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HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Revision No.569 of 2004**

Kuldeep s/o. Rati Ram Yadav, aged 20 years, r/o. Village Godhi, Police Station Tamnar, Tahsil Gharghoda, District Raigarh (CG).

---- APPLICANT**Versus**

State of Chhattisgarh through District Magistrate, District Raigarh (CG).

... NON-APPLICANT

For applicant: Mr. M.K. Sinha, counsel for the applicant.

For non-applicant: Mr. Anupam Dubey, Dy. Govt. Advocate for the non-applicant/State of Chhattisgarh.

Hon'ble Shri Justice Sanjay K. Agrawal**(C.A.V.) Order**

(Passed on 06-07-2015)

1. Invoking revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C."), the applicant herein has filed the instant criminal revision challenging the impugned judgment dated 6-11-2004 passed by the 1st Additional Sessions Judge, Raigarh, in Criminal Appeal No. 83 of 2004 affirming the judgment of conviction and order of sentence dated 25-3-2004 passed by Judicial Magistrate First Class, Gharghoda, in Criminal Case

No.664 of 2002, whereby the applicant has been convicted for commission of offences punishable under Sections 304-A and 337 of the IPC and was sentenced to undergo rigorous imprisonment for six months and fine of Rs.500/- and fine of Rs.300/-, in default of payment of fine to further undergo R.I. for one month respectively for offence under Section 337 of the IPC.

2. The case of the prosecution, in brief, is that the applicant herein has been charge-sheeted alleging that on 16-10-2002 at 1.00 a.m., at village Godhi, near tank, the applicant while driving the motor-cycle bearing registration No.CG13-0780 rashly and negligently caused death of Lochan Prasad Sao, which is not amounting to culpable homicide and also at the same time he caused hurt/ simple injury to Santosh endangering his life. Injured Lochan Prasad Sao was taken to hospital at Raigarh, where he succumbed to his injuries during treatment.
3. The matter was investigated by the concerned Police Station and after investigation charge-sheet was filed before the competent criminal Court against the applicant for commission of offence punishable under Sections 279, 337 and 304-A of the IPC. The applicant abjured his guilt and took the plea that he is an innocent and he has been falsely implicated in the offence in question.
4. During the course of trial, the prosecution examined as many as sixteen witnesses and exhibited 13 documents to bring home the offence, whereas Sukhsagar was examined as DW/1, but defence

not file and exhibit any document. Upon appreciating the oral and documentary evidence on record, learned Judicial Magistrate First Class, Gharghoda, by its judgment dated 25-3-2004 convicted the applicant for offence punishable under Sections 279, 337 and 304-A of the IPC and sentenced him to undergo R.I. for six months and to pay fine of Rs.500/- for offence under Section 304-A of IPC and sentenced to pay fine of Rs.300/- for offence under Section 337 of IPC.

5. In an appeal preferred by the applicant, learned 1st Additional Sessions Judge, Raigarh by its judgment dated 6-11-2004 affirmed the judgment of conviction and order of sentence passed by the Trial Magistrate. Feeling dissatisfied with the judgment of the appellate Court, the applicant has filed the instant criminal revision.
6. Mr. M.K. Sinha, learned counsel appearing for the applicant would submit that both the courts below have committed legal error in convicting the applicant for commission of offence punishable under Sections 279, 304-A and 337 of the IPC by recording a finding which is perverse and contrary to the evidence available on record. He would alternatively submit that jail sentence awarded to the applicant is disproportionate to the gravity of the offence as the applicant already remained in custody for a period of 75 days, in total, therefore, the period already undergone by the applicant be held to be sufficient sentence against the sentence

awarded by the two courts below and accordingly the revision be allowed by modifying the sentence awarded.

7. On the other hand, Mr. Anupam Dubey, learned Deputy Govt. Advocate for the State of Chhattisgarh would submit that the judgment of conviction and sentence awarded is based on evidence available on record and it is well merited judgment concurrently recorded by both the courts below and as such no interference is called for by this court in this revisional jurisdiction. Therefore, the instant criminal revision deserves to be dismissed.
8. I have heard learned counsel for the parties, perused the impugned judgment and records of both the courts below with utmost circumspection.
9. The following two questions would arise for consideration in this criminal revision:-
 - (i) Whether the prosecution has proved the aforesaid offence against the applicant beyond reasonable doubt?
 - (ii) Whether sentence awarded to the applicant is just and proper?.
10. **Answer to question No.1:** The trial Magistrate in its judgment dated 25-3-2004 has clearly recorded a finding based on testimony of PW/1 Sunderlal, who is eye-witness to the incident that the applicant while driving his motor-cycle accompanied by injured Santosh Kumar in a very high speed dashed Lochan Prasad Sao by which he suffered grievous injuries in various parts of the body and he was shifted to hospital for medical treatment

where he died during the course of treatment. The statement of PW/1 Suderlal is duly corroborated by the evidence of PW/4 Baliram PW/5 Sudarshan Sahu that the applicant while driving his offending motor-vehicle in a very high speed dashed Lochan Prasad Sao by which he suffered injuries and succumbed to injuries.

11. Learned trial Magistrate after appreciating oral and documentary evidence has clearly recorded a finding that it is the applicant who was driving the offending vehicle rashly and negligently dashed Lochan Prasad Sao as a result of which he sustained injuries and succumbed to the injuries. Thus, the act of the applicant falls within the ambit of Section 304-A and 337 of the IPC.
12. On an appeal being preferred by the applicant, the appellate Court has clearly affirmed the finding of the trial Magistrate holding that there is no infirmity in the finding recorded by the trial Magistrate and found the applicant guilty of offence under Sections 304-A and 337 of the IPC.
13. After hearing learned counsel for the parties and on perusal of the record and taking into consideration the testimony of eye-witness PW/1 Sunderlal duly corroborated by the evidence of PW/2 Shivprasad and PW/3 Jatiram and the documents available on record, I do not find any illegality or infirmity in the findings recorded by both the courts below holding that the applicant guilty for the offence under Sections 304-A and 337 of the IPC. Thus,

I hereby affirm the findings so recorded by both the courts below. Accordingly, conviction of the applicant for offence under Sections 304-A and 337 of IPC is hereby maintained.

14. **Answer to question No.2:** The determination of issue with regard to conviction brings me to reasonableness of the sentence awarded by the trial Court as affirmed by the appellate Court.
15. Mr. M.K. Sinha, learned counsel appearing for the applicant would submit that the applicant remained in jail seventy-five days, therefore, taking the lenient view of the matter, the sentence awarded to the applicant i.e. six months R.I. be reduced to the period already undergone by him i.e. 75 days holding it to be sufficient sentence.
16. Mr. Anupam Dubey, learned Deputy Govt. Advocate appearing for the State would submit that on account of rash and negligent act one person suffered death and one person became injured and looking to the rapid growth of death in road accidents in State of Chhattisgarh 4022 persons have lost their lives and 13157 persons have suffered injuries in the road accident in the year 2014, the lenient view ought not to be taken and sentence awarded to the applicant for a period of six months is not only just and proper, but it is also a fair sentence looking to the gravity of the offence and as such the sentence awarded to the applicant need not be interfered with as scope of interference in revisional jurisdiction is extremely limited and relied upon the judgment of

Supreme Court in the matter of **State of Karnataka vs. Sharanappa Basnagouda Aregoudar**¹.

17. At this stage, it would be appropriate to notice a very recent judgment of the Supreme Court in the matter of **State of Punjab vs. Sourabh Bakshi**² in which their Lordships considered the concept of adequacy of quantum of sentence to be imposed for offence under Sections 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

1 AIR 2002 SC 1529

2 2015 (4) Scale 340

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 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”.

18. Similarly, in a very recent decision in **Shanti Lal Meena vs. State of N.C.T. Of Delhi, CBI**³ their Lordships of the Supreme Court

3 JT 2015 (5) SC 459

while considering the sentencing policy held that the judgment on sentence shall not shock the common man and observed 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 “.

19. In a decision in **State of Karnataka vs. Sharanappa Basnagouda Aregoudar**⁴ 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 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”.

4 AIR 2002 SC 1529

20. Taking into consideration all the facts and circumstances of the case and keeping in view the principles laid down by their Lordships of the Supreme Court in the State of Punjab, Shanti Lal Meena and State of Karnataka (supra) on the sentencing policy and further taking into account that one person lost his life and other person suffered injury due to rash and negligent act of the applicant and further considering large numbers of road accidents causing loss of human lives in the roads of Chhattisgarh which is a matter of grave concern for this Court, the reduction of six months R.I. to period already undergone i.e. 75 days, will be inappropriate and send wrong signals to potential wrong doer and it will be injustice with the families of the person died in the road accident. Thus, the sentence of rigorous imprisonment for six months awarded by the trial Magistrate as affirmed by the appellate Court is hereby maintained warranting no interference.
21. Accordingly, the instant criminal revision is liable to be and is hereby dismissed. It is directed that the applicant be taken into custody forthwith to suffer the remaining period of the sentence.

Sd/-
(Sanjay K. Agrawal)
JUDGE