

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Revision No. 268 of 2004**

**Judgment reserved on : 11.11.2016**

**Judgment delivered on : 18.11.2016**

- Shailu @ Shailendra Kumar Rungta, aged about 42 (37) years, son of Late Shri Madanlal Rungta, Resident of Mohara, Rajnandgaon

**---- Applicant**

**Versus**

- State of Chhattisgarh

**---- Respondent**

---

For Applicant : Shri PKC Tiwari, Senior Advocate  
with Shri Kripesh G Kela, Advocate

For Respondent/State : Shri Sanjeev Pandey, GA

---

**Hon'ble Shri Justice Anil Kumar Shukla**

**CAV Judgment**

1) This revision is directed against the judgment dated 29.04.2004 by which learned Additional Sessions Judge, Rajnandgaon in Criminal Appeal No.137 of 2003 has confirmed the judgment of conviction and order of sentence awarded by the Judicial Magistrate First Class, Rajnandgaon in Criminal Case No.159 of 2002 on 04.12.2003 and convicted the applicant for committing the offence punishable under Section 304-A of the IPC, sentenced him to undergo RI for two years and to pay fine of Rs.2,000/-, in default of payment of fine, to further undergo RI for six months.

2) Judgment is challenged on the ground that without any clinching evidence, the Court below has convicted and sentenced the applicant as aforementioned.

3) Prosecution story in brief is that present applicant is owner of the Rungta Poha mill. He got dug one open pit without a hoop for keeping the dirty water of the said mill in his area. On 08.02.1997, one child, aged about two and half years boy, namely, Daduram died by drowning in that unsafe open pit. Proceedings regarding panchnama (Ex.P/4) and post-mortem of the deceased were conducted. Spot map was prepared vide ExP/8, dead body of the deceased was sent for autopsy. Dr CS Mahobe conducted post-mortem of the deceased and submitted his report vide Ex.P/11. FIR was registered vide Ex.P/9 and after investigation, the applicant has been arrested.

4) I have heard learned counsel for the parties, perused the judgment impugned, copies of statements of the witnesses and other documents relevant to the present case.

5) After arguing at length, learned Senior Advocate did not take any specific plea in the case. However, he has stated that the applicant was falsely implicated in the matter. No defence evidence was adduced. He further submitted that the applicant is not challenging his conviction, rather he only prays to reduce his sentence to the period already undergone, as he has been facing trial since the date of occurrence, i.e.08.02.1997. He was in jail for a week and has been granted bail by this Court on 06.05.2004. He placed reliance upon the order passed by the Apex Court in the matter of **Parkash Chandra Agnihotri Vs State of Madhya Pradesh**, 1990 (Supp) SCC 764.

6) On the other hand, learned State counsel opposed the revision and submitted that the appellate Court has rightly confirmed the judgment of the trial Court and supported the impugned judgment.

7) It is clear that the applicant is owner of the Rungta Poha mill; there is one open pit without a hoop for keeping the dirty water of the said mill; and on 08.02.1997, a child aged about two and half years boy, namely Daduram died by falling in that open pit. Present applicant has been granted bail on 06.05.2004 by this Court and has been facing trial since the date of the incident, meaning thereby, the applicant is under trial for about 19 years till now.

8) So far as the sentence is concerned, the applicant has been facing trial for 19 years till now and the incident took place in the year 1997. The Apex Court in the matter of **Parkash Chandra** (supra), has held that 18 years after the date of occurrence it is inadvisable to send the accused to imprisonment after such delay, thus, sentence is converted into fine payable to parents of the victim.

9) Considering all the facts and circumstances of the case, in my view, it would be rather harsh to send the applicant to jail after 19 years of the occurrence.

10) In the result, the revision is partly allowed. The judgment of conviction against the applicant under Section 304A IPC by the Courts below is hereby maintained. So far as sentence part is concerned, since the applicant has already undergone jail sentence

for a period of a week; the offence was committed on 08.02.1997; and further that the case remained pending for more than 19 years, the applicant is sentenced to the period already undergone by him. However, the applicant is further required to pay a fine of Rs.5,000/-. The sentence is thus converted to additional fine of Rs.5,000/-. On realisation, the amount shall be paid to the father of deceased child Daduram within a month from the receipt of this order. In default of payment of fine amount, the applicant shall undergo imprisonment for a period of six months.

11) The applicant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a period of six months in view of the provisions contained under Section 437-A of the Cr.P.C.

Sd/-  
(Anil Kumar Shukla)  
JUDGE