

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 21 of 2016**

Puranlal Soni S/o Taman Soni aged about 20 years, R/o village Maath, Police Station Kharora, Civil and Revenue District Raipur, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through District Magistrate, Baloda Bazar, District Baloda Bazar, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri T.K. Jha, Advocate.
For the Respondent	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order on Board

29/02/2016

1. The Applicant has filed this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as he has been convicted vide judgment dated 29.8.2011 passed by the Judicial Magistrate, First Class, Baloda Bazar, District Baloda Bazar, Chhattisgarh. Learned trial Court convicted the Applicant under Sections 279, 338 of the Indian Penal Code (for short 'the IPC') and Section 3/181 of the Motor Vehicles Act, 1988 and sentenced to undergo simple imprisonment for one month, SI for five months and SI for one month, in default of payment of fine to further undergo additional SI for 5 days on each count, respectively with a direction to run all the substantive jail sentences concurrently.

2. The Applicant has challenged the judgment of conviction before the First Additional Sessions Judge, Baloda Bazar, Chhattisgarh. The First Additional Sessions Judge, vide judgment dated 17.3.2015 in Criminal Appeal No.6 of 2013, affirmed the judgment of conviction and sentence passed by the trial Court.

3. Against the judgment passed by the Appellate Court, the present Applicant has preferred the instant criminal revision before this Court stating *inter alia* that the trial Court as well as the First Appellate Court have erred in not appreciating the evidence in its right perspective. Despite many omissions and contradictions in the statements of the witnesses regarding material facts, the Applicant has been convicted and the same has been affirmed by the Appellate Court, thereby committed illegality and impropriety. In absence of any admissible independent witness of the incident, the Court below has erred in holding the Applicant guilty. After appreciation of the entire material available, the Applicant ought to have been acquitted by the trial Court and also by the Appellate Court. Hence, it is prayed that this revision may be allowed and the impugned judgment of conviction and sentence passed by the Courts below may be set aside.

4. Heard Learned Counsel for the parties and perused the impugned judgment passed by the trial Court and the appellate Court.

5. Learned counsel for the Applicant submits that the Applicant is in jail since two months and 20 days till today. He deposited the entire fine amount. He is the first offender with no previous criminal antecedents. As per allegations, at the time of incident, the Applicant was driving the motorcycle bearing registration No. C.G.-04-9734 in a rash and negligent manner and thereby caused grievous injuries to Complainant – Ishwari and at that time the vehicle was also not insured. On perusal of the statement of

Complainant – Ishwari (PW-1), it reveals that there are many infirmities and the same is required interference and as such the Courts below have erred in holding the Applicant guilty.

6. Learned Counsel for the Applicant further submits that in the instant revision, the Applicant is assailing only the quantum of sentence as he had already deposited the entire fine amount and remained in custody for more than half of the sentence awarded. Looking to the entire facts and circumstances, it is admitted that the Applicant had not run away from the spot. The incident is about six years old. He may be given an opportunity and he will not commit any similar offence. Hence, it is prayed that the instant revision may be disposed of by modifying the sentence awarded to the period already undergone by him.

7. Per contra, Learned Counsel for the State opposing the arguments advanced on behalf of the Applicant, submitted that the Applicant while driving the motorcycle rashly and negligently caused grievous injuries to Complainant – Ishwari including fracture of the left clavicle bone and at that time the vehicle was also not insured. Looking to the entire facts available, the judgment of conviction and sentence passed by the trial Court and affirmed by the Learned Appellate Court requires no interference. Hence, the instant criminal revision may be dismissed.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence and other facts of the case.

9. From perusal of the entire evidence adduced by the prosecution before the trial Court, so far as the judgment of conviction passed by the trial Court is concerned, though there are minor variations regarding facts and the variations in the statements of the complainant and eyewitnesses, it is

clear that the trial Court has not committed any illegality or impropriety in convicting the Applicant and the Appellate Court has also not committed any error while affirming the judgment of conviction passed by the trial Court. Hence, the same does not require any interference.

10. So far as quantum of sentence is concerned, the incident is about six years old. The Applicant is the first offender. The incident happened during market time. The Applicant has not attempted to run away from the spot. There is no past criminal record of the Applicant mentioned in the charge sheet filed against him before the trial Court. The Applicant is in jail since 9.12.2015 till today. Looking to the entire facts and circumstances of the case, in the considered view of this Court, awarding of sentence to the Applicant for the period already undergone by him would serve the purpose.

11. Consequently, looking to the entire facts and circumstances of the case, the judgment passed by trial Court regarding conviction and fine sentence which has been affirmed by the Appellate Court, require no interference. Consequently, the revision filed on behalf of the Applicant is partly allowed. Hence, the judgment of conviction and fine sentence is hereby affirmed. So far as substantive jail sentence i.e. simple imprisonment of five months awarded to the Applicant for the offence under Section 338 of the IPC is concerned, the same is reduced to the period already undergone by the Applicant. However, substantive jail sentences awarded to the Applicant for the offences under Section 279 of the IPC and Section 3/181 of the Motor Vehicles Act are also affirmed. The applicant is in jail since 9.12.2015. He be released forthwith if not required in any other case. The copy of the order may be produced before the trial Court for compliance.

12. Registrar (Judicial) is also directed to transmit immediately copy of this judgment to concerned trial Court through usual and fax modes for compliance.

Sd/-

Chandra Bhushan Bajpai
Judge