

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.515 of 2004**

Ramesh Kumar, S/o Kejuram, aged 25 years, R/o Pathari Mines,
Police Station Dharseewa, Distt. Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through Station House Officer, Police Station
Civil Line, Bilaspur, Distt. Bilaspur (C.G.)

--- Non-applicant

For Applicant: Mr. Indrasen Sahu, Advocate.

For Non-applicant: Mr. Om Prakash Sahu, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

13/08/2015

1. Invoking the revisional jurisdiction of this Court under Section 397 read with Section 401 of the CrPC, the applicant herein has called in question legality, validity and correctness of the impugned judgment dated 6-10-2004 passed by the 1st Additional Sessions Judge, Bilaspur in Criminal Appeal No.57/2004 by which the learned Additional Sessions Judge has confirmed the judgment of conviction and order of sentence recorded for the offences punishable under Section 304A & Section 337 of the IPC and sentenced him to undergo RI for one year & pay fine of Rs.500/-, in default additional RI for two months and to undergo RI for three months & pay fine of Rs.300/-, in default additional RI for one month, respectively, but set aside the conviction for the offence under Section 279 of the IPC. Both the sentences were directed to be run concurrently.

2. The Station House Officer, Police Station Dharsiwa, Distt. Raipur, charge-sheeted the applicant for commission of offence under Sections 279, 337 & 304A of the IPC alleging that on 2-12-1998 at 7.30 p.m., near Tifra Railway Crossing, the applicant while driving the offending truck bearing registration No.MP-23/B-3773 rashly & negligently caused the death of Gyanesh Rao and also caused hurt to one Ashfaq Khan by endangering his life and safety, and thereby committed the offence.
3. Before the trial Court, the applicant abjured the guilt and entered into defence. The prosecution in support of its case examined 12 witnesses and exhibited 10 documents whereas, the defence has neither examined any witness nor exhibited any document. The trial Court by its judgment dated 21-1-2004 convicted the applicant for all the three offences as mentioned above and sentenced him accordingly, and has held that the applicant while driving the offending vehicle rashly & negligently on 2-12-1998 caused the death of Gyanesh Rao and endangered the life of Ashfaq Khan and also caused hurt to him, and thereby committed the offence.
4. On appeal being preferred by the applicant, the appellate Court partly allowed the appeal and set aside the conviction for offence under Section 279 of the IPC whereas maintained the conviction for offence under Sections 304A & 337 of the IPC.
5. Mr. Indrasen Sahu, learned counsel appearing for the applicant, would submit that the trial Magistrate as well as the learned Additional Sessions Judge has committed grave legal error in upholding conviction of the applicant, as concurrent finding recorded regarding rash & negligent act is contrary to record and

grossly perverse. Alternatively, he would also submit that sentence of one year awarded for offence under Section 304A of the IPC is shockingly on higher side as such, sentence be reduced to the period which the applicant had already undergone during pendency of the proceeding and therefore, the revision deserves to be allowed.

6. Per contra, Mr. Om Prakash Sahu, learned counsel for the State/non-applicant, would submit that the concurrent finding recorded by the two Courts below holding the applicant is guilty of rash & negligent act, causing death of Gyanesh Rao and endangering the life of Ashfaque Khan is a well merited judgment concurrently recorded by the two Courts below warranting no interference. He would also submit that the sentence of one year awarded for causing death of Gyanesh Rao and endangering the life of Ashfaque Khan also does not require interference looking to the gravity of offence committed by the applicant, as one person has lost his life in the accident, as such, the revision deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions made herein and gone through the original records with utmost circumspection.
8. The trial Magistrate relying upon the testimony of Ashfaque Khan (PW-3), who was accompanying deceased Gyanesh Rao in his moped, held that the applicant was driving the offending vehicle very rashly & speedily and dashed the deceased & Ashfaque Khan (PW-3) from backside by which the deceased & Ashfaque Khan (PW-3), both, suffered injuries and deceased Gyanesh Rao

succumbed to death, as one wheel of the truck came over the body of deceased Gyanesh Rao. The deceased and Ashfaq Khan (PW-3), both, have been medically examined by Dr. N.S. Chandel (PW-9) who has said that the cause of death of the deceased was grievous injuries suffered by him and which was accidental in nature. Thus, rash & negligent act of the applicant has been found proved by the trial Court and on appeal being preferred by the applicant, the appellate Court also did not find any illegality / perversity warranting interference in the said finding.

