

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.744 of 2015

Horilal Yadav, S/o Shri Asha Ram Yadav, aged about 26 years, R/o Mathpuraina, Police Station Tikrapara, Raipur, Civil & Revenue District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Mahasamund, District Mahasamund (C.G.)

---- Non-applicant

For Applicant:	Mr. C.R. Sahu and Mr. A.D. Kuldeep, Advocates.
For Non-applicant:	Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/10/2015

1. The applicant was charge-sheeted for offence under Section 304A of the IPC alleging that on 25-4-2012 at 7.30 a.m. on NH 353, Main Road, In front of Bagga Stores, the applicant while driving the offending vehicle No.CG-04/G-1300 rashly and negligently, dashed Kum. Aditi, aged about 16 years, and caused her death not amounting to culpable homicide.
2. In a duly constituted trial, the applicant abjured his guilt and entered into defence. During the course of trial, the prosecution examined as many as 18 witnesses in support of its case and also exhibited 12 documents, whereas the defence has neither examined any document nor brought any witness to bring home the offence. The trial Court by its judgment dated 29-6-2015 held that the death was caused due to rash and negligent act of the applicant and held the applicant guilty for offence under Section 304A of the IPC finding the ingredients of Section 304A of the IPC established, and sentenced

him to one year RI and fine of Rs.1,000/-. In an appeal preferred by the applicant, the Additional Sessions Judge has maintained the conviction as well as the sentence. Aggrieved against the judgment of conviction recorded by the trial Court and duly affirmed by the Additional Sessions Judge, the applicant has preferred this revision under Section 397 read with Section 401 of the CrPC.

3. Mr. C.R. Sahu and Mr. A.D. Kuldeep, learned counsel for the applicant, would submit that the judgment of conviction recorded by the trial Court as affirmed by the appellate Court is clearly unsustainable and bad in law, as the deceased herself was negligent in driving her scooty and as such, the finding of guilt recorded by the two Courts below deserves to be set aside. Alternatively, learned counsel would further submit that one year RI awarded to the applicant for offence under Section 304A of the IPC is inordinately high considering the fact that under Section 304A of the IPC, jail sentence is not mandatory and further the applicant is in jail with effect from 2-9-2015 since more than one month, therefore, the period undergone by him be held sufficient against the sentence awarded if ultimately this Court reaches to the conclusion about culpability of the offence, as such, the revision be allowed.
4. On the other hand, Mr. Anil S. Pandey, learned Government Advocate for the State, would submit that the finding of criminal negligence on the part of the applicant is based on the testimony of four eyewitnesses namely Jitendra Idikar (PW-1), Sheikh Wajid (PW-2), Swarn Singh Chawla (PW-7) & Bharat Sahu (PW-8) and as such, the finding recorded by the two Courts below holding the applicant guilty of criminal negligence does not warrant interference in exercise of revisional jurisdiction which is extremely limited jurisdiction and,

therefore, appreciation of evidence cannot be done in exercise of power under Section 397 read with Section 401 of the CrPC i.e. the revisional jurisdiction. On the question of sentence, he would further submit that one young girl in her sixteen's lost her life therefore, the period of sentence of one year awarded by the trial Court duly affirmed by the Court of Session does not require interference and as such, the revision deserves to be dismissed.

5. I have heard learned counsel appearing for the parties, perused the impugned judgment and records of both the Courts below with utmost circumspection.
6. Following two questions would arise for consideration in this criminal revision: -
 1. Whether the prosecution has proved the aforesaid offence against the applicant beyond reasonable doubt?
 2. Whether the sentences awarded to the applicant are just and proper?

Answer to question No.1: -

7. It is the case of the prosecution that on 25-4-2012, the applicant while driving the offending vehicle rashly and negligently dashed Kum. Aditi from her backside by which she fell down along with the scooty and the truck being driven by the applicant ran-over her by which she died instantaneously. Jitendra Idikar (PW-1) and Sheikh Wajid (PW-2) are eyewitnesses. Apart from these two eyewitnesses, Swarn Singh Chawla (PW-7) and Bharat Sahu (PW-8) are also eyewitnesses. Relying upon the testimony of four eyewitnesses, the trial Court has based its finding about criminal negligence of the applicant and pursuant to which, the said negligent act of the applicant is duly

established. Criminal negligence of the applicant has also been found to be established by the trial Court. The trial Court has also recorded finding that there was no traffic congestion on the road, the deceased was driving her scooty on right side and the applicant while driving his vehicle negligently in high speed, dashed her from her back by which she came into contact with the rear wheel of the truck and she had gone along with the truck for about 25-30 ft.. Thus, the finding of criminal negligence on the part of the applicant is duly established and rests on the testimony of four eyewitnesses which is duly affirmed in appeal by the appellate Court and in which I do not find any illegality, as such, the finding recorded by the trial Court and duly affirmed by the appellate Court in appeal deserves to be accepted and it is hereby accepted resulting into maintaining the finding of guilt of the applicant for offence under Section 304A of the IPC.

Answer to question No.2: -

8. This brings me to the question of reasonableness of sentence recorded by the two Courts below.
9. The applicant has been sentenced to undergo RI for a period of one year and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo SI for twenty days, which has been maintained by the appellate Court.
10. 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. Saurabh Bakshi**¹ in which Their Lordships considered the concept of adequacy of quantum of sentence to be imposed for offence under Sections 304A of the IPC while setting aside the order of High Court reducing sentence of one year RI to period undergone (24 days) and awarded

¹ 2015 (4) Scale 340

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, 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”.

11. Their Lordships taking note of road accidents in India while inviting the attention of law makers on sentencing policy in Section 304A of the 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 lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. We say so with immense anguish”.

12. Similarly, in a very recent decision in **Shanti Lal Meena v. State of NCT of Delhi, CBI**², 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 judgments 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

² JT 2015 (5) SC 459

institutional integrity, affecting the credibility of its verdict.”

13. In a decision in **State of Karnataka v. Sharanappa Basnagouda Aregoudar**³ while considering the scope of interference in revision filed against conviction and sentence for offence under Section 304A of the 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”.

14. Thus, going by the law laid down by Their Lordships of the Supreme Court in aforesaid cases, the period of one year RI awarded by the trial Court and affirmed by the appellate Court appears to be on the higher side. In view of law laid in the aforesaid judgments, it is reduced to RI for six months.

15. As a fall out and consequence of aforesaid decisions, conviction of

³ AIR 2002 SC 1529

the applicant for offence under Section 304A of the IPC is maintained, and sentence is reduced to six months R.I., however, fine sentence is maintained. Resultantly, the revision is partly allowed to the extent indicated herein above.

Sd/-
(Sanjay K. Agrawal)
Judge

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