IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 326 of 2014

Tarun Kumar Singh, son of Shri Bajrang Singh, resident of Jhumri Telliya Addibangla, P.O. & P.S. Telliya, District Koderma **... ... Petitioner**

Versus

The State of Jharkhand **... Opposite Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

For the Petitioner : Mr. Anil Kumar Sinha, Advocate
For the Opp. Party : Mr. Hardeo Prasad Singh, A.P.P

09**/25.06.2020**

1. Heard Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Hardeo Prasad Singh, learned counsel appearing on behalf of the opposite party-State.

3. This criminal revision application has been filed challenging the legality, correctness and propriety of the order dated 24.2.2014 passed in Criminal Appeal No.05 of 2011, corresponding to Koderma (T) P.S. Case No.420 of 2002, further corresponding to G.R. No.696 of 2002 (T.R. No.1125 of 2011), whereby and where under the learned District and Additional Sessions Judge, Sessions Court No. – I, Koderma has been pleased to uphold the decision of the learned trial court for which the appeal was preferred against the judgment of conviction and order of sentence dated 16.03.2011 passed by learned S.D.J.M, Koderma.

4. The petitioner has been convicted under Sections 279, 337, 338 and 304-A of Indian Penal Code for six months imprisonment each and it has been directed that all the sentences would run concurrently.

Arguments of the Petitioner

5. Learned counsel for the petitioner has confined his arguments on the legality and validity of the conviction of the petitioner under Section 304 (A) of Indian Penal Code and so far as other sections i.e., 279, 337 and 338 of Indian Penal Code are concerned, he has confined his argument on the point of sentence.

6. Learned counsel for the petitioner has submitted that upon perusal of the impugned judgements, it is apparent that only two witnesses have been examined in the present case out of which one has claimed to be an eye witness. As per the evidence of P.Ws. 1 and 2, the victim had suffered fracture in his leg due to rash and negligent driving of the petitioner who subsequently expired in the clinic. He submits that it has also come in evidence that the fard bayan of the deceased was recorded by the investigating officer in the clinic.

7. He submits that neither the injury report nor the post mortem report have been exhibited and neither the Investigating Officer of the case nor the doctor who had treated the victim have been examined during trial and accordingly the immediate cause of death has not been proved before the learned court below as the victim had only suffered fracture on his leg in the accident. He has submitted that it has not been proved that the accident was the immediate, direct and proximate cause of death of the victim and accordingly the conviction of the petitioner under Section 304 (A) of Indian Penal Code suffers from perversity which calls for interference in revisional jurisdiction to serve the ends of justice. He submits that considering this aspect of the matter, the petitioner may be acquitted for alleged offence under section 304(A) of Indian Penal Code.

8. So far as sentence under sections 279, 337 and 338 of Indian Penal Code are concerned, the learned counsel for the

petitioner has submitted that the incident is of the year 2002; The petitioner was convicted by the learned trial court on 16th March, 2011 and at that point of time the petitioner was 45 years of age and accordingly the present age of the petitioner is about 55 years. The learned counsel has also submitted that present offence of the petitioner was the first offence which has come during the argument recorded by the learned trial court at the time of sentencing of the petitioner. Learned counsel has submitted that some sympathetic view may be taken considering the aforesaid facts including the fact that the petitioner has faced the rigors of the criminal case for a long time. It is submitted that after the judgement passed by the learned lower appellate court, the petitioner had surrendered before the learned court below on 01.07.2014 and was directed to be released on bail by a Co-ordinate Bench of this Court on 13.10.2014 and thereafter the learned counsel is not aware as to when the petitioner had furnished his bail bond before the learned court below. He submits that accordingly the custody of the petitioner is for a period of about 3 ½ months.

Arguments of the Opposite Party

9. Learned counsel appearing on behalf of the opposite party State opposes the prayer of the petitioner. However during the course of hearing, he has not disputed that the Investigating officer and the doctor have not been examined and the injury report as well as post mortem report have not been exhibited and it has come in the evidence that the victim had only suffered the injury of fracture on his leg due to rash and negligent driving of the petitioner and subsequently he died in the clinic during his treatment. It is not in dispute that the accident had taken place and the victim had ultimately died and the fardbeyan itself was recorded on the basis of the statement of the victim in clinic.

10. On the point of sentence, the learned counsel for the opposite party does not dispute the fact that the alleged incident is of the year 2002 and as per the records of this case, the petitioner has remained in custody for about 3 ½ months and it was also argued before the learned trial court that this is the first offence of the petitioner.

