

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.724 of 2015

Ghanshyam Sharma, age 45 years, S/o Brijlal Prasad Sharma, R/o Santoshi Nagar, in front of Temple, Near Nahar, Raipur, Police Station Azad Chowk, Raipur, Distt. Raipur (C.G.)

---- Applicant

Versus

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

---- Non-applicant

For Applicant: Mr. Dharendra Prasad Mishra, Advocate.

For Non-applicant/State:
Mr. Neeraj Jain, Government Advocate
with Mr. Ashish Surana, Panel Lawyer.

Amicus Curiae: Mr. Praveen Das, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

26/10/2015

1. The applicant herein is an accused who stands convicted for commission of offence punishable under Section 304-A of the IPC for causing death of Kum. Sarita, Kum. Kumudni, Kum. Sheela & Kum. Deepanjali, all school going girls, and also stands convicted for offence punishable under Sections 279 & 337 of the IPC for endangering the life and causing simple injury to Kum.

Geetanjali & Kum. Khirodni, and sentenced to R.I. for one year (four counts) under Section 304-A of the IPC and fine sentence of Rs.500/- for offence under Sections 337 (two counts) & 279 of the IPC and sentences to run concurrently.

2. Imperative facts as unfolded by the prosecution during the course of trial and which are necessary for disposal of instant revision are as under: -
3. The State of Chhattisgarh through the Station House Officer, Basna, charge-sheeted the applicant for offence punishable under Sections 304-A (only one count), 279 & 337 of the IPC alleging that the applicant on 30-4-2003 at 7.15 a.m., on National Highway, Bhukel while driving the offending truck No.CG-13/ZC-0206 rashly and negligently, caused death of school going girls / pedestrians Kum. Sarita, Kum. Kumudni, Kum. Sheela & Kum. Deepanjali, and also endangered the life and caused simple injury to Kum. Geetanjali & Kum. Khirodni, as they were going to their school situated at Village Bhukel from their native Village Barbaspur, as their result of examination was to be declared on that date.
4. The applicant during the course of trial, abjured the guilt and entered into defence. During the course of trial, the prosecution examined as many as nine witnesses in

support of its case and exhibited documents Exs.P-1 to P-21 to bring home the offence, whereas the defence neither examined any witness nor proved any document in support of its defence.

5. The trial Court upon appreciation of oral and documentary evidence on record, found the applicant guilty for the offence under Sections 304-A (four counts), 279 & 337 (two counts) of the IPC holding that the applicant by his rash and negligent act while driving the offending vehicle rashly and negligently caused death of four girls named above and also endangered the life of two girls named above by causing simple hurt to them and sentenced to the period as given below:-

<u>Conviction</u>	<u>Sentence</u>
Sec. 304-A of the IPC	RI for one year & fine of Rs.1,000/-, in default, additional imprisonment for one month
Sec. 304-A of the IPC	RI for one year & fine of Rs.1,000/-, in default, additional imprisonment for one month
Sec. 304-A of the IPC	RI for one year & fine of Rs.1,000/-, in default, additional imprisonment for one month
Sec. 304-A of the IPC	RI for one year & fine of Rs.1,000/-, in default, additional imprisonment for one month
Sec. 337 of the IPC	Fine of Rs.500/-, in default, imprisonment for ten days

Sec. 337 of the IPC	Fine of Rs.500/-, in default, imprisonment for ten days
Sec. 279 of the IPC	Fine of Rs.500/-, in default, imprisonment for ten days. (Sentences to run concurrently)

6. Feeling dissatisfied with the judgment of conviction under Sections 304-A (four counts), 337 (two counts) and 279 of the IPC and sentence awarded for the aforesaid offences, the applicant herein preferred appeal under Section 374 of the IPC before the Court of Sessions, Mahasamund. By the impugned judgment, learned Additional Sessions Judge, Saraipali has dismissed the appeal affirming the judgment of conviction and order imposing sentence to the applicant resulting into filing of this revision under Section 397 read with Section 401 of the CrPC assailing the judgment of conviction duly affirmed and sentence awarded therein.

