

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 415 of 2007

- Hemlal Sahu, aged about 26 years, S/o late Mela Ram Sahu, R/o Post : Dharadei, Thana Shivrinarayan, Tahsil Pamgarh, District Janjgir (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, Through Police Station, Shivrinarayan, Dist. Janjgir (C.G.)

---- Respondent

For Applicant : Shri Vaibhav Goverdhan, Advocate
For Respondent/State : Shri O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/11/2016

1. This revision is brought against the judgment in Criminal Appeal No. 20/2007 passed by Sessions Judge, Janjgir-Champa (C.G.) on 03/08/2007, whereby the judgment of conviction and sentence under Section 304 A of Indian Penal Code against the applicant in Criminal Case No. 510/2007 dated 25/05/2007 was upheld.

2. The case of prosecution is this, that on 17/07/2002 at about 02.30 p.m. in village Ghardei deceased Gokul @ Kuldeep, aged about 5 years was playing near his residence, at that time

applicant who was the driver of Tractor bearing registration number M.P. 26 E/1729, carrying a load of stones in his trolley, by rash and negligent driving caused the accident, in which deceased was crushed to death. FIR (Ex.P/1) was lodged by Girdhari Lal Sahu (PW-1), in which driver of the offending vehicle was named as Santosh Kumar Sahu. In the investigation, spot map (Ex.P/2) was prepared. Inquest of dead body was conducted vide (Ex.P/5). Seizure of the offending vehicle and papers were made vide (Ex.P/7), mechanical inspection of offending vehicle was done vide (Ex.P/8). Later on, on first informant Girdhari Lal Sahu (PW-1) filed a written complaint in Police Station, Shivrinarayan, in which he informed that the driver of the concerned vehicle at the time of incident was Hemlal Sahu. On completion of investigation, appellant was charge-sheeted.

3. Appellant was charged under Section 304-A of IPC and under Section 3/181 of Motor Vehicles Act. On his denial of charges, the trial was conducted and judgment dated 25/05/2007 was passed by the trial Court by which applicant was acquitted from the charge under Section 3/181 of Motor Vehicles Act and convicted under Section 304-A of IPC sentencing him with rigorous imprisonment of six months and fine of Rs.200/-. Appeal was preferred in the Sessions Court, which was heard and decided by the appellate Court the Sessions Court Janjgir-champa, whereby the judgment of conviction and sentence by trial Court was upheld.

4. The grounds in this revision are these the finding of conviction by the Court below is contrary to the law, facts and circumstance of the case. The FIR was firstly recorded against Santosh, which was corrected. Later on by the complainant by giving a written application. This change of name required explanation which is not on record. The evidence of prosecution is suggestive of this fact that the vehicle at the relevant time was driven at a slow speed and carefully. Even then the applicant has been convicted and sentenced which is bad in law.

5. It is submitted by counsel for applicant that the incident took place on 17/07/2002 after which almost time of 14 years have passed. Applicant has remained in jail. Applicant had been bail during trial and appeal, but he was taken into custody on dismissal of appeal on 03/08/2007 and as per record of revision, the order for his release on bail was passed by this Court on 18/09/2007. As per the information received from the party applicant was released on bail three days after passing of this order when he furnished bail bond before the trial Court. The bail papers are not with the record of the trial Court which has been called for this revision. Hence it is safe to take into account the date of order i.e. on 18/09/2007 on which basis appellant has remained in custody for 46 days so far. It is prayed that the sentence of applicant be modified to the period of custody already undergone by him.

6. Counsel for the State has opposed the arguments of the

applicant side, it is submitted that delay alone cannot be made a ground for modification of sentence. Prosecution has proved the charge against the applicant beyond reasonable doubt and he deserves a reasonable punishment for these reasons, the impugned judgment should not be interfered with .

7. On briefly going to the merits of the case it is not disputed that on 17/07/2002 deceased Golu @ Kuldeep, aged 5 years died in the motor accident, in which the tractor No. M.P. 26 E/1729 crushed him to death. Eye witness Munna (PW-3), Ku. Madhu (PW-5), Santosh (PW-6) have supported the prosecution case, according to their statements the vehicle in question was being driven by applicant, there is an admission in cross-examination by Santosh (PW-6) that Santosh was driving the tractor and Santosh was engaged as driver by the owner of the the tractor. This statement has not been further clarified to this extent that Santosh was driver of the tractor at the time of accident. As argued by counsel for the applicant that Santosh Kumar (PW-8) has also admitted in his statement that the tractor was being driven by Santosh Kumar, but this witness is not an eyewitness and has made this statement as hearsay, hence the statement of the eyewitnesses in this aspect, that applicant was the driver of the concerned vehicle is fully established and the finding in this respect of the trial court and the lower appellate Court cannot be interfered with.

8. About the rash and negligent act of driver it is the statement of Munna (PW-3) in cross-examination, that at the time of accident the child all of sudden came in front of tractor and driver was asked to stop the vehicle, then the accident took place. Same is the statement of Ku. Madhu (PW-5). As per the spot map (Ex.P/2) by Girdhari Lal Sahu (PW-1) the incident took place on the road passing through the village, hence the incident occurred in such place which is a road going through the village. It becomes the duty of the person driving of the vehicle to be extra careful when passing through the road in between the populated area. A child cannot be expected to know about the rule or road or the traffic rules. Villagers usually frequent the road and open place present in front of their residence places, for these reasons driver had to be extra cautious while passing the street of that village and in which he failed. For these reason the negligence on the part of applicant is also established, the finding of the trial Court and the lower appellate Court to this effect cannot be interfered with.

9. The conviction of applicant under Section 304 A of IPC is proper and there is no ground in this revision to interfere with this finding of the trial Court and lower appellate Court. Regarding the sentence part, the prayer of applicant needs consideration. It is a fact that almost 14 years is passed during which the applicant has faced trial and prosecuted appeal before the lower appellate Court, later on he is prosecuting this revision before this Court, which has already caused enough hardship. As per the calculation he has

already faced 45 days in custody. Penal provision under Section 304-A gives discretion to the Court, under which the prayer of applicant can be allowed and the sentence awarded to him can be modified. Though a road accident is result in death is an offence under IPC but it is an offence of different nature which has criminal as well as civil consequences and this kind of offence lacks *mens rea* considering all this factors, the prayer of applicant is hereby allowed. The order of sentence passed by the trial Court and upheld by the lower appellate Court is hereby set-aside and for the conviction against the applicant he is sentenced with imprisonment of a period of custody already undergone by him, the fine amount is enhanced to Rs. 2000/- on failure to pay the fine amount, applicant shall be required to undergo rigorous imprisonment of one month. The applicant is directed to appear before the trial Court on 22/12/2016 for compliance of the order passed by this Court.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE