

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 190 of 2015

1. Shiv Kumar Sahu S/o Bharat Lal Sahu, aged About 35 years, R/O Village - Kishanpara, Navapara, P.S. – Gobra Navapara, District (Civil & Revenue) - Raipur C.G.

---- Applicant

Versus

1. State Of Chhattisgarh through District Magistrate Raipur, District Raipur C.G.

---- Respondent

For Applicant – Mr. Yogesh Pandey, Advocate.

For Respondent – Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

09/04/2015

1. The applicant by filing this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short 'the Code') against judgment passed on 09-03-2015 in Criminal Appeal No.257/2014 passed by Additional Sessions Judge, Raipur whereby and whereunder the Additional Sessions Judge, Raipur, C.G., by affirming the judgment of conviction passed on 26-11-2014 in Criminal Case No.681/2012 whereby the Judicial Magistrate First Class, Raipur after holding the applicant guilty under Sections 279, 338 of the Indian Penal Code (for short 'the IPC') sentenced him rigorous imprisonment for 1 month, rigorous imprisonment for 6 months,

allowed the appeal filed by the applicant in part and instead of 6 months' R.I. for conviction under Section 338 of the IPC, sentenced the applicant R.I. for 3 months and upheld the sentence for conviction under Section 279 of the IPC.

2. The applicant has challenged the order of the appellate court on the ground that the trial court and appellate court passed the impugned judgment contrary to the rule of prudence. Both the courts below erred in appreciating that applicant was rash and negligent, whereas, there is no evidence adduced for this by the prosecution. Also it taken the ground that one independent witness not supported the prosecution's story, turned hostile. Also Doctor Neeta Karnawat (PW-5) not gave any opinion regarding injuries caused to the complainant. By filing this revision the applicant submitted that the revision may be allowed and the judgment passed by the appellate court dated 09-03-2015 and the judgment of conviction and sentence passed by the trial Court dated 26-11-2014 may be set aside.

3. Heard counsel for the parties and perused the record of the courts below.

4. During argument, it is submitted on behalf of the applicant that as instructed, the applicant is not contesting this revision regarding the judgment of conviction passed by the courts below. Learned counsel as directed confining his argument only on the point of the sentence, submitted that the incident is about 2 years and 8 months old, the applicant was the first offender, he had not committed any motor accident prior to this incident and even after this incident he had not involved in any motor accident. Sections 279 and 338 are punishable for imprisonment or fine or both. For 4 days, he had served a part of sentence. He be given an opportunity to remain cautious in future by not implicating him in any other accident. The sentence awarded by the trial Court is excessive looking to the facts and circumstances of the case. Hence, the revision may be allowed for the quantum of the sentence.

5. Per contra, learned counsel for the State/respondent opposed the revision also the argument advanced on behalf of the applicant and submitted that in the intervening night of 31-07-2012 and 01-08-2012 while the applicant was driving a truck, he drove his truck with rashness and negligently and hit the truck with road divider, by this, the conductor/complainant received fracture in his leg. Looking to the entire facts and circumstances, the appellate court rightly convicted and sentenced the applicant. There is no scope in the judgment of the trial Court or of the appellate court, hence, the revision may be dismissed as not maintainable.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during the trial.

7. This revisional court has to see regarding the correctness, legality and propriety of the finding, sentence or order passed by the trial court and appellate court. As submitted on behalf of the applicant that the applicant is not contesting this revision for the conviction under Section 279 and Section 338 of the IPC. On perusal of the entire evidence adduced before the trial court, in the considered view of this court, the trial court and the appellate court not committed any illegality or infirmity while convicting the applicant under Sections 279 and 338 of the IPC except the point that Section 279 being a lesser Section is well merged under the essential ingredients of Section 338 of the IPC, it is not required to pass a separate sentence for Section 279 of the IPC. With this proposition of law, the judgment of both the courts below requires interference and hence, instead of Sections 279 and 338 of the IPC, the applicant is technically convicted under Section 338 of the IPC.

8. So far as quantum of sentence is concerned, the applicant was the first offender, at the time of incident he was driving the vehicle, if the conductor/complainant was sitting along with him and in the intervening night by the rash and negligent act of the applicant the truck hit towards the divider

thereby the complainant/conductor received grave injury on his leg, it is not a case that the applicant hit the complainant when the complainant was moving on the road. Looking to the above facts and circumstances with the facts that for 4 days the applicant served a part of sentence, Section 338 provides that sentence may be awarded R.I. upto 2 years or with fine or both and there is no minimum sentence provided for Section 338 of the IPC, and also the that the incident happened about more than 2 years and 8 months ago, it would be just and appropriate to reduce the substantive jail sentence to the period already undergone by the applicant along with fine of Rs.1000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 15 days.

9. Consequently, the revision filed by the applicant is allowed in part. The applicant's conviction is technically converted into only Section 338 of the IPC as Section 279 being a lesser Section merges with Section 338 of the IPC. Conviction and sentence awarded under Section 279 of the IPC separately is hereby quashed. The applicant is held convicted under Section 338 of the IPC and is sentenced for the period already undergone by him along with fine of Rs.1000/-, in default of payment of fine, to further undergo rigorous imprisonment for 15 days. The applicant is directed to deposit the fine amount within 3 months from now before the trial Court failing which the trial Court is directed to serve the applicant with default part of rigorous imprisonment.

Sd/-
(C.B.Bajpai)
JUDGE

