

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 133 of 2007**

Brijesh Upadhayay s/o Muktinath Upadhayay aged about 33 years R/o
Yadunandan Nagar, P.S. Civil Line, District Bilaspur, Chhattisgarh.

---- Revisioner in jail

Versus

State of Chhattisgarh through police station Takhatpur, District
Bilaspur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri C.K. Kesharwani, Advocate.
For the Respondent/ State	:	Shri Vijay Bahadur, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

15.11.2016

1. The applicant has brought this revision against the judgment dated 14.3.2007 passed in Criminal Appeal No. 175 of 2006 by the Learned Sessions Judge, Bilaspur, Chhattisgarh, whereby, he has affirmed the judgment of conviction and order of sentence dated 29.9.2006 passed by the Chief Judicial Magistrate, Bilaspur in Criminal Case No.4292 of 2004 by which the Learned Chief Judicial Magistrate has convicted the applicant under Sections 279, 337, 338 and 304(A) of the Indian Penal Code (for short 'the IPC') and sentenced to undergo simple imprisonment for one month, one month and three months and to pay fine of Rs.50/-, Rs.50/-, Rs.500/- and Rs.500/- respectively, in default of payment of fine, to further undergo SI for one week on each count.

2. Facts of the case are, that on the date of incident, i.e., 3.5.1998, the applicant was driving a Jeep bearing registration No. M.P.-26 E 6169, in

which Gangaram (PW-13) and deceased – Mohammad Safi @ Kallu were travelling from Takhatpur to Bilaspur. Due to rash and negligent driving of the applicant, the vehicle turned turtle near Ghonga Nadi due to which Savitri Bai (PW-1) and Rajnandini were injured and Mohd. Safi was grievously injured which resulted into his death. A case was registered under Sections 279, 337, 338 and 304(A) of the IPC in Police Station Takhatpur. The injured persons were examined by the doctor and the postmortem of the deceased was conducted. Seizure of articles were made. Statements of the prosecution witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, charge-sheet was filed against the applicant. The applicant was charged under Sections 279, 337, 338 and 304A of the IPC. He denied the charges. Learned Trial Court vide judgment dated 29.9.2006 convicted the applicant under Sections 279, 337, 338 and 304(A) of the IPC and sentenced as aforesaid. This judgment was challenged before the Session Court, Bilaspur which was decided on 14.3.2007, whereby the judgment passed by the Learned Trial Court has been affirmed.

3. The grounds of challenge in this revision are that both the Courts below have not appreciated the evidence on record in proper perspective. The rash and negligent act of the applicant while driving the jeep has not been proved in any sense. For this reason, the applicant deserves to be acquitted.

4. Learned counsel for the applicant submits that the applicant has already undergone about 21 days in custody. It has been further submitted that the case was initiated in 1998 and almost 18 years have lapsed. At this

stage, no purpose would be served to send the applicant behind the bars to serve the remaining part of the sentence awarded to him. Hence, it is prayed that the applicant be sentenced with imprisonment for the period of custody already undergone by him.

5. Learned counsel appearing on behalf of the State has argued that the applicant's case is devoid of substance and the arguments advanced on behalf of the applicant have no merit.

6. I have heard learned counsel appearing for the parties at length and also perused the material on record.

7. Savitri Bai (PW-1) has stated that on the date of incident, the applicant was driving the jeep in a rash and negligent manner due to which one incident took place and she was injured. Mahattar Kaushik (PW-2) is a hearsay witness. Raju Naidu (PW-3) witnessed the incident. R. Jeet Kurre (PW-4) is the radiologist who, vide Ex. P/4A and 4B, examined Makhanlal Sahu and Kallu, who were having grievous injuries. Makhanlal Sahu (PW-5) was a traveller in the jeep, who suffered injuries and stated about the rash and negligent driving of the applicant. Gyanendra Masih (PW-6) did the mechanical examination of the vehicle involved in the incident. Dr. S. Chatterjee (PW-7) examined the injured Gangaram (PW-13). Bharatlal Gupta (PW-8) is a witness of the seizure of the vehicle involved in the incident vide Ex. P/7. Sabbir Hussain (PW-9) witnessed the inquest (Ex. P/9) regarding the dead-body of Mohammad Safi @ Kallu. Abdul Hafiz (PW-10) also witnessed this procedure. Dr. R.K. Bhattacharya (PW-11) conducted the autopsy of the deceased and reported about the injuries sustained by the deceased Mohd. Safi @ Kallu vide Ex. P/9. Mohd. Kalam Khan (PW-12),

who is also a witness of the inquest. Gangaram (PW-13) is one of the persons who was travelling in the jeep and was injured in the incident. Mohd. Aziz (PW-14) is son of the deceased who came to know about the incident later on.

8. On exhaustive examination of the prosecution evidence, I find that the findings arrived at by the Learned Trial Court and the lower Appellate Court do not suffer from any infirmity regarding the conviction against the applicant. The finding of conviction is based on evidence of the prosecution witnesses, which has been found reliable and proof beyond reasonable doubt.

9. The incident took place in the year 1998 and almost 18 years have lapsed since then. The applicant was arrested on the date of passing of the judgment by the lower appellate court on 14.3.2007, the order to release him on bail was passed by this court on 4.4.2007 and the applicant was released on 6.4.2007, as stated by counsel for the applicant, but there is no document on record to confirm this statement. Hence, it can be assumed that the applicant was released on bail on 4.4.2007. Concluding on this basis, the number of days undergone by the applicant comes to 21 days. The jail sentence awarded to him by the trial court and confirmed by the lower court had been nominal. Looking to the present state of things, it appears that no purpose would be served, if the applicant is sent behind the bars to undergo the remaining part of the sentence awarded to him.

10. Considering all the above aspects, it appears that the prayer made on behalf of the applicant deserves to be allowed. Hence, this revision is allowed in part. Confirming the finding given by the two courts below

regarding conviction, the sentence part is interfered with for all the respective offences and are set aside. The applicant is sentenced with imprisonment for the period of custody already undergone by him for conviction in all the offences. However, the sentence of fine is enhanced to Rs.500/- for the offence under Section 279 IPC, Rs.500/- for the offence under Section 337 IPC, Rs.1,000/- for the offence under Section 338 IPC and Rs.2,000/- for the offence under Section 304(A) IPC. Needless to say that the amount of fine already deposited by the applicant shall be adjustable in the amount of fine enhanced by this Court today.

Sd/-

(Rajendra Chandra Singh Samant)
Judge