant has submitted that the learned Trial Court has committed error in relying upon the evidence of PW:1 Jayantibhai. Learned Courts below have failed to appreciate the evidence of PW:4 and panchnama of scene of offence. Further, the applicant was plying a Jeep in Gujarat Water Board and was driving his jeep on correct side of the road, but to save the deceased, he turned his jeep and such unfortunate accident occurred. In this

accident, the applicant was totally innocent and accident occurred only because of reckless driving of the deceased.

- 5) Learned APP for the respondent–State has opposed the present revision application and contended that after appreciating the evidence produced on record, learned trial Court has recorded the conviction. Only because of rash and negligent driving, person has lost his life. Considering the scene of panchnama and statements of the witnesses, trial Court has rightly recorded conviction which was confirmed by the lower appellate Court. Hence, no interference of this Court is required. In such submissions, he has prayed to dismiss the preset revision application.
- 6) Having heard the learned counsel for the respective parties and upon perusal of the material placed on record, it appears that on 21.07.1989 at about 3:30 p.m., the applicant, along with his supervisor Shri I.D. Pathan, was proceeding from Harij to Mehsana to purchase a battery for the vehicle. At that time, an accident occurred. Pursuant thereto, FIR being I-C.R. No. 224/1989 dated 21.07.1989 came to be registered for the offences punishable under Sections 279, 304-A, 337 and 338 of the Indian Penal Code and Sections 112 and 116 of the Motor Vehicles Act. It further appears that, after recording the evidence, the learned Trial Court convicted the accused. Being aggrieved by the same, the applicant preferred an appeal before the learned Sessions Court, which came to be dismissed, confirming the order of conviction. Hence, the present revision has been filed.
- 7) In order to prove the charge, the prosecution examined witness Jayantibhai Viramdas Patel at Exh.14, who stated that he was travelling from Mehsana to Harij. When his scooter reached near Panchot at a moderate speed and on the left side of the road, a jeep coming from the opposite direction, while overtaking a truck, dashed into a scooter ahead of him. Another witness namely Shaileshkumar

Chhaganlal Patel, examined at Exh.15, has also corroborated the version of the accident.

- 8) Learned counsel for the applicant has mainly relied upon the evidence of PW-4 Ishakali Dilshakali Pathan, examined at Exh.27. The said witness was travelling in the jeep along with the driver and has identified the accused who was driving the jeep. Thus, the identity of the accused is not in dispute. The factum of the accident is also not in dispute. After the accident, he shifted the deceased to the hospital for treatment. He has admitted that the jeep stopped at a distance of 5–10 feet and that it was coming on the wrong side towards Harij. The Investigating Officer, examined as PW-3, collected the evidence and filed the chargesheet. Upon perusal of the evidence of Exh.14 and Exh.27, it clearly emerges that the jeep dashed with the scooter while overtaking the truck. The death of the scooter rider in the said accident is not in dispute. Hence, only question that remains to be determined is the negligence on the part of the applicant, as identity is not in dispute.
- 9) So far as negligence is concerned, it appears that the jeep was coming from the opposite direction. The width of the road was more than 15 feet, and while trying to overtake one truck, the jeep collided with the scooter. Witness Jayantibhai Patel has clearly stated that the jeep came on the wrong side of the road from the opposite direction, whereas the scooter was being driven on the correct side. While overtaking the truck, the jeep swerved to the wrong side, resulting in the accident. The driver of the jeep failed to observe and follow traffic rules, and thus, the accident occurred solely due to his negligence. Though witness Ishakali remained silent on the aspect of negligence in his cross-examination, upon a question put by the learned JMFC under Section 165 of the Indian Evidence Act, he admitted that the jeep driver was driving in a rash and negligent

manner and, while overtaking the truck, dashed into the scooter and stopped the jeep at a distance of 5-10 feet. The learned Trial Court as well as the learned Sessions Court have not committed any error in recording the conviction. Hence, no interference by this Court is warranted.

- 10) The revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, if we examine the reasons assigned by the learned trial Court, it appears that learned trial Court has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned trial Court. Learned trial Court has properly assigned reasons and given the finding based on evidence led before him and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.
- 11) It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 Cr.P.C vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does

not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Courts below have recorded the finding of fact, the question of re-appreciation of evidence by the Court does not arise unless it is found to be totally perverse.

- 12) Learned counsel for the applicant has prayed to extent the benefit of probation, but considering the nature of offence and alarming situation in the country due to road race, number of people lost their lives. Hence, considering the decisions rendered in the cases of Dalbir Singh Vs. State of Haryana, reported in AIR 2000 SC 1677, Thakur Singh Vs. State of Haryana, reported in 2003(9) SCC 208 and State of Punjab Vs. Balvinder Singh, reported in 2012 (2) SCC 182, no benefit of probation is extended to the accused for the offence under Section 304A of IPC. Hence, request of learned counsel for the applicant is not acceded to.
- 13) However, considering that the accident occurred in the year 1989, the judgment of conviction came to be recorded on 25.04.2008, and thereafter the revision has been preferred in the same year, and having regard to the long lapse of approximately 36 years, the sentence of one year's imprisonment is ordered to run concurrently in terms of Section 31 of the Code of Criminal Procedure. It is also noted that the accused has already paid the fine of Rs. 3,500/-. In view of the prolonged lapse of time and the attendant circumstances, the sentence of imprisonment is reduced to a period of one month.
- 14) In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged

**(HASMUKH D. SUTHAR,J)**

SUCHIT