Findings of this Court

11. After hearing the learned counsel for the parties, this Court finds that case of the prosecution is that on 2.11.02 at about 3.00 p.m, the informant Pancho Mian was going to his house. In the meantime, driver of truck bearing no. BR 13 G 6821 dashed him rashly and negligently causing grievous injury on his leg. The injured Pacho Mian was brought to Parvati Clinic Telaiya, where his fardbeyan was recorded. It was also alleged that later on injured Pancho Mian died during medical treatment at aforesaid clinic. The case was registered under section 279/337/338 of Indian Penal Code and upon investigation the cognizance was taken under sections 279/337/338 and 304(A) of the Indian Penal Code.

12. The prosecution had produced only two witnesses. As per the evidence of P.W-1, as recorded in the impugned judgements, he has stated that he heard that the victim met with an accident at the place of occurrence and he knew that the truck no. BR 13 G-6821 dashed the victim rashly and negligently due to which he sustained injury of fracture. He has also stated that he went to the hospital, purchased medicines for the victim where the victim told him that the driver of the said truck dashed him. It has been deposed that the victim died on the same night. During cross examination, he has stated that when he went to the clinic, he saw that injured victim was giving his statement to the police.

13. As per the evidence of P.W-2 (the son of the victim), as recorded in the impugned judgements, he has stated that the driver of the said truck drove the truck in a rash and negligent manner due to which his father met with an accident and got fracture on his leg. He has also stated that at the time of accident, he was with his father and he brought his father to the clinic where his father died during treatment.

14. After considering the materials on record, the learned trial court convicted the petitioner as follows: -

> *Having gone through the above depositions I find that both the witnesses have alleged that they went to the hospital where treatment of injured Panchu Mian was going on and during treatment the injured Panchu Mian died. In deposition of P.W.1 Md. Farooq it has been collected by the prosecution that (vide para – 2 of examination in chief) that Md. Farooq met injured Panchu Mian who stated him that driver of truck no.BR 13 G 6821 dashed him due to which he sustained fractured injury on the leg.*
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> *Thus it is clear that both the witnesses have supported the case of prosecution that driver of truck no. BR 13 G 6821 namely Tarun Kumar Singh drove said truck rashly and negligently and caused fracture injury. Thereafter the victim Panchu Mian died during his treatment. I find the accused Tarun Kumar Singh guilty of committing offence u/s 279, 337, 338 and 304 (A) I.P.C.*

15. The learned lower appellate court upheld the conviction and sentence of the petitioner and recorded finding that P.W.1 has clearly and fairly projected himself as a post eye witness of the incident uttering the fact that hearing the news of accident of the victim with a truck bearing no. BR 13 G 6821, he arrived at the place to see him and in the attempt, he could meet the injured in Parwati clinic and at that place also he assisted him by providing medicine on purchase. He has also stated that the victim had given his statement to the police in his presence and told him that the driver of truck bearing no. BR 13 G 6821 had dashed him and this witness had disclosed the fact that the victim expired due to the accident in the night of the incident. P.W.1 had also exhibited the fardbeyan and also disclosed that the truck in question was there at the place of accident which he

had seen. So far as the other witness i.e., P.W.2 is concerned, who is the son of the deceased has stated that with the help of other persons, he had brought his father to parwati clinic for treatment after hearing the news of accident.

16. This Court finds that admittedly neither the doctor nor the investigating officer of the case have been examined and accordingly, neither the injury report nor the post mortem report of the victim has been exhibited. It has also come in the evidence as has been clearly recorded by the learned trial court that the victim suffered an injury of fracture on his leg and ultimately, he expired in the clinic during the course of his treatment.

17. The post-mortem report and injury report having not been proved and the investigating officer as well as the doctor who treated the victim having not been examined, the cause of death and the nature and extent of injury of fracture has not been proved. In such circumstances, it cannot be said that the prosecution has proved that the rash or negligent act of the petitioner was the direct immediate and proximate cause of the death of the victim who had expired in the clinic during the course of his treatment.

