

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 606 OF 2003**

Jagdish Sahu S/o Jhadooram Sahu aged about 36 years, resident of
C.M.S.S. Near Rasiyan Office, Rajhara, P.S. Rajhara, Distt. Durg (C.G.)

---Applicant**Versus**

State of Chhattisgarh

----Non-applicant

For Applicant	:	Mr. Praveen Kumar Dhurandhar, Advocate
For Non-applicant/State	:	Mr. Anant Bajpai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****10/09/2015**

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 03/12/2003 passed by the Additional Session Judge, Balod, District Durg (C.G.), in Criminal Appeal No.352/2002 affirming the judgment of conviction and order of sentence dated 29/08/2002 passed by Judicial Magistrate First Class, Balod, District Durg (C.G.), in Criminal Case No.23/2002, whereby the applicant has been convicted for commission of offence punishable under Section 304-A of the Indian Penal Code (hereinafter called as "IPC") and was sentenced to undergo rigorous imprisonment for one year and fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

2. The case of the prosecution, in brief, is that, the applicant herein has been charge sheeted alleging that on 11/08/1988 at about 6.30 P.M., the applicant while driving the Truck bearing registration No. C.P.S. 9423 rashly

and negligently caused death of Ramadhin S/o Kartik, which is not amounting to culpable homicide.

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 Section 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 eleven witnesses and exhibited nine documents to bring home the offence, whereas defence neither examined any witness nor exhibited any document.

5. Upon appreciating the oral and documentary evidence on record, learned Judicial Magistrate First Class, Balod, District Durg (C.G.), by its judgment dated 29/08/2002 convicted the applicant for offence punishable under Section 304-A of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

6. In an appeal preferred by the applicant, learned Additional Session Judge, Balod, District Durg (C.G.), by its judgment dated 03/12/2003 affirmed the judgment of conviction and order of sentence passed by the Trial Magistrate.

7. Feeling dissatisfied with the judgment of the appellate Court, the applicant has filed the instant criminal revision.

8. Mr. Praveen Kumar Dhurandhar, 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 for a period of 16 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.

9. On the other hand, Mr. Anant Bajpai, learned Panel Lawyer appearing 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 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.

10. I have heard learned counsel appearing for the parties, perused the impugned judgment and records of both the Courts below with utmost circumspection.

11. 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?

12. **Answer to question No.1:** The trial Magistrate in its judgment

dated 29/08/2002 has clearly recorded a finding based on testimonies of PW1 Bachnu Prasad, PW3 Jhumuk Lal Yadav and PW4 Dashrath, who are eye-witnesses to the incident held that the applicant while driving offending Truck in a very high speed, dashed Ramadhin, by which, he suffered injuries and succumbed to injuries.

13. Learned trial Magistrate after appreciating oral and documentary evidence has clearly recorded a finding that it is the applicant who was driving the offending Truck rashly and negligently, dashed Ramadhin, as a result of which, he sustained injuries and succumbed to the injuries. The trial Magistrate recorded a detailed finding that the applicant was driving the Truck in a very high speed, by which, rear wheel of Truck came over the body of Ramadhin and he suffered to death. Thus, the act of the applicant falls within the ambit of Section 304-A of the IPC.

14. 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 Section 304-A of the IPC.

15. After hearing learned counsel appearing for the parties and on perusal of the record and taking into consideration the testimonies of eye-witness PW1 Bachnu Prasad, PW3 Jhumuk Lal Yadav and PW4 Dashrath 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 Section 304-A of the IPC. Thus, I hereby affirm the findings so recorded by both the Courts below. Accordingly, conviction of the applicant for offence under Section 304-A of IPC is hereby maintained.

16. **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.

17. Mr. Praveen Kumar Dhurandhar, learned counsel appearing for the applicant would submit that the applicant remained in jail for a period of 16 days, therefore, taking the lenient view of the matter, the sentence awarded to the applicant i.e. rigorous imprisonment for one year be reduced to the period already undergone by him i.e. 16 days holding it to be sufficient sentence.

18. Mr. Anant Bajpai, learned Panel Lawyer 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 **State of Karnataka vs. Sharanappa Basnagouda Aregoudar**¹.

19. At this stage, it would be appropriate to notice a very recent judgment of the Supreme Court in **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

¹ AIR 2002 SC 1529

² 2015 (4) Scale 340

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 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”.

20. 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”.

21. 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”.

22. 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 **State of Punjab, Shanti Lal Meena and State of**

³ JT 2015 (5) SC 459

⁴ AIR 2002 SC 1529

Karnataka (supra), in which, Their Lordships of the Supreme Court have awarded six months rigorous imprisonment for the offence punishable under Section 304-A of the IPC, thus, following the law laid down by the Supreme Court in aforesaid cases, I find that the sentence of rigorous imprisonment for one year awarded by the trial Magistrate as affirmed by the appellate Court is on higher side and it would be reduced to rigorous imprisonment for six months.

23. Accordingly, the criminal revision is allowed in part. Sentence is reduced from rigorous imprisonment for one year to rigorous imprisonment for six months. It is directed that the applicant be taken into custody forthwith to suffer the remaining period of the sentence. Fine sentence shall remain intact.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari