

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1053 of 2018

Arising Out of PS. Case No.-63 Year-2008 Thana- NARHATT District- Nawada

Manoj Singh @ Manoj Kumar Singh S/o Yamuna Singh, R/o Vill.- Khanma,
P.S.- Narhat, District- Nawada.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Ram Prasad Singh, Advocate
For the Respondent/s : Mr. Parmanand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 18-12-2018

This revision application is directed against the judgment dated 18.7.2018 passed by learned Sessions Judge, Nawada in Cr.Appeal No. 32 of 2017 whereby and whereunder he has dismissed the appeal filed by the petitioner by which the judgment and order dated 4.7.2017 passed by learned A.C.J.M., VI, Nawada in Trial No. 909 of 2016, arising out of Narhat P.S.Case No. 63 of 2008 was upheld convicting the petitioner under Sections 279 and 304A of the Indian Penal Code and sentencing him to undergo S.I. for three months and fine of Rs.1000/- for offence under Section 279 IPC and also S.I. for two years and fine of Rs.2000/- for the offence under Section 304A IPC and in default of payment of fine he has further been directed to undergo S.I. for additional three months and further ordered that all the sentences shall run concurrently.

2. Prosecution case, in short, is that while father of informant was going to his house on road by foot with his son Santosh Kumar and nephew Jitendra Kumar, who were also coming from village Olipur, and when he reached near north of Shree Krishna Dwar, a tractor having registration No. BR-27A-2788 driven by the petitioner rashly and negligently dashed his father, who fell down and badly injured



and died at the spot and the driver-petitioner fled away along with his tractor towards his village.

3. On the basis of aforesaid fardbeyan, Narhat P.S.Case No. 63 of 2008 under Sections 279 and 304A IPC was registered and after investigation charge sheet has been submitted, cognizance was taken and during trial altogether seven witnesses have been examined on behalf of prosecution, they are PW 1 Meena Devi, PW 2 Santosh Kumar, PW 3 Binod Kumar, the informant, PW 4 Anil Kumar, PW 5 Jitendra Kumar, PW 6 Arvind Kumar Sinha (M.V.I.) and PW 7 Dr. Ram Chandra Prasad, who has conducted post mortem examination of deceased. I.O. has not been examined.

4. In his defence the revisionist-petitioner denied the allegation levelled against him and also alleged the false implication in this case due to village politics.

5. Learned A.C.J.M. after conclusion of trial has convicted the revisionist-petitioner under Section 279 and 304A IPC and sentenced him as stated above. Being aggrieved by the same, petitioner preferred Cr.Appeal No. 32 of 2017 before the learned Sessions Judge, Nawada which was dismissed on hearing both the parties affirming the conviction and sentence passed by learned trial court.

6. Being aggrieved by the aforesaid judgment of trial court as well as appellate court, this present revision application has been filed by the petitioner on the ground that there is no independent witness in this case and moreover PW 4 has not taken name of the petitioner, rather he has named one Surendra Singh as Driver but learned Magistrate as well as learned appellate court has not considered this aspect of the matter and further I.O. has not been examined and as such place of occurrence has not been established and on that grounds learned counsel for the petitioner has assailed the judgment of appellate court as well as judgment and order of learned trial court and lastly it has been submitted that petitioner is in custody for four months and occurrence is of 10 years back and as such a lenient view may be taken and sentence may be reduced to the period already undergone by him in custody.



7. Heard learned APP for the State who has supported the judgment of guilt passed by learned trial court which was affirmed by learned appellate court in appeal.

8. Having heard both sides and on perusal of the record it appears that FIR itself shows that revisionist-petitioner was driving the tractor rashly and negligently and dashed father of the informant, causing his death at the spot and Doctor (PW 7), who has been examined in this case, has found several injuries on the person of deceased and stated that cause of death is due to shock and haemorrhage due to the following injuries :

- (i) Crushed flattening left side of the face. Blood clots present in sub-cutaneous tissue and mussels, facial bone of left side fractured.
- (ii) A bruise at upper region of left soldier.
- (iii) Crushed injury of left leg from below knee to ankle, skin, mussels were tore and bones of leg are fractured.
- (iv) Bruise right knee in front, 1-1/2" x 1-1/4".
- (v) Both bones of Pt. Leg below knee were fractured on the section of body ever injuries confirmed.

and even to the suggestion he has stated that this type of injury could not be made due to fall on the ground. Apart from that, PW 1 is not an eye-witness to the occurrence, rather she is hearsay witness. PW 2 is son of deceased and according to FIR he has categorically named this petitioner and stated that he could not recollect number of tractor but petitioner was driving the tractor and Jamuna Singh is the owner of the tractor and thereafter he has reported the matter to the police and even in his cross examination he has stated that he saw the tractor for the first time from a distance of five bamboos away from him and that also disclosed that he is an eye-witness to the occurrence. PW 2 has also named this petitioner as he was driving the tractor and stated that tractor dashed the deceased and even in his cross examination he has stated that on hulla he along with his brother were coming he found his father in badly injured condition. PW 4 though has not named this petitioner but stated the name of Surendra Singh. PW 5 has also named this petitioner as the driver and stated that the tractor dashed and caused death of deceased. He has also stated that his uncle



was fallen on the left side of the road. PW 6 is MVI and he has found that there was no damage in the tractor and break was properly working.

9. Considering the aforesaid evidence it appears that Pws 2, 3 and 5 have named this petitioner as driver of the tractor, who dashed the tractor to the deceased. PW 4 has not named this petitioner but PW 4 does not appear to be an eye-witness to the occurrence, whereas PW 2 has named this petitioner in the FIR and PW 5, who is nephew of the informant, has also named this petitioner and in spite of cross examination, their presence at the place of occurrence cannot be doubted.

10. Regarding submission of learned counsel for the petitioner that no independent witness has been examined is concerned, at the present days it is very difficult to find out any independent witness who has come to depose in court in a case of road accident or anything else to face harassment before police and court, as such evidence of witnesses cannot be brushed aside only because of the fact that there is no independent witness examined in this case and death of the deceased appears to be injuries caused to him and rightly the MVI disclosed that there was no fault in the tractor and as such aforesaid fact clearly shows that death was caused due to rash and negligent driving of the tractor by the petitioner.

11. Learned counsel for the petitioner has also cited a decision of this Court in the case of **Indradeo Yadav vs. The State of Bihar : 2013(3) PLJR 627** in support of his contention stating that in a similar case accused had been acquitted. From perusal of the said judgment it appears that in that case identification of the petitioner was itself doubtful and as such revision application was allowed but in the present case, witnesses had identified the petitioner and they are eye-witnesses to the occurrence.

12. Considering the aforesaid facts and circumstances, I find that there is no illegality in the conviction of the revisionist-petitioner under Section 279 and 304A IPC. So far sentence is concerned, petitioner has been sentenced S.I. for three months under Section 279 IPC and further S.I. for two years under Section 304A IPC



and submission of learned counsel for the petitioner is that he is in custody since 23.8.2018 and occurrence is of the year 2008.

13. Considering the aforesaid aspect of the matter and considering the fact that case is of 10 years back, as such the sentence under Section 304A IPC is reduced to S.I. for one year and fine and sentence of Sections 279 and 304A IPC shall remain intact.

14. With the aforesaid modification in sentence, this revision application is dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
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