

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION NO. 523 OF 2015**

Haldhar Markam, S/o Rameshwar Markam, aged about 21 years, R/o Village Nawagaon (Sankra), Post Office & Police Station Sihawa, District Dhamtari (C.G.)

---Applicant

Versus

State of Chhattisgarh through the District Magistrate, Dhamtari, District Dhamtari (C.G.)

----Non-applicant

For Applicant	:	Mr. Shivendu Pandya, Advocate
For Non-applicant	:	Mr. Siddharth Rathore, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14/08/2015**

1. Heard on admission.
2. Admit.
3. Issue notice.
4. Mr. Siddharth Rathore, Dy. Govt. Advocate for the State/non-applicant accepts notice on behalf of the State/non-applicant.
5. With the consent of learned counsel for the parties, the matter is heard finally.
6. 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 02/06/2015 passed by the learned

Session Judge, Dhamtari, District Dhamtari (C.G.) in Criminal Appeal No.10/2014 affirming the judgment of conviction and modifying the order of sentence dated 18/02/2014 passed by the Judicial Magistrate First Class, Nagri, District Dhamtari (C.G.) in Criminal Case No.96/2013. By the said judgment, the learned Session Judge, Dhamtari (C.G.) affirmed the conviction under Section 279, 337 and 304(A) of the IPC. It also confirmed the sentence of rigorous imprisonment for 6 months and fine of Rs. 300/- under Section 279 of IPC and rigorous imprisonment for 3 months and fine of Rs. 100/- under Section 337 of IPC but altered the sentence for offence under Section 304(A) of the IPC to rigorous imprisonment for 6 months and fine of Rs. 500/- from that of rigorous imprisonment for 1 year and 6 months and fine of Rs. 500/-. Default sentence awarded by the Trial Magistrate has however been kept intact.

7. The case of the prosecution, in brief, is that, on 24/04/2013 at about 3.00 P.M., applicant while driving motorcycle bearing registration No. CG/04/CR/8984 rashly and negligently dashed two children, namely, Satyendra and Tikeshwar, by which, Satyendra died and Tikeshwar sustained simple injury and endangered his life.

8. 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 innocent and has been falsely implicated in the offence in question.

9. During the course of trial, the prosecution examined as many as eleven witnesses and exhibited 16 documents to bring home the offence, whereas, defence neither examined any witness nor exhibited any document.

Upon appreciating the oral and documentary evidence on record, learned Judicial Magistrate First Class, Nagri, District Dhamtari (C.G.), by its judgment dated 18/02/2014 convicted the applicant for offence punishable under Sections 279, 337 and 304(A) of the IPC and sentenced him as mentioned in the paragraph No. 6 of this order.

10. In an appeal preferred by the applicant, learned Session Judge, Dhamtari (C.G.) by its judgment dated 02/06/2015 affirmed the judgment of conviction and modified the order of sentence passed by the Trial Magistrate to the extent indicated in paragraph No. 6 of this order.

11. Mr. Shivendu Pandya, learned counsel appearing for the applicant would submit that both the Courts below have committed grave legal error in convicting the applicant for commission of offence punishable under Sections 279, 337 and 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 since 02/06/2015 i.e. for a period of two months, 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.

12. On the other hand, Mr. Siddharth Rathore, learned Dy. Govt. Advocate appearing for the State/non-applicant 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.

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

14. 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?

15. **Answer to question No.1:** The Trial Magistrate in its judgment dated 18/02/2014 has clearly recorded a finding based on testimony of PW-1 Tikeshwar, who is minor and was standing along with deceased Satyendra on the road, who stated on oath that on 24/04/2013 applicant while driving his motorcycle rashly and negligently, dashed both of them, by which, Satyendra suffered injury and died and he suffered simple injury. The statement of PW-1 Tikeshwar is duly corroborated by the evidence of other eye-witness PW-2 Amit, who identified the accused and hospitalized the deceased Satyendra. PW-8 Dr. A.K. Netam has examined the deceased and recorded an opinion that deceased suffered injury, which was accidental in nature.

16. Learned Trial Magistrate after appreciating oral and documentary evidence has clearly recorded a finding based on testimonies of two eye-witnesses that it is the applicant who was driving the offending vehicle rashly and negligently dashed Satyendra and Tikeshwar, as a result of which, Satyendra died and Tikeshwar sustained simple injury.

17. In the instant revision, learned counsel for the applicant sought to question the finding of two Courts below that they are perverse as PW-1

Tikeshwar has not supported the case of the prosecution.

18. After hearing learned counsel for the parties and on perusal of the record and taking into consideration the testimony of PW-1 Tikeshwar, I am of the considered opinion that PW-1 Tikeshwar, who is minor on the date of offence and was standing with the deceased has clearly supported the case of the prosecution stating that applicant was driving his motorcycle in very high speed and dashed them, by which, Satyendra died on account of injury and PW-1 Tikeshwar suffered simple injury. Thus, finding recorded by the Trial Magistrate as affirmed by the Appellate Court is well merited and reasoned, warrants no interference and the conviction is hereby maintained and I do not find any illegality or infirmity in the findings recorded by both the Courts below holding that the applicant is guilty for the offence under Sections 279, 337 and 304(A) of the IPC.

19. **Answer to question No.2:** The determination of issue with regard to conviction brings me to reasonableness of the sentence awarded by the Trial Magistrate as modified by the Appellate Court.

20. Mr. Shivendu Pandya, learned counsel appearing for the applicant would submit that the applicant remained in jail for two months as he is in jail since 02/06/2015, therefore, taking the lenient view of the matter, the sentence awarded to the applicant i.e. rigorous imprisonment for six months be reduced to the period already undergone by him holding it to be sufficient sentence.

21. Mr. Siddharth Rathore, learned Dy. Govt. Advocate appearing for the State/non-applicant 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 rigorous imprisonment 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.

22. 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 Section 304-A of IPC, while setting aside the order of High Court reducing sentence of one year rigorous imprisonment 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

¹ AIR 2002 SC 1529

² 2015 (4) Scale 340

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.”

23. 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.”

24. 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

³ JT 2015 (5) SC 459

⁴ AIR 2002 SC 1529

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.”

25. 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 number 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 rigorous imprisonment for six months to period already undergone, will be inappropriate and send wrong signals to potential wrongdoers and it will be injustice to the family of the person died in the road accident. Thus, the sentence of rigorous imprisonment for one year and six months awarded by the Trial Magistrate and modified by the Appellate Court while maintaining the conviction for the aforesaid offences and reducing the sentence from rigorous imprisonment for one year and six months to rigorous imprisonment for six months for the offence under Section 304(A) of the IPC, is hereby maintained warranting no interference.

26. Accordingly, the instant criminal revision is liable to be and is hereby dismissed.

Sd/-
(**Sanjay K. Agrawal**)
JUDGE