

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 492 of 2007

1. Ravindra Mishra son of Shivshankar Mishra, aged about 53 years, R/o MIG-63, Shivaji Nagar -Korba, CG
2. Lala Ram son of Firat Ram Kewat, aged about 38 years, R/o Kothari, Chowki – Urga, PS Kotwali, Korba, District Korba, CG

---- Applicants

Versus

1. The State of Chhattisgarh through Station House Officer, PS Kotwali, Korba, CG

---- Respondent

For Applicants	:	Shri BMK Bajpai, Advocate
For Respondent/State	:	Smt. Smita Ghai, PL

Order on Board by Pritinker Diwaker, J

26/04/2017

This revision petition has been filed by the applicants against the judgment and order dated 17.9.2007 passed by Sessions Judge Korba, in Criminal Appeal No. 33/2005 affirming the judgment and order dated 14.12.2005 passed by Chief Judicial Magistrate, Korba in Criminal Case No. 1102/2002 convicting the applicants for the offence punishable under Sections 304-A and 337 IPC and sentencing each of them to undergo RI for six months with fine of Rs. 500/- u/s 304-A and pay fine of Rs. 300/- u/s 337 IPC, plus default stipulation.

2. Case of the prosecution in brief is that applicant Ravindra Mishra was the contractor and the mining work was to be carried out under the supervision of applicant Lala Ram. It is alleged that on 31.5.2002 about 8-10 labourers were engaged in excavation work for taking out stone from Thakurdia hillock situate at

Ghatadavari and while the said work was being carried out, there was a landslide on account of which one Kalesh Ram suffered injuries whereas the other one namely Brijlal got buried to death. Allegation against the applicants herein is that they did not provide the safety equipments to the workers and it is for their negligence only the mishap took place resulting in the death of Brijlal and injuries to Kalesh Ram. Offence under section 304-A read with Section 34 IPC was registered against the applicants and after investigation the charge-sheet was filed by the police. Trial Court however framed the charge against them for the offence under Sections 304-A and 337 IPC.

3. In order to hold the accused/applicants guilty, the prosecution examined as many as nine witnesses. Statements of the accused/applicants were also recorded under Section 313 of the Code of Criminal Procedure where they denied their guilt and pleaded innocence and false implication in the case. One Dwarika Prasad (DW-1) has also been examined by the defence in support of its case.

4. The trial Court, after considering the material available before it, convicted the accused/applicants under Sections 304-A and 337 IPC which has subsequently been affirmed by the lower appellate Court in appeal. Hence this revision.

5. Counsel for the applicants submits that he is not pressing this revision on merits and confining his argument to the sentence part of the judgment impugned only. He submits that as the applicants have already remained in jail for a period of 10 days, the incident took place about 15 years back and the applicants are ready and willing to adequately compensate the family members of the

deceased as also the injured himself, a lenient view may be taken and their sentence may be reduced to the period already undergone. He placed his reliance on the decision of the Supreme Court in the matter of **Bhalachandra Waman Pathe v. The State of Maharashtra** reported in **1968 ACJ 38**.

6. Counsel for the respondent/State however supports the judgment impugned and submits that the findings recorded by both the Courts below are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the documents on record.

8. Pataitram (PW-1) – the labourer who at the relevant time was working with deceased Brijlal and injured Kalesh Ram, has stated that the applicant Ravindra Mishra was the contractor whereas the mining work was being carried out under the supervision of applicant Lala Ram. He has stated that on the date of incident at about 10 AM on hearing the cries of Rambai, he along with the co-workers Shyam and Ramkhilawan rushed to the spot and saw that there was landslide in the mine and Brijlal and Kalesh Ram were under the earth. He has stated that before being taken out, Brijlal died and Kalesh Ram suffered injury in his chest and fracture of leg. He has further stated that adequate safety arrangements were not made by the applicants. Smt. Rambai (PW-2) has also made almost similar statement like Pataitram (PW-1). Ramkhilawan (PW-4) – the co-worker has also supported the case of the prosecution stating that adequate safety measures were not followed by the applicants. Shyamlal (PW-5) though has turned hostile yet he has stated that proper safety arrangements were not there by the

applicants. Dr. P.S. Sisodia (PW-6) is the witness who conducted postmortem examination on the body of deceased Brijlal and gave his report Ex. P-3 stating that he noticed abrasions on his back, fracture in radius ulna and bruises in left elbow, knee and legs. Dr. M.S. Paul (PW-7) is the witness who medically examined injured Kalesh Ram and gave his report Ex. P-4 stating that he noticed contusion on forearm and incised wound in the scapula, and had advised for x-ray. K.B. Singh (PW-8) is the investigating officer who has duly supported the case of the prosecution. Kaleshwar (PW-9) is the injured who has described the incident which had taken place for want of adequate safety arrangements, in which he received injuries including fracture of leg.

9. Material on record thus clearly establishes the guilt of the accused/applicants where they utterly failed in providing adequate safety equipments to the labourers for which they could not endure the impact of landslide in the mines which ultimately resulted in the death of one and the injuries to the other, and thus committed the offence under Sections 304-A and 337 IPC. Witnesses examined by the prosecution have duly supported its case. Findings of both the Courts below are thus well reasoned and based on proper appreciation of the evidence of the witnesses. Being so, conviction of the applicants is hereby maintained. However, looking to the fact that the applicants have already remained in jail for a period of 10 days, that the incident took place about 15 years back and that the applicants are ready and willing to compensate the injured and family members of the deceased, this Court deems it proper to reduce their sentence to the period already undergone. Order accordingly. They however are directed to pay Rs. 10,000/- each (total 20,000/-) to the injured and Rs. 40,000/- each (total 80,000/-)

to the family members of the deceased as compensation in terms of Section 357 of the Code of Criminal Procedure. Let this amount be deposited in the Court below within a period of four months from today. On such deposit being made, the Court below shall ensure disbursement as directed. Failure in so doing, will not fetch them any benefit of this order.

10. Revision thus allowed in part to the extent indicated above.

Sd/-
(Pritinker Diwaker)
Judge

Jyotishi