

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No.397 of 2014

Bablu Tirkey son of Late Mahadeo Tirkey
... .. **Petitioner**
-Versus-
State of Jharkhand ... **Opposite Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Chandra S. Pandey, Advocate
For the Opp. Party : Mr. Suchendra Prasad, A.P.P.

Through Video Conferencing

C.A.V. on 17/06/2020

Pronounced on 25/06/2020

1. Heard Mr. Chandra S. Pandey, the learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Suchendra Prasad, the learned A.P.P. appearing on behalf of the Opposite Party-State.
3. The petitioner has preferred this criminal revision challenging the legality, propriety and correctness of the Judgment dated 26.03.2014 passed by the learned Principal Sessions Judge, Latehar in Criminal Appeal No.01/2014, confirming the judgment of conviction and the order of sentence passed by the learned trial court vide Judgment dated 24.01.2014 passed in G.R. Case No. 493/2009 (Tr. No.130/2013) by the learned C.J.M., Latehar whereby and whereunder the petitioner was convicted and was sentenced to undergo S.I. for six months under Section 279 of IPC, S.I. for six months under Section 337 of I.P.C. and S.I. for one Year under Section 338 of I.P.C. with a direction that all the sentences shall run concurrently and the period, if any, already undergone by the petitioner in jail shall stand set off.

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4. The learned counsel for the petitioner, at the outset, submitted that his arguments are confined to the point of sentence only which has been awarded to the petitioner.

5. Accordingly, the learned counsel for the petitioner, on the point of sentence submitted that there are two victims in this case i.e. PW-7 and PW-8, but PW-7 has not suffered any injury, whereas PW- 8 has turned hostile. He further submitted that the occurrence had taken place in the year 2009, the petitioner has already remained in jail custody since 03.09.2013 to 09.05.2014 i.e. for a period of more than 07 months and this is his first offence. He submits that considering the facts and circumstances of the present case , a lenient view may be taken and the sentence of the petitioner may be limited to the period already undergone in jail and some amount of fine may be imposed upon him in lieu of his further imprisonment as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case and for the ends of justice.

6. Learned A.P.P. appearing on behalf of the Opposite Party-State opposed the prayer, but he did not dispute the aforesaid submissions made by the learned counsel for the petitioner which are based on the records of the case. He further submitted that the petitioner was driving the vehicle rashly and negligently, there are concurrent findings of both the learned courts below and there is limited scope under revisional jurisdiction. There is no perversity in the impugned judgments and the order of sentence passed by the learned courts below.

7. After hearing the learned counsel appearing for the parties, this Court finds that a formal F.I.R. was registered as Latehar P.S. Case No. 119/2009 dated 25-08-2009 under Sections 279, 337, 338 of IPC against the petitioner on the basis of the written report of the Informant namely, Sushil Kumar Shukla,

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Police No.779 (PW-1) alleging *inter alia* that he is the driver of the Invader Vehicle No. JH 19A-0755 in which on 25-08-2019, he alongwith the Deputy Superintendent of Police, Headquarter was proceeding to Chandwa. He was accompanied by two bodyguards namely, Constable No.306 Avinash Kumar Shukla (PW-2) and Constable No.805 Jai Prakash Pandey (PW-5) and the reader namely, Sri Balram Mishra (PW-3) of the Deputy Superintendent of Police, Headquarter was also present in the vehicle. At about 1300 hours, when they reached near the turning of Jagaldaga, he saw a tempo overloaded with passengers coming from opposite direction with imbalanced condition. The Informant stopped his vehicle on the left side of the road. As there was a steep slope and turning of the road ahead, he saw that the driver of the Tempo No.JH 01Z-8956 driving rashly and negligently dashed the Invader vehicle and got turned up-side down due to which the passengers in the tempo sustained injuries.

8. The learned C.J.M., Latehar, vide order dated 12-01-2010, took cognizance of the offences under Sections 279, 337 and 338 of IPC against the petitioner. On 25-06-2010, the substance of accusation under Sections 279, 337 and 338 of IPC was read over and explained to the petitioner in Hindi to which he pleaded not guilty and claimed to be tried.

9. In course of trial, the prosecution examined altogether 08 witnesses as oral evidence. The prosecution witnesses PW-1 to 5 have fully supported the case. PW-6 is Dr. Shiv Pujan Sharma who had provided treatment to the inured PW-7 and PW-8 who were travelling in the offending vehicle. PW-6 deposed that no injury was found or seen clinically on the person of the injured PW-7 and all the injuries on the person of the injured PW-8 were simple in nature caused by hard and blunt substances. He has proved the Injury Report of injured PW-7 as Exhibit-2 and

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the Injury Report of injured PW-8 as Exhibit-2/a. PW-7 has fully supported the prosecution case but PW-8 has been declared hostile by the prosecution.

10. The learned courts below have given concurrent findings that the petitioner was driving the Tempo rashly and negligently which dashed the police Invader Vehicle causing injuries to PW-7 and other passengers travelling in the offending tempo and the prosecution has been able to prove its case against the petitioner beyond all reasonable doubt. There is no illegality or perversity in the impugned judgments of conviction and the petitioner has confined his arguments on the point of sentence. Accordingly, the conviction of the petitioner under Sections 279, 337 and 338 of IPC is hereby upheld.

11. While considering the point of sentence, this Court finds that the case was instituted in the year 2009, the criminal revision remained pending before this Court since 2014 and as such, the petitioner has faced the rigours of criminal case for more than 10 Years. As submitted by the learned counsel for the petitioner, the petitioner has no criminal antecedents and he has already remained in jail custody for 08 months and 07 days (from 03.09.2013 to 09.05.2014). So, this Court is of the opinion that ends of justice would be served if the sentence of the petitioner is modified by limiting the sentence to the period already undergone by him and a fine of Rs. 2,000/- is imposed upon him i.e. Rs.1,000/- for the offence committed under Section 279 of IPC and Rs.1,000/- for the offence committed under Section 338 of IPC.

12. Accordingly, the sentence of the petitioner is modified and reduced to the period of custody already undergone by him and a total fine of Rs. 2,000/- is imposed upon him i.e. Rs.1,000/- for the offence committed under Section 279 of IPC

and Rs.1,000/- for the offence committed under Section 338 of IPC. The fine amount is directed to be deposited before the learned trial court within a period of two months from today. On deposit of the aforesaid fine amount, the bailors of the petitioner shall stand discharged from the liability of their bail bonds.

13. 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.

14. This criminal revision is hereby disposed of with the aforesaid modification in the sentence of the petitioner.

15. Let the Lower Court Records be sent back to the learned court concerned.

16. Let this order be communicated to the learned Court concerned through FAX.

(Anubha Rawat Choudhary, J.)

Pankaj