7. Mr. Dhirendra Prasad Mishra, learned counsel for the applicant, would submit that conviction recorded by the trial Court as affirmed by the learned Additional Sessions Judge is absolutely contrary to the material available on record, as the prosecution has miserably failed to bring home the offence by proving the ingredients of the offence under Section 304-A of the IPC, particularly the fact that

the accused has caused death of four girls and that such act of the accused was rash or negligent which did not amount to culpable homicide. Elaborating his submission, he would further submit that except Geetanjali (PW-2) and Khirodni Sahu (PW-5) – injured & eyewitnesses, none have seen the applicant causing death by his rash and negligent act. Referring to the evidence of Geetanjali (PW-2) and Khirodni Sahu (PW-5), he would also submit that their statements would reveal that they have not seen the applicant driving the offending vehicle rashly and negligently as such, conviction of the applicant is based on no evidence and, therefore, the judgment of conviction and order of sentence deserves to be set aside and the applicant deserves to be acquitted of the charges alleged against him. Mr. Mishra, learned counsel, alternatively, while questioning the sentence awarded for offence under Section 304A of the IPC (four counts) i.e. RI for one year on each count, that too to run consecutively, would submit that such an order of sentence is absolutely illegal and bad in law. Elaborating his submissions, he would further submit that though four school going girls died due to criminal negligence of the applicant, but sentencing the applicant for offence under Section 304A of the IPC for four counts that is four years is absolutely contrary to the

provisions contained in Section 31 of the CrPC. He would also submit that in fact, Section 31 of the CrPC would be applicable when a person is convicted at one trial of two or more offences, then the sentence have to run concurrently. In this case, though the applicant has been convicted for offence under Section 304A of the IPC and also for offence under Sections 279 & 337 of the IPC, but no jail sentence has been awarded for offence under Sections 279 & 337 of the IPC and he has been sentenced to jail only for offence under Section 304A of the IPC, therefore, the order of sentence imposing R.I. for one year on four counts for offence under Section 304A of the IPC, is bad in law. Arguing further and relying upon Section 71 of the IPC, he would submit that the applicant can be punished only for an offence i.e. Section 304A of the IPC and, therefore, punishment of four years is in teeth of Section 304A read with Section 71 of the IPC, as the jail sentence prescribed under Section 304A of the IPC is only two years, or with fine, or with both, as such, the order of sentence imposed by the trial Court i.e. 4 years and the order affirming such sentence by the learned Additional Sessions Judge also suffers from illegality. In the facts and circumstances, the impugned sentence be set aside and the revision be allowed partly.

8. Per contra, Mr. Neeraj Jain, learned Government Advocate appearing for the State of Chhattisgarh / non-applicant, would submit that the finding of criminal negligence on the part of the applicant is based on the testimony of two injured eyewitnesses namely Geetanjali (PW-2) and Khirodini Sahu (PW-5) and finding of the trial Court about criminal negligence of the applicant is essentially a question of fact. Jurisdiction of this Court in criminal revision is extremely limited and it cannot indulge into re-appreciation of evidence. Finding of criminal negligence recorded by the trial Court has been duly affirmed by the learned Additional Sessions Judge in appeal and as such, finding of fact recorded by the two Courts below holding the applicant guilty of criminal negligence is based on evidence, it is neither contrary to record nor is perverse and, therefore, it deserves to be accepted as it is and the criminal revision deserves to be dismissed on the question of conviction being well merited and in accordance with law. Mr. Jain arguing further on question of sentence would submit that though the applicant was charged for criminal negligence, yet looking to the fact that four school going girls died in the accident, imposition of four years' jail sentence on four counts to run one after the another (consecutively), is in accordance with Section 31 of the

CrPC and looking to the fact that four school going girls lost their lives on account of criminal negligence of the applicant, sentence prescribed for four years cannot be said to be inordinately high warranting interference by this Court in exercise of revisional jurisdiction. In the facts and circumstances, the revision deserves to be dismissed.

9. Mr. Praveen Das, learned counsel appearing as *amicus curiae* would submit that Section 31 of the CrPC lays down the manner in which a Court may impose sentence in case of conviction of several offences at one trial and as such, the judgment of conviction and sentence awarded for four counts is in accordance with law as by virtue of Section 31 (2) (b) of the CrPC, the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence. Therefore, the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class duly affirmed by the Additional Sessions Judge calls for no interference.
10. Mr. Ashish Surana, learned Panel Lawyer also appearing for the State, would submit that the word "offence" is defined under Section 2 (n) of the CrPC which means any act or omission made punishable by any law for the time being in force. The term offence is defined in Section 40 of the IPC. Thus, the act of criminal negligence is an offence

punishable under Section 304A of the IPC and relying upon first part of Section 71 of the IPC, he would submit that criminal negligence of the applicant is one and all and, therefore, he is liable to be sentenced to criminal negligence only once (one count) and as such, the order of sentence passed by the two Courts below are liable to be modified accordingly.

