

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.753 of 2011**

- Yagyavalkya @ Ballu Sahu, aged about 30 years, S/o Lt. Mangtaram Sahu, R/o Village Serikhedi, P.S. - Mandir Hasoud, District – Raipur, Chhattisgarh

---- Applicant**Versus**

- The State of Chhattisgarh, Through the Police Station – Mandir Hasoud, District – Raipur, Chhattisgarh

---- Respondent

For Applicant	:	Shri J.K. Gupta, Advocate on behalf of Shri Devershi Thakur, Adv.
For Respondent	:	Shri Anand Verma, Dy. G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor**Order on board****25.02.2021**

FIR Ex-P/6 registered on the basis of merg intimation Ex-P/3 given by Mohan Sahu (PW-4) goes to show that on 10.12.2009 his two year old son died on account of drowning in the septic tank of the accused/applicant which was full of water upto the surface level. On the basis of FIR an offence under Section 304 (A) IPC was registered against the accused/applicant and the investigation resulted in charge-sheet being laid and the charge framed for the said offence.

2. Learned Magistrate vide its judgment dated 25.08.2011 passed in Criminal Case No.969/2011 held the accused/applicant guilty under Section 304 (A) IPC and sentenced him to undergo

RI for two years. On appeal being filed there-against, the conviction of the accused/applicant remained as it is but the sentenced was reduced to RI for three months with payment of fine of Rs.5,000/- to be paid to the father of the deceased child, by judgment impugned dated 27.12.2011. Hence this revision.

3. Heard counsel for the parties and perused the material available on record.

4. From the evidence of Mohan Sahu (PW-4) and Bhojbai Sahu (PW-2) – the parents of the deceased child, it is apparent that the accused/applicant had got a house constructed adjacent to their house but in spite of several reminders, he did not cover up or erected any fencing around the septic tank dug by him which at the relevant time was filled with water upto the surface level. It is also clear from their evidence that such an incident had occurred earlier also but that time the child was fortunate enough to survive the said tragedy. However, the accused/applicant did not take any care in ensuring the safety of the people by covering up the septic tank or putting any fencing around the same. Apart from PW-4 and PW-2, there are other witnesses also such as Sevak Ram (PW-1), Mangli Bai (PW-3), Gaurav Sahu (PW-6) and Bhagwat (PW-7) who have categorically stated that no safety measures were undertaken by the accused/applicant for covering up the septic tank or putting a fencing around that. PW-2 and PW-7 who had been to the Hospital at Mandir Hasaud have also stated that after the child being taken to the hospital, he was declared brought dead. The septic tank of the accused/applicant

was prone to any mishap as the spot being a thoroughfare was open for public movement for any time but the carelessness of the accused/applicant was never paid any heed by him. Evidence of Dr. Ulhas Gonade (PW-5) also makes it clear that the cause of death of deceased child was suffocation as a result of drowning and that both his lungs had swollen due to excessive water. It was the bounden duty of the accused/applicant to take all possible measures to the safety of one and all and this indolent act in leaving open the tank with water upto surface level makes him liable for conviction under Section 304 (A) IPC, and that being so both the Courts below by way of concurrent findings have been fully justified in holding him guilty for the same. No illegality or infirmity in the conviction part of the judgment impugned is noticeable to this Court warranting any interference therewith in this revision. It is hereby maintained.

5. As regards sentence, of course the recklessness of the accused/applicant has claimed one blooming life, but at the same time being mindful of the interest of justice, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone by imposing a little heavier fine to be paid to either of the parents of the deceased child. Accordingly, the substantive sentence imposed on the accused/applicant is reduced to the period already undergone but he would be required to pay a fine of Rs.10,000/- in place of Rs.5,000/- as has been directed by the lower Appellate Court to be payable to either of the parents of the deceased child being Mohan Sahu (PW-4) and Smt. Bhojbai Sahu (PW-2). This benefit of reduction would be

available to the accused/applicant only after the enhanced fine amount is deposited in the Court.

6. The revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge