

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No 498 of 2024**

Arising Out of PS. Case No.-303 Year-2005 Thana- MAKHDUMPUR District- Jehanabad

Ajit Kumar Son of Sri Shyama Kant Sharma Resident of Village - Ekkil, P.S.-  
Makhdumpur, District - Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gopal Narayan Mishra Son of Sidhnath Mishra Resident of Village -  
Manjhiawan, P.S.- Kurtha, District - Arwal.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Shashi Bhushan Singh  
For the Respondent/s : Mr.Jai Narain Thakur

**CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL**

**ORAL JUDGMENT**

**Date : 09-09-2024**

With consent of both the parties, this revision petition has been heard finally.

2 This revision petition has been preferred by the petitioner (accused) being aggrieved with the judgment dated 22.04.2024 passed by the learned Additional Sessions Judge II, Jehanabad in Criminal Appeal No 18 of 2021 whereby and whereunder the learned appellate Court affirmed the judgment dated 08.03.2021 passed by the learned Judicial Magistrate, 01<sup>st</sup> Class, Jehanabad in GR No 1831 of 2005, Trial No 512 of 2021 whereby and whereunder the learned Magistrate convicted the petitioner for the offence punishable under Sections 279 and 304A



of the IPC and sentenced him to simple imprisonment for six months and two years respectively with fine of Rs 1,000/- and Rs 5,000/- respectively.

3 According to the case of the prosecution, on 04.11.2005 about 9.15 am, the informant Gopal Narayan Mishra (PW 2) was going with his father and mother. When they were crossing through the left side of the road, a truck bearing Registration No BR25A 1921G came there and driver of the said truck rashly and negligently dashed the informant's mother who died on the spot. The driver of the truck fled away from the spot. The truck was caught hold by the public and matter was reported by the informant Gopal Narayan Mishra (PW 2). On the basis of said, FIR has been lodged and after completion of investigation, charge sheet was filed before the learned Magistrate. After conclusion of trial, the learned Magistrate convicted and sentenced the petitioner for the offence punishable under Sections 279 and 304A of the IPC, as mentioned in paragraph 1 of the judgment which has been affirmed by the learned appellate Court. Hence, this revision petition.

4 The learned counsel for the petitioner submits that, without being any evidence available on record, both the trial Court as well as the appellate Court erroneously came to the



conclusion that at the time of incident, the offending truck bearing Registration No BR 25A 1921G was driven by the petitioner herein and both the Courts below have wrongly convicted the petitioner for the said offence.

**5** Learned counsel for the State supported the judgments passed by the learned Courts below.

**6** I have heard learned counsel for the petitioner and perused the entire evidence adduced before the learned Magistrate.

**7** Before the trial Court, the prosecution has examined as many as four witnesses for establishing its case. Out of them PW 3 Balkeswar Sharma has not supported the case of the prosecution and has been declared hostile. PW 4 Dr Akhouri Vijay Kumar is the doctor who conducted the post mortem on the body of deceased Sunaina Devi.

**8** Perusal of the FIR clearly shows that in the FIR (Exhibit 1), the informant, i.e., PW 2 Gopal Narayan Mishra has only mentioned the fact that the accident had occurred from the truck bearing Registration No BR25A 1921G. According to the contents of the FIR, the driver of the offending vehicle was driving the vehicle rashly and negligently and due to that, the accident happened. However, in the FIR, it is mentioned that the driver of the offending vehicle fled away from the spot.



**9** PW 1 Sidhnath Mishra, the husband of deceased has supported the case of the prosecution. However, he categorically admitted that at the time of accident, the driver fled away from the spot and he did not see the driver of the offending vehicle. This fact has also been admitted by the informant Gopal Narayan Mishra (PW 2). However, in his cross examination, at the time of accident, he saw the driver of the offending vehicle and the said driver is the accused who is present before the Court at the time of recording his statement. Only on the basis of this part of evidence of this witness, the learned trial Court arrived at the conclusion that this witness had seen the driver of the offending vehicle and convicted the petitioner which has also been affirmed by the learned appellate Court.

**10** The above finding recorded by the trial Court, which has been affirmed by the appellate Court, is perverse and not in accordance with the evidence adduced before the trial Court. As mentioned in the FIR, which has been lodged by the informant PW 2 Gopal Narayan Mishra clearly shows that the driver of the offending vehicle fled away and he was not seen by PW 2. In spite of that, PW 2, before the trial Court, stated that driver of the truck was seen by him. Thus, it is clear that he developed his statement during the course of recording his statement. Therefore, on this



ground alone, his statement appears to be suspicious and not reliable. Apart from that, there is no any legal evidence available on record which establishes that the petitioner was the person who was driving the offending vehicle at the time of accident.

11 As discussed above, I am of the view that the conviction of the petitioner for the offence punishable under Sections 279 and 304 of the IPC, as imposed against him by the learned trial Court and affirmed by the learned appellate Court is not sustainable.

12 Resultantly, both the judgments of the Courts below dated 08.03.,2021 and 22.04.2023 are set aside.

13 The petitioner is acquitted from both the above charges.

14 The fine amount, if deposited by the petitioner, be refunded to him forthwith.

(Arvind Singh Chandel , J)

M.E.H./-

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