11. I have heard learned counsel for the parties and considered the rival submissions made therein and also gone through the record with utmost circumspection.

12. Following two questions arise for consideration: -

1. Whether the prosecution has proved the aforesaid offence under Sections 304-A, 337 and 279 of the IPC against the applicant beyond reasonable doubt?
2. Whether the sentence awarded to the applicant is just and proper?

Answer to question No.1: -

13. The trial Court after appreciating oral and documentary evidence on record came to the conclusion that death of Kum. Sarita, Kum. Kumudni, Kum. Sheela & Kum. Deepanjali, was caused on 30-4-2003 by the applicant and it was on account of criminal negligence of the applicant and did not amount to culpable homicide. The finding of

criminal negligence of the applicant is based on the testimony of two eyewitnesses Geetanjali (PW-2) and Khirodni Sahu (PW-5), both are also injured eyewitnesses, as they were also going to school to get the result of their examination.

14. Geetanjali (PW-2) has clearly stated in her evidence that they were seven girls going from their Village Barbaspur to Bhukel school by road, the tanker driven by the applicant came from their backside and dashed all the girls by which four girls suffered grievous injuries, three girls died instantaneously and one girl Kum. Sheela died on the way to hospital. She has further clearly stated that she has seen the applicant driving the offending vehicle rashly. This statement is corroborated by the testimony of Khirodni Sahu (PW-5) who is also an eyewitness.
15. Not only this, four deceased girls and two injured witnesses Geetanjali (PW-2) & Khirodni Sahu (PW-5) were going by their side down the road, the applicant while driving the vehicle came down the road and dashed the school going girls by which they suffered injuries, four girls died and two girls Geetanjali (PW-2) & Khirodni Sahu (PW-5) suffered grievous injuries which clearly demonstrates that the applicant is guilty of rash and negligent act. The learned trial Magistrate has rightly held the applicant guilty

of criminal negligence for offence under Section 304A of the IPC. Finding of the trial Court has been affirmed by the appellate Court in appeal filed by the applicant. Finding of criminal negligence on the part of the applicant recorded by the trial Court duly affirmed by the appellate Court is a finding of fact based on evidence available on record and the said finding is neither perverse nor contrary to record requiring interference by this Court in revisional jurisdiction.

16. In the matters of **Mrs. Shakila Khader and others v. Nausheer Cama and others**¹ and **Duli Chand v. Delhi Administration**², Their Lordships of the Supreme Court while considering identical question have held that the question whether accused is guilty of negligence and if his negligence caused the death, are questions of fact and such questions fall outside the High Court's jurisdiction in revision, as it is in the realm of appreciation of evidence. In paragraph 4, Their Lordships of the Supreme Court in **Duli Chand** (supra) have observed as under: -

“.....Now the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a reappraisal of the evidence, but even so, the learned Single Judge of the High Court who heard the revision application, examined

1 (1975) 4 SCC 122

2 (1975) 4 SCC 649

the evidence afresh at the instance of the appellant.....”

17. Thus, in view of the above, finding recorded by the trial Court and affirmed by the appellate Court is a finding of fact based on record and it is neither perverse nor contrary to record, as such, no interference is warranted in exercise of revisional jurisdiction of this Court under Section 397 read with Section 401 of the CrPC.

Answer to question No.2: -

18. The determination of culpability of the applicant for offence under Section 304A of the IPC brings me to the reasonableness of sentence awarded by the trial Court and affirmed by the appellate Court.
19. The trial Court found the applicant guilty for offence under Sections 304A (four counts), 337 (two counts) and 279 of the IPC. It is the case of the applicant that not only conviction, but sentence of the applicant for offence under Section 304A of the IPC for four counts i.e. one year R.I. on each count and that would be four years sentence and that would be contrary to Section 71 (first part) of the I.P.C.
20. In order to judge correctness of the plea raised on behalf of the applicant, it would be appropriate to notice the definition of “offence” as defined in the CrPC. Section 2 (n) of the CrPC defines “offence” as under: -

““offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871)”

21. Likewise, Section 40 of the IPC defines “offence” as under:-

“Except in the chapters and sections mentioned in Clauses 2 and 3 of this section, the word “offence” denotes a thing made punishable by this Code.

In Chapter IV, Chapter V-A and in the following sections, namely, Sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 118, 119 and 120, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word “offence” denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in Sections 141, 176, 177, 201, 202, 212, 216 and 441, the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

22. At this stage, it would also be appropriate to notice Section 31 of the CrPC. Section 31 of the CrPC reads as follows: -

“31. Sentences in cases of conviction of

several offences at one trial.-(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this

section shall be deemed to be a single sentence.”

23. Before proceeding further, it would be more appropriate to notice the charge framed against the applicant.

“मै आर0एल0 कुर्रे, न्यायिक मजि0 प्रथम श्रेणी सरायपाली तुम अभियुक्त घनश्याम शर्मा, बल्द बृजनाथ प्रसाद शर्मा, उम्र 38 साल साकिन संतोषी नगर थाना आजाद चौकी, रायपुर को निम्न लिखित अपराध विवरण सुनाता हूँ कि:—

1. तुमने दिनांक 30.04.2003 के 7—15 बजे राष्ट्रीय राजमार्ग भूकेले मे ट्रक क0 सी0जी013, जेड0सी0 0206 को उपेक्षा पूर्व चलाकर मानव जीवन संकटापन्न किया?
2. इसी तिथि समय व स्थान पर तुमने उक्त वाहन को उपेक्षायू लाहर वाही से चलाकर पैदल स्कूल जा रही कु सरिता, कु कुमोदनी, कु0 शीला, कु0 दीपाजली को ठोकर मारकर जिससे उनकी मानव की कोटि मे नही आने वाला मृत्यु कारित हुई?
3. इसी तिथि समय व स्थान पर उक्त वाहन को उपेक्षा पूर्वक लापरवाही से चलाकर पैदन स्कूल जा रही कु0गीताजली एवं खिरोदनी को ठोकर मारकर साधार उपहति पहुचाया ?

इस तरह तुमने वह उपराध किया जो भा.द.वि की धारा 279, 304—अ⁴ एवं 337² के तहत दण्डनीय है और इस न्यायालय के संज्ञान मे है क्या तुम्हें अपना जुर्म स्वीकार है या जिरह चाहते हो।”

24. Charges framed against the applicant would show that the

applicant has been charged for offence under Sections 304A – 4 counts, 337 – 2 counts and 279 – 1 count, of the IPC. Sub-section (1) of Section 31 of the CrPC would be applicable where a person is convicted at one trial of two or more offences and the Court, subject to the provisions of Section 71 of the IPC, may sentence him for such offences, to several punishments prescribed therefor which such Court is competent to inflict and such sentences would run one after the other i.e. consecutively.

25. In the present case, the applicant has been convicted and jail sentence has been awarded only for offence under Section 304A of the IPC (four counts), he has not been convicted in one trial of more than two offences in which jail sentence has been awarded. Therefore, Section 31 (1) of the CrPC would not be applicable.

26. At this stage, it would be appropriate to notice Section 71 of the Indian Penal Code which is pressed in to service by learned counsel for applicant. Section 71 of the I.P.C. is in three parts:-

First Part is: Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Second Part is: Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished.

Third Part is: Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, which combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

The first part deals with continuous or continual series of similar act each forming the same offence or offence of the same nature as the whole series which is very well illustrated by illustration (a) and (b) appended with Section 71 of the I.P.C. which provides as under:-

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisonment for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily

causing hurt to Z, and to another for the blow given to Y.

27. In the matter of **Behari and others v. State**³, the Allahabad High Court while considering scope and applicability of Section 71 of IPC has held that an accused cannot be convicted more than once for the several offences committed by him though he can be convicted for particular offence as many times as offence is committed by holding in paragraph 6 as under:-

"6.....

The first part deals with a continuous or continual series of similar acts each forming the same offence or offence of the same nature as the whole series; for instance, giving a man fifty strokes with a stick (see illustration (a) to section 71), stealing five articles from an owner, abducting a female from her residence and taking her through several places in continuation etc. Illegally giving strokes with a stick is an offence punishable under S.323, IPC; as soon as one stroke is given, hurt is caused and the offence is completed. When the next stroke is given, hurt is again caused, and another offence committed. The same is the case with the examples of offences under Ss.379 and 366, IPC There is nothing in the Code of Criminal Procedure to prevent the accused from being convicted under S.323,

3 A.I.R. 1953 All 510

IPC as many times as there are blows given by him. But when it comes to punishing him, the first part of S.71, IPC provides that he cannot be punished with the punishment of more than one of the offences. So for practical purposes, the whole beating is treated as one offence under S.323 IPC the whole act of stealing several articles is one offence under S.379, IPC and the whole act of abducting the female to various places is one offence under section 366, IPC. If he cannot be punished more than once for the several offences committed by him, it would be no use convicting him of the several offences; that is why in practice only one charge under S.323 or 379 or 366, IPC is framed and only one conviction is recorded.

