

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.56 of 2023

Arising Out of PS. Case No.-253 Year-2001 Thana- KAKO District- Jehanabad

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Mahendra Kumar Son of Boudh Prasad Resident of Village- Manihari @
Maniyari, P.O. and P.S.- Kako (Bhelawar O.P.), District- Jehanabad

... .. Petitioner/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.

For the Respondent/s : Mr. Ram Priya Sharan Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 21-03-2023

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

The present Cr. Revision Application has been filed
against the order dated 28.07.2022 passed in Kako P.S. Case No.
253 of 2001, G.R. No. 1837 of 2001, T.R. No. 417 of 2022
whereby the petitioner was convicted under Sections
279/304(A) of the Indian Penal Code and was sentenced to
undergo rigorous imprisonment for a period of 6 months for the
offence punishable under Section 279 of I.P.C. and further
convicted for rigorous imprisonment for a period of 2 years for
the offence punishable under Sections 304(A) of I.P.C. It has
also been directed that both the sentences were ordered to be run
concurrently and the judgment dated 09.11.2022 passed by

Sessions Judge, Jehanabad in Criminal Appeal No. 35 of 2022 has also been challenged, by which, the criminal appeal of petitioner challenging the order dated 28.07.2022 has been dismissed.

Learned counsel for the petitioner submits that as per the prosecution story the informant has given information on 21.10.2001 at about 5.30 p.m. that at about 4.30 p.m. the informant and his son Shailendra Mahto aged about 18 years were coming from Kako block. As soon as both of them reached near the *Pulia* towards east of Village-Auliachak, the truck bearing Registration No.- M.P. 24C 4894 which was being driven rashly and negligently dashed the son of informant, as a result thereof his son fell down and the truck ran over his son who died on spot instantly. The specific allegation is against the driver that he dashed the son of informant, as a result of rash and negligent driving.

Learned counsel for the petitioner fairly submits that for the said information F.I.R. bearing Kako P.S. Case No. 253 of 2001 dated 21.10.2001 under Sections 279/304(A) of I.P.C. was registered, after investigation charge sheet has been submitted under Sections 279/304(A) of I.P.C. subsequently charge has also been framed under the said provisions of the

Indian Penal Code and after charge trial was conducted, in which, petitioner was convicted and above stated sentence were imposed upon the petitioner. Being aggrieved and dissatisfied with the order dated 28.07.2022 passed by A.C.J.M.-III, Jehanabad, the petitioner has preferred criminal appeal bearing Criminal Appeal No. 35 of 2022 against the said judgment of conviction and order of sentence dated 28.07.2022 in Kako P.S. Case No. 253 of 2021. Counsel for the petitioner submits that in the appeal, the order passed by the trial court was affirmed and the said criminal appeal was dismissed on merit, thereafter, he has preferred the present Cr. Revision under Section 397 read with Section 401 of Cr.P.C.

It is well settled in law that the scope of criminal revision is limited and the Court has to look into the correctness, legality and propriety in the judgment/order passed in appeal.

Counsel for petitioner has raised two points, the first point he has raised is that the informant of the case has not been examined and the second point is that the Doctor who has conducted the post-mortem has also not been examined. He further submits that for the purpose of proving the case under Sections 279/304(A) of the I.P.C. these are the legal requirement to fulfill the ingredients under the provisions of Indian Penal

Code, as such, the said order passed by the original Court as well as the order passed by the trial Court required interference and may be treated as illegal order.

Learned counsel for the State vehemently opposes for the same and submits that from the judgment of the original Court, it transpires that F.I.R. has been exhibited. There are two witnesses on the basis of which the present case has been decided. From the statement of those two witnesses, it transpires that they are the eye witness of the said case. One witness has categorically stated about the informant that informant has written the F.I.R. in his presence and put his signature. The said witness has also exhibited the F.I.R. which is Exhibit-1 to the case. Counsel further submits that it is nowhere that both witnesses are not a prudent person. Specific allegation of the informant is there that the victim died on spot and these two witnesses were present and they have also supported that the victim died on spot.

This Court is of the view that for the purpose of ascertainment that whether a person is died or alive, there is no need of any expert. Any prudent man can identify that a person is dead or alive particularly when both witnesses have narrated that due to this accident the victim died on spot, then there is no

need of medical expert in this matter as per the view of this Court.

In the light of above said circumstances, this Court is not inclined to interfere in the decision of the Original Court which has been affirmed by the Appellate Court and the Criminal Revision is hereby dismissed.

It is important to mention here that concept of victimology has been inserted in the criminal jurisprudence by virtue of Criminal Amendment, 2008 notified in the Gazette in the year 2009 and after the insertion of the philosophy of the victimology in the criminal jurisprudence in the Indian Criminal Justice System, it is now an essential part of the Judicial System and every Court must have to decide in every criminal case that who is victim and for what compensation he is entitled for. Here in the present case there is no whisper on the point of victim or compensation particularly when conviction is there. It is due to this reason, I am hereby deciding that so far as the conviction of the accused person is concerned, there is no need of any interference but on the point of holding that who is victim and for what compensation the victim is entitled for. I am hereby directing the Original Court i.e. A.C.J.M.-III, Jehanabad that the said Court shall issue notice to the victim as defined under

Section 2(wa) of the Code of Criminal Procedure, 1973 to decide on two questions:-

- (a) who is the victim of this case, and
- (b) for what compensation the victim is entitled for.

The A.C.J.M.-III, Jehanabad shall decide on these two points within six weeks from the date of receiving of the order.

The office is directed to communicate one copy of the order to the A.C.J.M.-III, Jehanabad for compliance of the observation passed by this Court and communicate after ten weeks from the date of passing of this order.

With these observations, the present Cr. Revision stands dismissed.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	