

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.787 of 2018

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1. Sipu Upadhyay, S/o Sitaram Upadhyay, R/o Village- Ekauni, P.S. Dumraon & District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar

For the Respondent/s : Mr. Sri Ram Bilash Roy Raman

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 30-10-2018 Heard the parties.

2. The instant revision application has been filed by the petitioner against the order dated 18.04.2018 passed by Sri Arun Kumar Srivastava, Presiding Officer, F.T.C. 1, Buxar in Cr. Appeal No. 14 of 2017, by which he has affirmed the judgment of conviction and order of sentence dated 28.01.2017 passed by the Trial Court, by which, the petitioner was convicted under Sections 279, 337 and 304A of the Indian Penal Code and was sentenced to undergo R.I. for two years under Section 304 of the Indian Penal Code with a fine of Rs. 5,000/- and in default of payment of fine, further sentence of six months and he has further been sentenced to undergo R.I. for six months under Section under Section 279 of the Indian Penal Code and R.I. for three months under Section 337 of the Indian Penal Code.



Prosecution case as per the statement of Sujit Kumar brother of the deceased in short is that on 27.04.2006 at about 11.30 A.M., he along with his younger brother was going to their house from the school on bicycle and the bicycle was being ridden by his younger brother Ranjit and when they reached village Bankat near Kali Mandir, suddenly, the petitioner came riding on motorcycle and dashed their bicycle due to which, the bicycle got damaged and they received injuries. Thereafter, the petitioner took them to the hospital for treatment and later on the younger brother of the informant died. It is alleged that the incident took place due to negligent and rash driving of the motorcycle driver.

On the basis of the above, Dumraon P.S. Case No. 87/06 was registered against the petitioner. Charge-sheet was submitted under Sections 279, 337, 338 and 304A of the Indian Penal Code. Cognizance of the offence was taken.

During trial, prosecution got examined eight witnesses. After trial, the petitioner was convicted under Sections 279, 337 and 304A of the Indian Penal Code and was sentenced in the manner aforesaid on the basis of evidence of PW4, who is the informant and brother of the deceased and claimed himself to be eye-witness of the occurrence and also on the basis of the evidence of PW1, PW2 and PW3, as they also claimed themselves to be eye



witness of the occurrence and further post mortem report also shows that deceased died due to motorcycle accident.

Against the judgment of Trial Court, the petitioner preferred Criminal Appeal No. 14 of 2017 and the Appellate Court after considering the materials available on record dismissed the appeal of the petitioner on the ground that the factum of accident is not denied, in which, the brother of informant lost his life and the doctor also opined that the death has been caused due to rash and negligent driving by the petitioner.

Aggrieved by the impugned orders, the petitioner has preferred the present revision application.

Contention of learned counsel for the revisionist – petitioner is that there is no finding available on record to show that the incident took place due to rash and negligent driving by the petitioner and in absence of that conviction of the petitioner is not sustainable in the eye of law. Further submission is that it was the petitioner himself, who after the accident took the informant and his brother to the hospital for their treatment.

Learned counsel for the State on the other hand submitted that there is sufficient material to show that the death of the deceased was caused due to rash and negligent driving by the petitioner and, therefore, there is no infirmity in the impugned



judgments.

Having gone through the impugned judgments and also considered the submission of the learned counsels. It appears that P.W. 4 is the brother of the deceased and he was also going along with the deceased on bicycle, which was dashed by the petitioner and he and the deceased was taken to hospital, where, the deceased succumbed to his injuries. P.W. 1, P.W. 2 and P.W. 3 also claims themselves to be eye witness of the occurrence and in spite of cross examination, there presence cannot be doubted at the place of occurrence. Furthermore, the evidence of doctor also shows that the death has caused due to motorcycle accident and further there is no cross- examination of any witness denying the factum of accident caused by the revisionist petitioner. In such view of the matter, I find no merit in this revision application, so far conviction of the petitioner convicted under Sections 279, 337 and 304A of the Indian Penal Code is concerned.

However, so far question of sentence is concerned, it has been submitted by learned counsel for the revisionist – petitioner that it is his first offence and there is nothing available on record that he has ever been made accused in connection with any other case. Moreover, the evidence of P.W. 4 itself shows that it is the petitioner, who brought him and deceased to hospital for their



treatment and, therefore, a lenient view may be taken and he may be given the benefit of probation of offenders act or in alternative his sentence may be reduced to the period already undergone by him in judicial custody as he has remained in custody for one and half months.

Having considered the facts and circumstances of the case and also considered the fact that it was the petitioner, who brought P.W. 4 and the deceased to the hospital for treatment and also considering the age of the petitioner, to my opinion, petitioner deserves the lenient view in the matter. As such, his sentence under Section 304A and 279 of the Indian Penal Code is modified to the extent that he will undergo R.I. for three months under Sections 304A and 279 of the Indian Penal Code. So far his sentence under Section 337 of the Indian Penal Code is concerned, the same is hereby affirmed.

With the above modification in sentence, this revision application stands dismissed.

(Vinod Kumar Sinha, J)

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