An important point to be noticed is that the first part deals with a case in which the whole of the act is punished under the same section under which its parts are punished; it does not deal with a case in which the whole act constitutes an offence different in nature from the offence or offences constituted by its parts. This is made clear not only by the illustration but also by the provision about the punishment. The provision is that the accused must not be punished with the punishment of more than one of the offences. The restriction is on the number of the sentences to be passed and not on the quantum. The very fact

that he is required to be punished only once shows that otherwise he would be liable to be punished several times, i.e., several times for the same offence. Were the part dealing with a case in which the accused is liable for the various offences under different sections to punishments different from one another, the restriction would not have been that he should be punished only once or for only one offence; it would have been similar to that imposed under the second and third parts.

.....”

In the later part of the judgment it has further been held that Section 71 of the IPC placed restriction upon the separate punishment for every offence, which is committed by observing as under in paragraph 7:-

“7. An accused must be convicted of every offence with which he has been charged and which is proved against him and this, regardless of whether he can separately be punished for every offence or not. Ordinarily he must be punished for every offence of which he has been found guilty. The sections under which he is convicted themselves lay down that he should be punished within certain limits. Section 71 is the only section that places restrictions upon the separate punishment for every offence of which he is convicted. There are no other restrictions. If a case is not governed by S.71, the accused is

liable to be punished separately for each offence (of which he has been convicted) up to the maximum provided for it.”

28. In the matter of **Bhagat Singh v. The State and another**⁴,

Their Lordships of the Supreme Court while considering Sections 234 and 233 of the Cr.P.C. 1898 (old Code) have clearly held that where accused is charged with attempt to murder two persons by firing a single shot at them the charge cannot be said to be in respect of two offences, but is a charge in respect of only one offence for the purpose of Section 234 and held that single act of firing by the accused, only one offence has been committed in paragraph 6 as under:-

“6.....In our opinion, the short reply to this contention is that the second charge which relates to the appellant firing at Kartar Singh and Jangir Singh is not a charge with respect to 2 offences but is a charge with respect to one offence only. The evidence adduced by the prosecution shows that the appellant fired only one bullet. The word "offence" has been defined in the Criminal P. C. as meaning "any act or omission made punishable by any law for the time being in force". There seems to be nothing wrong in law to regard the single act of firing by the appellant as one offence only. On the other

4 A.I.R. 1952 SC 45

hand we think that it would be taking an extremely narrow and artificial view to split it into 2 offences. There are several reported cases in which a similar view has been taken, and in our opinion they have not been incorrectly decided. In *Empress v. Reghurai*, 1881 ALL W. N. 154 (2) where a person stole several bullocks from the same herdsman at the same time, it was held that only one offence had been committed. In *Promtha Nath v. Emperor*, 17 Cal. W. N. 479 it was held that misappropriation in regard to several account books constituted only one offence. In *Johan Subarna v. King Emperor* 10 Cal. W. N. 520, it was held that when an attempt to cheat a number of men by speaking to them in a body had been committed, one joint charge was valid. In *Poonat Singh v. Madho* 13 Cal 270 it was held that only one offence had been committed by a person who gave false information in one statement to the police against 2 persons. In *Sudheendra kumar Ray v. Emperor*, 60 Cal. 643, a person who was chased by 2 constables had fired at them several times, but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided. In our opinion, there is no substance in the point raised, though we should not be understood as laying down the wide proposition that in no

case can a single act constitute more than one offence.”

29. In the matter of **Roshan Lal and others v. State of Punjab**⁵, Their Lordships of the Supreme Court have held that normally no court should award two separate punishments for same act constituting two offences under Section 201, by holding in paragraph 15 as under:-

“15. Mr. Sachthey next contended that the appellants having caused the evidence of the two offences under Ss. 330 and 348 to disappear, committed two separate offences under S. 201 and are punishable accordingly. Now, by the same Act, namely, burning of the dead body of Raja Ram, the appellant caused the evidence of two offences to disappear. Taking a strict view of the matter, it must be said that by the same act the appellants committed two offences under S. 201. The case is not covered either by S. 71 of the Indian Penal Code or by S. 26 of the General Clauses Act, and the punishment for the two offences cannot be limited under those sections. But, normally, no Court should award two separate punishments for the same act constituting two offences under S. 201. The appropriate sentence under S. 201 for causing the evidence of the offence under S. 330 to disappear should be passed, and no separate sentence need be passed under S.

