

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.638 of 2015

Ramfal, S/o Niranjan Prasad, aged about 34 years, R/o Village Semra,
Police Station Navagarh, District Janjgir-Champa (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station
Navagarh, District Janjgir-Champa (C.G.)

---- Non-applicant

For Applicant:	Mr. Gurudev I. Sharan, Advocate.
For Non-applicant:	Mr. Om Prakash Sahu, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/09/2015

1. Heard on admission.
2. The applicant was convicted by the trial Magistrate i.e. the Judicial Magistrate First Class, Janjgir by its judgment of conviction and order of sentence dated 9-2-2015 passed in Criminal Case No.84/2014, for the offence punishable under Sections 279, 337 & 304A of the IPC and sentenced to pay fine of Rs.400/-, in default additional SI for four days; Rs.300/-, in default additional SI for two days; and to undergo SI for one year & pay fine of Rs.800/-, in default additional SI for one month, respectively. Feeling aggrieved against the judgment of conviction & order of sentence, the applicant preferred appeal before the Court of Sessions and the Court of Sessions i.e. the 1st Additional Sessions Judge, Janjgir-Champa by the impugned judgment dated 29-7-2015 passed in Criminal Appeal No.37/2015, maintained the conviction under all the three offences and also maintained the sentence for offence under Sections 279 & 337 of the IPC, however,

reduced the jail sentence for offence under Section 304A of the IPC to RI for six months & fine of 5,000/-, in default additional RI for five months. Against this judgment, the applicant has preferred this revision under Section 397 read with Section 401 of the CrPC.

3. Mr. Gurudev I. Sharan, learned counsel appearing for the applicant, vehemently submits that findings recorded by the two Courts below holding the applicant guilty for offence under Section 304A of the IPC are not only contrary, but perverse to the record. Both the Courts have committed grave illegality in appreciating the evidence available on record, particularly Ramavtar (PW-8), who is injured and eyewitness, has categorically deposed that he has not given any statement before the police and first time he is deposing before the trial Court. He further submits that on the question of sentence, the applicant is already in jail since 29-7-2015, since 1½ months, therefore, period already undergone by him be held sufficient sentence and the revision be allowed in part.
4. Mr. Om Prakash Sahu, learned Government Advocate appearing for the State/non-applicant, submits that conviction recorded by the two Courts below holding the applicant guilty for offence under Section 304A of the IPC is a well merited judgment, it is neither perverse nor contrary to the record. Arguing on the question of sentence, he further submits that the appellate Court has already shown leniency and reduced one year SI to 6 months RI and, therefore, further reduction of sentence would not serve the ends of justice, as one person Teejram had already died and Ramavtar (PW-8) and his minor daughter have suffered injuries, as such, sentences awarded are just, fair and reasonable.
5. I have 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 offences 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 the applicant on 31-5-2013 while driving his tractor No.CG-04/DT-7818 rashly & negligently, dashed the motorcycle by which one Teejram who was driving the motorcycle suffered death instantaneously and Ramavtar (PW-8) and his daughter suffered simple injuries vide Ex.P-10. The trial Court after appreciating oral and documentary evidence on record, particularly relying upon the testimony of Ramavtar (PW-8), finding the testimony of P.N. Tiwari (PW-10) – Investigating Officer reliable and applying the principle of *res ipsa loquitur*, has clearly held that the death of Teejram and injuries to Ramavtar (PW-8) and his daughter Umeshwari were caused due to rash and negligent act of driving the offending vehicle on the date of offence, as such, the prosecution has proved the ingredients of offence under Section 304A of the IPC and accordingly, convicted and sentenced the applicant to undergo SI for one year and pay fine of Rs.800/-. In appeal, the appellate Court has also minutely examined the contention raised on behalf of the applicant particularly, the perversity of finding recorded by the trial Court. The appellate Court after examining the record has clearly come to the conclusion that the finding recorded by the trial Court is

not perverse as the mechanical condition of the tractor was quite good, there is no mechanical defect, testimony of Ramavtar (PW-8) is reliable and the prosecution has proved the offence beyond reasonable doubt and overruled the arguments made by counsel for the applicant. Thus, the concurrent finding recorded by the two Courts below holding the applicant guilty for offence under Section 304A of the IPC is based on material evidence available on record. Taking into consideration the testimony of Ramavtar (PW-8) who is eyewitness sitting as pillion rider on the motorcycle, I do not find any illegality in the judgments recorded by the two Courts below and hereby affirm the same.

Answer to question No.2: -

8. This brings me to the reasonableness of sentence recorded by the two Courts below.
9. The trial Court had already imposed the sentence of SI for one year and fine of Rs.800/- upon the applicant for the offence under Section 304A of the IPC and on appeal, the appellate Court has reduced the sentence of one year SI to six months RI and enhanced the fine of Rs.800/- to Rs.5,000/-.
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 six months imprisonment by observing as under: -

“17. In the instant case the factum of rash and negligent

1 2015 (4) Scale 340

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”.

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”.

11. 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 institutional integrity, affecting the credibility of its verdict.”

² JT 2015 (5) SC 459

12. In a decision in **State of Karnataka v. Sharanappa Basnagouda**

Aregoudar³ 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”.

13. Thus, in view of aforesaid decisions, sentence of RI for six months awarded to the applicant is quite just and fair. I do not find any ground to interfere in the impugned judgment. The revision is devoid of merit same is liable to be dismissed and is accordingly, dismissed at the admission stage itself without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge