

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.667 of 2014

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1. Sohan Gosai @ Sohan Goswami @ Gosai, Son of Late
Nageshwar Goswami , resident of village Bakhari, P.S. Bajpatti,
District Sitamarhi Petitioner

Versus

1. The State of Bihar Respondent

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Appearance :

For the Petitioner : Mr. V. R. P. Singh, Advocate
Mr. Mrityunjay Kumar, Advocate
For the Respondent : Mr. S. N. Shukla, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

Date : 08-11-2016

The present criminal revision application has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, by the petitioner, feeling aggrieved by the judgment and order, dated 06.06.2014, passed by the learned Sessions Judge, Sitamarhi, in Criminal Appeal No. 45 of 2013, whereby, while dismissing the said criminal appeal, learned Sessions Judge has affirmed the judgment of conviction and order of sentence, dated 20.08.2013, passed by the learned Sub Divisional Judicial Magistrate, Pupri, at Sitamarhi, in Trial No. 203 of 2013, arising out of G. R. No. 98 of 2007.

2. The learned Trial Court, by the aforesaid



judgment and order, dated 20.08.2013, has convicted the petitioner for commission of offence punishable under Sections 279 and 304A of the Indian Penal Code and has sentenced him to undergo simple imprisonment for a period of 3 (three) months for the offence punishable under Section 279 of the Indian Penal Code and simple imprisonment for one year and a fine of Rs. 5,000/- for the offence punishable under Section 304A of the Indian Penal Code. The petitioner, upon rejection of his appeal, by the learned Sessions Judge, Sitamarhi, which is impugned in the present revision application, was taken into custody on 31.07.2014 and, by virtue of an order, dated 10.09.2014 passed in this case, he appears to have been released on bail, on the condition that he would deposit the amount of fine before the learned Trial Court. Learned Counsel for the petitioner has submitted that the said fine has since been deposited.

3. Mr. V.R.P.Singh, learned Counsel appearing on behalf of the petitioner, has attempted to assail the judgments and orders of the Courts below on the ground that the findings recorded by both the Courts are perverse and based on erroneous appreciation of the evidence on record. He has submitted that the conviction is virtually based on the testimony of only one witness, i.e., PW 3 (Sanjay Mandal), who has wrongly claimed to be an eyewitness. He has also

submitted that the post mortem report does not corroborate the evidence of PW 3 that the deceased instantly died, after having met with the accident because of rash and negligent driving of the petitioner.

4. Learned Counsel for the petitioner has added that the First Information Report was registered on the basis of fardbayan of the informant-chowkidar, Kaiyum Sheikh, who did not support the case of the prosecution. Further, according to him, non-examination of Investigating Officer at the trial has seriously prejudiced the case of the petitioner at the trial inasmuch as he did not have the opportunity to cross-examine.

5. He, accordingly, submits that the judgments and orders passed by the Courts below, need interference, exercising revisional jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

6. I have perused the materials on record, gone through the judgments and orders impugned in the present proceeding and have considered the submissions advanced on behalf of the parties.

7. On the basis of fardbayan of Kaiyum Sheikh, a Chowkidar, to the effect that in the morning, at about 07:00 AM, when he was returning home after night patrolling duty, he saw one "Sanjay Bus", bearing registration no. BR-

06B/9597, being driven rashly and negligently by its driver (the present petitioner) which dashed Bhola Choudhary, who sustained grievous injuries and in course of treatment, he died.

8. It is true that at the trial, the said Chowkidar, who was examined as PW 5, did not support the case of the prosecution inasmuch as he denied of having any knowledge about the occurrence. Because of his denial, the trial was deferred for sometime for the purpose of having report from Forensic Science Laboratory, on his thumb impression on the First Information Report, which never happened.

9. However, one Sanjay Mandal (PW 3) deposed at the trial as eye-witness saying that deceased met with the accident because of rash and negligent driving of the petitioner. He identified the driver who was seen fleeing away after the occurrence, after jumping out of the said bus. PW 3 (Sanjay Mandal) is an independent witness, who supported the case of the prosecution whole hog.

10. The submission advanced on behalf of the petitioner that whereas, PW 3 deposed in his evidence that the deceased died instantly and it has come on record that the deceased died in course of treatment and, therefore, his evidence ought not to have been the basis for conviction, is not convincing for the purpose of interference by this Court, in

exercise of revisional jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

11. In a proceeding under Section 401 of the Code of Criminal Procedure, 1973, the concurrent findings of facts can be interfered with in exceptional circumstance, only when such findings are perverse, i.e., without any evidence or contrary to evidence on record. The non-examination of the Investigating Officer in the present case cannot vitiate the findings because the petitioner has not been able to make out a case that because of non-examination of the Investigating Officer, any serious prejudice was caused to him, resulting into serious failure or miscarriage of justice. Mere non-examination of the Investigating Officer at a trial cannot be a ground for interference in a revisional jurisdiction, against judgment of conviction and order of sentence.

12. I do not find that the petitioner has been able to make out an exceptional case for interference with the concurrent findings of facts recorded by the Courts below, in revisional jurisdiction.

13. I do not find any perversity in the judgments and orders, which are impugned in the present proceeding, whereby the petitioner has been convicted of the offence punishable under Sections 279 and 304A of the Indian Penal Code.

14. Learned Counsel has, however, submitted that considering the fact that the petitioner has no criminal history and his livelihood will be seriously jeopardized, if he is allowed to undergo the sentence so imposed.

15. Considering the above submission, and totality of the facts and circumstances, the order of sentence is modified and reduced to the period of custody which the petitioner has already undergone. He is discharged of the liabilities of his bail bonds.

16. This application is accordingly disposed of with the aforesaid modification.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-c

AFR/NAFR	NAFR
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