201 for causing the evidence of the offence under S. 348 to disappear. The maximum sentence for the offence under S. 330 is imprisonment for seven years, and under the para 4 to S. 201, the appellants are liable to be sentenced to a maximum of one-fourth of seven years of imprisonment. The facts of the case call for the maximum sentence. Accordingly, the sentence passed on the appellants for the offence under S. 201 should be reduced to a sentence of one year and nine months. Mr. Girish Chandra attempted to argue that the entire conviction of Roshan Lal under S. 201 was illegal. But it is not open to him to argue this point, as the special leave is limited to the question of the legality of the sentence only. We are also not disposed to grant him leave to challenge the legality of the conviction at this stage.”

30. Recently, in the matter of **State of Punjab v. Balwinder**

Singh & others⁶, on account of rash and negligent driving of two drivers, five persons travelling in bus died, the trial Court convicted both the drivers and directed them to undergo R.I. for 2 years maintained by Sessions Court. The High Court in revision reduced the sentence to the period already undergone for fifteen days, however, Their Lordships of the Supreme Court taking note of the fact that five persons died due to negligent act of two drivers,

sentenced them to six months R.I. and fine of Rs.5,000/- and held as under:-

“16. In the light of the above principles, we express our inability to accept the reasoning of the High Court in reducing the sentence of imprisonment to the period already undergone, that is, 15 days. Merely because the fine amount has been enhanced to Rs. 25,000 each, is also not a sufficient ground to drastically reduce the sentence, particularly, in a case where five persons died due to the negligent act of both the drivers, of the bus and the truck. Accordingly, we set aside the impugned order of the High Court and impose a sentence of rigorous imprisonment for six months with a fine of Rs. 5,000/- each. The trial court is directed to take appropriate steps for surrender of the accused in both the appeals to serve the remaining period of sentence. The appeals are allowed to the extent mentioned above.”

31. In the light of the principles laid down in the aforesaid judgments if the facts of the case are examined it is *quite vivid* that the applicant while driving the offending vehicle negligently on 30.04.2003 at 07:15 a.m. caused the death of four girls. The trial Court charged the applicant for offence under 304-A of the IPC in four counts for causing death of four girls and also found him guilty for the offence

under Section 304-A of the IPC and convicted him for the said offence for the four counts and convicted for the said offence one year each for such an offence and which would be four years in total. There is no provision in the Code of Criminal Procedure to prevent the accused from being convicted for offence under Section 304-A of the IPC as many as time he has committed the offence but the first part of Section 71 of the IPC clearly bars and provides that accused cannot be punished with more than one of the offences and for all the practical purpose the whole offence under Section 304-A IPC criminal negligence will be treated as one and all and he can be sentenced only once for the maximum sentence prescribed in Section 304-A of the IPC but he cannot be punished for offence under Section 304-A of the IPC (*i.e.* four times), that would be against the spirit and ambit of first part of Section 71 of the IPC barring the punishment of the offender more than one of such offences. Thus, the imposition of sentence to the applicant by the trial court for offence under Section 304-A of the IPC for four times *i.e.* one year for each of the offence (total four years) is unsustainable and bad in law.

32. As a fallout and consequence of the aforesaid discussion, conviction of the applicant for offence under Sections 304-A, 337 and 279 of the IPC is hereby maintained, however

the applicant is sentenced to one year R.I. for offence under Section 304-A of the IPC and also fine of Rs.1,000/- is imposed and in default to pay fine, additional imprisonment for one month is imposed, whereas the sentences awarded for offence under Sections 337 and 279 of the IPC are maintained as it is.

33. Resultantly, the revision is allowed to the extent indicated hereinabove.

34. While parting with the record, this Court appreciates the valuable assistance rendered by Mr. Praveen Das, learned *amicus curiae*, and also appreciates the excellence of written submission prepared and submitted by Mr. Ashish Surana, learned counsel, on short notice which enabled this Court to decide the issue involved herein.

Sd/-
(Sanjay K. Agrawal)
Judge