18. In the judgment passed by Hon'ble Supreme Court reported in ***(2014) 6 SCC 173 (Sushil Ansal Vs. State),*** it has been held that one of the basic ingredients for committing an offence under Section 304A of Indian Penal Code is that the rash or negligent act of the accused ought to be direct immediate and proximate cause of the death and that the principle of law that the death must be shown to the direct immediate and proximate result of the rash or negligent act is well accepted. It has been held by the Hon'ble Supreme Court while dealing with the doctrine of *causa causans* that for offence under Section 304 A to be proved, it is not only necessary to

establish that the accused was either rash or grossly negligent but *also* that such rashness or gross negligence was the cause that resulted in the death of the victim. Para 80 to 84 of the said judgement dealing with the issue is quoted as follows:

> ***80.*** *We may now advert to the second and an equally, if not, more important dimension of the offence punishable under Section 304-A IPC viz. that the act of the accused must be the proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence. This aspect of the legal requirement is also settled by a long line of decisions of the courts in this country. We may at the outset refer to a Division Bench decision of the High Court of Bombay in Emperor v. Omkar Ram pratap where Sir Lawrence Jenkins speaking for the Court summed up the legal position in the following words:*
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> *"… to impose criminal liability under Section 304-A of the Indian Penal Code, it is necessary that the act should have been the direct result of a rash and negligent act of the accused and that act must be proximate and efficient cause without the intervention of another negligence. It must have been the causa causans; it is not enough that it may have been the causa sine qua non."*
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> *The above statement of law was accepted by this Court in Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra. We shall refer to the facts of this case a little later especially because Mr Jethmalani, learned counsel for the appellant Sushil Ansal, placed heavy reliance upon the view this Court has taken in the fact situation of that case.*
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> ***81.*** *Suffice it to say that this Court has in Kurban Hussein case accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra has once again approved the view taken in Omkar Rampratap case that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A IPC. To the same effect are the decisions of this Court in Rustom Sherior Irani v. State of Maharashtra, Bhalchandra v. State of Maharashtra, Kishan Chand v. State of Haryana, S.N. Hussain v. State of A.P. Ambalal D. Bhatt v. State of Gujarat and Jacob Mathew case.*
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> ***82.*** *To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was*

either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim.

83. *As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (5th Edn.) which defines that expression as under:*

"Causa causans.—The immediate cause; the last link in the chain of causation."

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines causa causans as follows:

"Causa causans.—The immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage."

84. *The expression "proximate cause" is defined in the 5th Edn. of Black's Law Dictionary as under:*

"Proximate cause.—That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. Wisniewski v. Great Atlantic & Pacific Tea Co., A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

19. Considering the facts and circumstances of this case, particularly non-examination of the investigating officer as well as the doctor, who had treated the deceased in the clinic and consequently, the injury report as well as the post mortem report of the victim having not been exhibited, it could not be proved by the prosecution that the rash or negligent act of the petitioner was the direct, immediate and proximate cause of the death as the accident had caused fracture in the leg of the victim as per the evidence led by the prosecution witnesses, which was not an injury on any vital part of the body.

Accordingly, the prosecution has failed to prove one of the essential ingredients of offence under Section 304 A of IPC though rash and negligent act on the part of the petitioner has been proved beyond all reasonable doubts by concurrent finding of facts by the learned courts below. This Court finds that the learned courts below have failed to consider that one of the aforesaid essential ingredients of the offence under section 304A of Indian Penal Code was not proved by the prosecution. As a consequence, the conviction of the petitioner under Section 304 A of Indian Penal Code is hereby set aside and he is acquitted for offence under Section 304A of Indian Penal Code.

20. So far as sentence under Sections 279, 337 and 338 IPC are concerned, this Court finds that in each section the petitioner has been convicted for a period of 6 months. There is no minimum sentence prescribed under the said sections. The present offence is of the year 2002 and the petitioner has faced the rigors of criminal case for a longer time and the present age of the petitioner is around 54 years of age. The petitioner has remained in custody at least for a period from 01.07.2014 (date of surrender) to 13.10.2014 (date of suspension of sentence by this court) which is more than three months. This Court is of the view that ends of justice would be served if the sentence of the petitioner is modified. Accordingly, the sentence of the petitioner is modified to the aforesaid period of custody already undergone by the petitioner in jail and a total fine of Rs. 2,500/- is imposed upon him i.e., Rs.1,000/- for the offence committed under Section 279 of IPC, Rs.1,000/- for the offence committed under Section 338 of IPC and Rs.500/- for the offence committed under Section 337 of IPC. The aforesaid amount is directed to be deposited by the petitioner before the learned trial court within a period of two months from today.

21. On deposit of the aforesaid fine amount, the bailors of the petitioner shall stand discharged from the liability of their bail bonds.

22. If the aforesaid fine amount is not deposited by the petitioner within the stipulated time frame, the petitioner would undergo the punishment which has been imposed upon him by the learned trial court.

23. Accordingly, this criminal revision is partly allowed.

24. Pending interlocutory applications, if any, are dismissed as not pressed.

25. Office is directed to send back the lower court records to the court concerned.

26. Let a copy of this order be communicated to the court concerned through FAX.

(Anubha Rawat Choudhary, J.)

Mukul/Saurav