9. After hearing learned counsel for the parties, after going through the record and after going through the testimony of Ashfaq Khan (PW-3), I do not find any illegality in the finding of the trial Court holding that the applicant caused death of Gyanesh Rao rashly & negligently and endangered the life of Ashfaq Khan, is perverse. The said finding is based on the material evidence available on record and the appellate Court has rightly affirmed the same finding no illegality as such, the finding of the trial Court as upheld by the appellate Court is based on evidence and, therefore, conviction is well merited and as such, it is hereby further affirmed.
10. This leads me to the question of reasonableness of the sentence awarded by the trial Court, as the trial Court has awarded one year sentence for offence under Section 304A of the IPC.
11. At this stage, it would be appropriate to notice a very recent judgment of the Supreme Court in the matter of **State of Punjab v. Sourabh Bakshi**¹ in which Their Lordships have considered the

1 2015(4) Scale 340

concept of adequacy of quantum of sentence to be imposed for offence under Section 304-A of IPC, while setting aside the order of High Court reducing sentence of one year RI to period undergone (24 days) and awarded six months imprisonment by observing as under:-

“17. In the instant case, the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say that the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case.

In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign mistress” and “queen of virtue” as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It is ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months”.

Their Lordships taking note of road accidents in India while inviting the attention of law makers on sentencing policy in Section 304-A of IPC further observed as under:

“18. Before parting with the case, we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to observe that the law makers should scrutinize, re-look and re-visit the sentencing policy in

Section 304-A of IPC. We say so with immense anguish”.

12. Similarly, in a very recent decision in **Shanti Lal Meena v. State of N.C.T. of Delhi, CBI**² Their Lordships of the Supreme Court while considering the sentencing policy held that unwarranted sympathy should not be shown towards convicted person and held as under:-

“The court is the conscience of the statute and hence its judgment should project and promote the policy aims of punishment, lest it should shake the faith of common man in courts. The judgment on sentence shall not shock the common man. It should reflect the public abhorrence of the crime. The court has thus a duty to project and promote public interest and build up public confidence in efficacy of rule of law. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public giving room to suspect the institutional integrity affecting the credibility of its verdict “.

13. In a decision in **State of Karnataka vs. Sharanappa Basnagouda Aregoudar**³ while considering the scope of interference in revision filed against conviction and sentence for offence under Section 304-A of IPC, their Lordships observed as under:

“We are of the view that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the Court below. It may

2 JT 2015(5) SC 459

3 AIR 2002 SC 1529

create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrong-doers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system”.

14. In a decision in the case of **State of Punjab v. Balwinder Singh & others**⁴, Their Lordships of the Supreme Court awarded sentence of six months for offence under Section 304A of the IPC. Paragraph 12 of the said judgment reads thus,

“In the light of the above principles, we express our inability to accept the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days. Merely because the fine amount has been enhanced to Rs.25,000/- each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers of the bus and the truck. Accordingly, we set aside the impugned order of the High Court

4 2012(4) C.G.L.J. 291 (SC)

and impose a sentence of rigorous imprisonment for six months with a fine of Rs.5,000/- each. The trial Court is directed to take appropriate steps for surrender of the accused in both the appeals to serve the remaining period of sentence. The appeals are allowed to the extent mentioned above.”

15. Taking into consideration the nature and gravity of offence, and following the law laid down by their Lordships of the Supreme Court in above referred cases particularly **State of Punjab** (supra) the sentence of one year awarded by the learned Additional Sessions Judge for offence under Section 304-A of the Indian Penal Code appears to be on higher side. The said sentence of one year rigorous imprisonment is modified to six months rigorous imprisonment. Sentence awarded for offence under Section 337 IPC would remain as it is both the sentences would run concurrently.

16. The resultantly, revision petition is partly allowed. The conviction of the applicant for offence under Sections 304-A IPC and 337 IPC is maintained and the sentence for offence under Section 304-A is modified as indicated hereinabove the bail bonds of the applicant are forfeited and he is directed to surrender for undergoing remaining part of sentence. The trial court is also directed to take suitable steps in this regard.

Sd/-
(Sanjay K. Agrawal)
Judge