

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 578 of 2003**

Ashok Kumar Das, S/o Prabhakar Das, Aged about 33 years,
Resident of – Ward Ganganagar, P.S._ Jagdalpur, Distt. Bastar
(C.G.)

---- Petitioner

Versus

State Of Chhattisgarh

---- Respondent

For Petitioner:	Shri H.S. Ahluwalia, Advocate.
For Respondent/State:	Shri Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/07/2015**

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 21-11-2003 passed by the Additional Sessions Judge, Jagdalpur, in Criminal Appeal No. 112 of 2002.

2. Station House Officer, Kondagaon charge sheeted the applicant herein alleging that on 23-4-1999 the applicant while driving the offending Truck bearing registration No. M.P. 25B/0664 rashly and negligently caused death of Shivilal &

Vasudeo which is not amounting to culpable homicide, punishable under Section 304-A of 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.

3. During the course of trial, the prosecution examined as many as nine witnesses and exhibited 15 documents to bring home the offence, whereas the defence neither examined any witness nor exhibited any document in support of its defence.

4. Upon appreciating the oral and documentary evidence available on record, learned Judicial Magistrate First Class, Kondagaon, Distt. Bastar, vide its order dated 16.09.2002 convicted the applicant for the offences punishable under Sections 279 & 304-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months & fine of Rs. 1,000/- u/S 279 IPC, to undergo rigorous imprisonment for two years and pay fine of Rs. 1,000/-, u/S 304-A IPC with default stipulations. Both the sentences were ordered to run concurrently.

5. In an appeal preferred by the applicant, learned Second Additional Sessions Judge, Bastar at Jagdalpur, by its judgment dated 21-11-2003 partly allowed the appeal and set aside the order convicting the applicant for the offence under Section 279 IPC whereas reduced the sentence from two years to one year RI for the offence under Section 304-A IPC. Feeling dissatisfied with the judgment of the appellate Court, the applicant has filed the instant criminal revision.

6. Mr. H.S. Ahluwalia, 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 Section 304-A 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 during trial and after disposal of the appeal, therefore, the period already undergone by the applicant be held to be sufficient sentence against the sentence awarded by the first appellate court and accordingly the revision be allowed by modifying the sentence awarded.

7. On the other hand, Mr. Neeraj Jain, learned Govt. Advocate for the State would submit that the judgment of conviction and sentence awarded is based on evidence available on record and it is well merited judgment recorded by the first appellate court 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 16-09-2002 has clearly recorded a finding that the applicant driving the offending vehicle rashly and negligently caused death of two persons namely Shivilal & Vasudeo and in order to reach such finding relied upon the testimony of eye-witness namely Tarun Kumar (PW-6).

11. Learned trial Magistrate after appreciating oral and documentary evidence available on record including the testimony of eye-witness reached to a categorical finding that it is the applicant who was driving the offending vehicle rashly and negligently dashed Shivilal & Vasudeo as a result of which they sustained injuries and succumbed to the injuries. Thus, the act of the applicant falls within the ambit of Section 304-A of the IPC.

12. On an appeal being preferred by the applicant, the appellate Court has also minutely examined the finding of the trial Court holding that the applicant was driving the offending vehicle rashly and negligently dashed Shivilal & Vasudeo as a result of which they died and found the applicant guilty of offence under Section 304-A of the IPC.

13. After hearing learned counsel for the parties and after carefully going through the records and findings of both the courts below, I do not find any illegality in the findings recorded by the

two courts below holding the applicant guilty for offence punishable under Section 304-A of IPC warranting interference. The finding so recorded by the two courts below holding the applicant guilty is hereby affirmed.

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. H.S. Ahluwalia, learned counsel appearing for the applicant would submit that the applicant remained in jail for fairly long time, therefore, taking the lenient view of the matter, the sentence awarded to the applicant i.e. one year R.I. be reduced to the period already undergone by him holding it to be sufficient sentence.

16. Mr. Neeraj Jain, Govt. Advocate appearing for the State would submit that on account of rash and negligent act one person suffered death 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 one year 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 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”.

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 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”.

20. Taking into consideration all the facts and circumstances of the case and particularly considering the view taken in the State of Punjab in which their Lordships have reduced the sentence of one year R.I. awarded by the trial Court to six months R.I, and likewise, in the State of Karnataka (supra) also, six months S.I. was held to be sufficient sentence for offence punishable under Section 304-A of IPC, I am of the considered opinion that the ends of justice would meet if the sentence of one year awarded by learned Second Additional Sessions Judge, Bastar at Jagdalpur is reduced to six months of R.I., while maintaining the conviction under Section 304-A of IPC.

21. Accordingly, the instant criminal revision is allowed in part. While maintaining the conviction under Section 304-A of IPC,

sentence of one year awarded by the first appellate Court is reduced to six months R.I. It is directed that the applicant be taken into custody forthwith to suffer the remaining period of the sentence.

Sanjay K. Agrawal)

JUDGE

D/-

[1] AIR 2002 SC 1529

[2] 2015 (4) Scale 340

[3] JT 2015 (5) SC 459

[4] AIR 2002 SC 1529