
(2011) 08 PAT CK 0044

In the Patna High Court

Case No : Criminal Revision No. 507 of 2004

Binod Prasad Singh

APPELLANT

Vs

The State of Bihar and Gandhi Rai

RESPONDENT

Date of Decision : 13-08-2011

Acts Referred:

Citation : (2011) 08 PAT CK 0044

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—The informant-petitioner has preferred this revision application against the judgment and order dated 15.06.2004 passed by the learned Judicial Magistrate, Ist Class, Naugachia in G.R. No. 571/96, Trial No. 22/04 arising out of Naugachia P.S. Case No. 250/96 by which the accused opposite party No. 2 has been convicted under Sections 279 and 304A of the I.P.C., but has virtually exonerated the accused by providing the formal punishment and sentenced him till rising of the court and a fine of Rs. 250/- u/s 279 of the I.P.C. and imprisonment till rising of the court and a fine of Rs. 500/- u/s 304A of the I.P.C. and in default to undergo simple imprisonment for a period of 15 days and one month respectively.

2. The prosecution case, in brief, is that on 18.12.1996, the informant and the other members were present in their house at about 11.45 A.M. a running vehicle Jhonga (jeep) bearing registration No. BRY 1283 rashly and negligently driven by the accused opposite party No. 2 entered into the courtyard of the informant and sister of the informant was crushed under the front wheel of the Jhonga (Jeep) and her two years daughter was injured. Later on, she also died. On the basis of aforesaid Fardbeyan of the Petitioner, Naugachia P.S. Case No. 250/96 was instituted against the accused opposite party No. 2 for the offence punishable under Sections 279, 337, 338 and 304A of the I.P.C. After investigation, charge-sheet was submitted for the offence punishable under Sections 279 and 304A of the I.P.C. Accusations were explained to the accused opposite party No. 2 for the offence punishable under Sections 279 and 304A of

the I.P.C. After the trial, the accused opposite party No. 2 was convicted and sentenced as aforesaid.

3. The main contention of the learned Counsel for the Petitioner is that the accused was convicted under Sections 279 and 304A of the I.P.C. But, the learned Magistrate has sentenced the accused till rising of the court and fine of Rs. 250/- and Rs. 500/-only which is inadequate and mockery of the trial. He has further submitted that there has been miscarriage of justice. It will also undermine the confidence of the public in the efficacy of the criminal judicial system. It need be hardly pointed out that the imposition of a sentence of fine of Rs. 500/- on the driver of a motor vehicle for an offence u/s 304A of the I.P.C. and that too without any extenuating or mitigating circumstance is bound to shock the conscience of any one and will unmistakably leave the impression that the trial was a mockery of justice.

4. In support of his contention, he has relied upon a decision in the case of State of Karnataka Vs. Krishna alias Raju,

5. The learned Counsel for the opposite party has submitted that it is the first offence of the accused and he also got injury in that accident and his hand was also broken. Considering the facts and circumstances, the learned Magistrate has taken a lenient view in awarding the sentence. Even in non-compoundable case, the period of sentence may be reduced.

6. In support of his contention, he has referred to the decisions in the case of Hasi Mohan Barman and Another Vs. State of Assam and Another,

7. In the case of Surendra Nath Mahanti (Supra) the offence was committed u/s 326 of the I.P.C. and the period of sentence was reduced to the period already undergone and in the case of Hasi Mohan Barman (Supra) the period of sentence was reduced to the period undergone in view of the marriage between the accused and the complainant.

8. With great respect, in my opinion, both these decisions are not applicable in the present case. It appears from the record that there is constant case of the prosecution that due to rash and negligent driving of the Jeep, the Jeep entered into the courtyard of the informant where his cousin sister Manju Devi was sitting in the courtyard with her daughter aged about 2 years. Manju Devi died on the spot, as she was crushed by the Jeep and her daughter got injury in her head and subsequently she also died after two days of the occurrence. The accused was caught hold by the co-villagers of the informant. There is no material on the record to show that the accused also got injury and he was also injured, although the defence witnesses have also been examined. The learned Magistrate has held in paragraph 16 of the judgment that on the analysis of the evidence, it appears that the accused was driving the aforesaid jeep rashly and negligently, which entered into the courtyard of the informant after breaking the wall. Manju Devi, sister of the informant died on the spot as she was crushed by the jeep and her daughter got injury, who also died later on. From the evidence of the defence

witness, it has been proved that the jeep was driven by the accused and after discussing all the evidence, the learned Magistrate has held the accused guilty for the offences punishable under Sections 279 and 304A of the I.P.C. Even thereafter, the learned Magistrate has sentenced the accused imprisonment till rising of the court and a fine of Rs. 250/- u/s 279 I.P.C. and sentence of imprisonment till rising of the court and a fine of Rs. 500/- under Section 304A I.P.C. and in default of payment of fine simple imprisonment for 15 days and one month respectively.

9. It appears that notice was issued to the accused opposite party No. 2 vide order dated 10.03.2005 by this Court as to why the sentences awarded to him be not enhanced. He has appeared through Vakalatnama and also in person on 7.02.2006 as it appears from order dated 7.02.2006 passed in this case.

10. Considering the facts and circumstances stated above, I find that the decision reported in State of Karnataka Vs. Krishna alias Raju, is very much applicable in this case. It is a fit case in which the sentence, in the interest of justice, must be enhanced. I, therefore, feel that the ends of justice would be met by enhancing the sentence for the most serious of the charges for which the opposite party No. 2 has been convicted viz. the charge under Sections 279 and 304A of the I.P.C. Accordingly, I enhance the sentence for the offence u/s 279 of the I.P.C. to six months" rigorous imprisonment and a fine of Rs. 1000/- in default to undergo rigorous imprisonment for two months and u/s 304A of the I.P.C. rigorous imprisonment for one and half years and a fine of Rs. 10000/- in default to undergo rigorous imprisonment for four months. Both the sentences would run concurrently. In case the fine is realized, it will be payable to the husband of the deceased Manju Devi.

11. To the extent indicated above, this revision application is allowed. The opposite party No. 2 shall forthwith be taken into custody to serve out the sentence.