

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.52 of 2018

Arising Out of PS. Case No.-116 Year-2007 Thana- PIPRA District- East Champaran

Rajesh Mahto, S/o Late Asharfi Mahto, resident of village- Pipra Chanp Tola,
P.S.- Pipra, Dist.- East Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Sangeet Deokuliar, Adv.
For the Respondent/s : Mr. Bharat Bhushan (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 08.05.2019

Heard parties.

2. This revision application has been filed for setting aside the judgment dated 14.07.2017 passed in Criminal Appeal No. 09 of 2013 by which the learned 12th Additional Sessions Judge Motihari, East Champaran has dismissed the appeal of petitioner and has affirmed the judgment of conviction and order of sentence dated 19.01.2013 passed by learned Judicial Magistrate 1st Class, Motihari Sadar, in Trial No. 442 of 2013/G.R. No. 1947/07 (arising out of Pipara P.S. 116 of 2007) by which the learned trial court has convicted petitioner under Section 279, 337, 304(A) of Indian Penal Code and sentence to undergo rigorous imprisonment for two years for offence under Section 304 A and simple imprisonment for 6 months for offences under Section 279 and 337 of the Indian Penal Code. Both sentences to run



concurrently.

3. Prosecution case is based upon a written complaint lodged by informant Mithilesh Kuamr Singh before Pipra Police alleging that on 28.08.2007 at about 10:30 P.M., his niece Neha Kumari (deceased) had gone to attend call of nature on the road and in the meantime a Jeep dashed against her resulting in spot death and thereafter said Jeep fled away however villagers on the motorcycle chased jeep and caught the petitioner and on basis of said fardbeyan Pipra P.S. Case No. 116 of 2007 was registered for offences under Section 279, 337, 338 and 304 (A) of the Indian Penal Code against the petitioner. The case was investigated by the I.O. and after investigation chargesheet has been submitted against the petitioner for offences under Section 279, 337 and 304(A) of the Indian Penal Code and court took cognizance of the offence and on 11.04.2008 the substance of accusation was explained to petitioner to which he pleaded not guilty and claimed to be tried.

4. Prosecution has examined altogether two witnesses out of whom

P.W.1 Mithilesh Kumar Singh

P.W.2. Chandra Bhushan Singh

5. P.W.1. Informant Mithilesh Kumar Singh in his



deposition has stated that he saw the Jeep its registration number BR-05P-4197 and when Jeep was fleeing away he chased the said Jeep with other villagers by cycle and motorcycle and apprehended the accused along with vehicle. There was no other vehicle plying on the road and as such they were able to locate and stop the fleeing Jeep and caught the accused on said Jeep.

6. P.W.2 Chandra Bhushan Singh is an independent witness who has also deposed that at the time of occurrence he was at Kalyanpur market when Jeep dashed against the girl and started running away towards Kalyanpur market and then villagers chased the Jeep and caught the driver with jeep. He came to know that the niece of the informant subsequently died.

7. The trial court on appreciation of evidence of witnesses who is the informant and maternal uncle of the deceased and the independent witness has found the version of P.W.1 and P.W. 2 to be reliable and found that there was nothing in their cross-examination to disbelieve them.

8. The Trial court has held that the prosecution has been able to prove that niece of the informant met an accident with the jeep and subsequently died and after accident the driver



tried to flee away with the Jeep but he was apprehended and caught by the villagers and brought to the police station and found the charges against petitioner to be proved and convicted him under Section 279, 337 and 304(A) of Indian Penal Code and sentence to undergo rigorous imprisonment for two years for offence under Section 304(A) and sentence simple imprisonment of 6 months for offence under Sections 279 and 337 of Indian Penal Code. Both the sentences shall run concurrently.

9. Against the judgment of conviction and sentence, petitioner preferred Criminal Appeal being Criminal Appeal No. 09 of 2013 which was heard by 12th Additional Sessions Judge, East Champaran, Motihari and dismissed by his order dated 14.07.2017 and the Appellate court affirmed the judgment of conviction and order of sentence passed by the Trial court and aggrieved by which present revision has been filed on behalf of petitioner.

10. The trial court as well as Appellate Court on the basis of appreciation of evidence has come to finding that the deceased girl met an accident as a result of which she died from the Jeep which was being driven by the petitioner however from the evidence on record there is nothing to



suggest that the Jeep was being driven by the petitioner in a rash and negligent manner and due to his negligent act victim met an accident and died. The prosecution has not been able to prove that the accused was driving the Jeep in a rash and negligent manner as a result of which the victim met an accident and died on account of said accident. Even the I.O. and doctor has not been examined to prove the post mortem report in order to establish that the deceased died due to accidental injuries.

11. In the facts and circumstances of the present case, it cannot be said that the prosecution has been able to establish charges under Section 304(A), 279 and 337 of the Indian Penal Code against petitioner beyond reasonable doubt as such the judgment of conviction and order of sentence is not sustainable and accordingly set aside. Petitioner who is on bail is discharged from the liability of his bail bond.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

