

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 985 of 2014

Sanika Mundri S/o Birsa Mundri R/o Village- Lagora, P.O. & P.S.-
Bandhgaon, Dist.- Singhbhum West, Jharkhand.

... .. **Petitioner**
Versus
The State of Jharkhand **Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

For the Petitioner : Mr. Shiv Kumar Singh, Advocate
For the Respondent : Mr. Sanjay Srivastava, Advocate

06/07.07.2020

1. Heard the learned counsel for the parties.
2. This revision application has been filed against the judgment dated 14.08.2014 passed in Cr. Appeal No. 42 of 2014 passed by the learned Sessions Judge, West Singhbhum at Chaibasa, whereby the learned Sessions Judge has been pleased to uphold the judgment of conviction and order of sentence dated 09.04.2014 of the petitioner under Sections 279/337/338/304-A of Indian Penal Code passed by the learned Sub-Divisional Judicial Magistrate, Porahat at Chaibasa in Bandgaon P.S. Case No. 14/2009 corresponding to G.R. Case No. 74/2009. The trial court has been pleased to convict the petitioner to undergo rigorous imprisonment for three months for offence under Section 279 of IPC, three months rigorous imprisonment for offence under Section 337 of IPC, six-month rigorous imprisonment for offence under Section 338 of IPC and one-year rigorous imprisonment for offence under Section 304-A of IPC.

Arguments of the petitioner

3. The learned counsel for the petitioner submits that there are two points involved in this case for consideration by this

Court. *Firstly*, the prosecution has failed to prove that the petitioner was driving the tractor along with trailer rashly and negligently and accordingly the basic ingredients of Section 304-A of IPC is not made out against the petitioner. *Secondly*, it has come in evidence that the tractor and trailer was being driven by one Guddu and so far as the petitioner is concerned, his name is Sanika Mundri and accordingly, the petitioner has been wrongly tried and convicted by the learned trial court. He further submits that no witness has stated that the petitioner has alias name as Guddu.

4. Without prejudice to the aforesaid contention, the learned counsel has also argued the case on the point of sentence. He submits that the present case was instituted in the year 2009 and the petitioner was ultimately convicted only on 9th April, 2014. He submits that the appeal was decided on 14th August, 2014 and at the stage of revision, the petitioner has been remained in custody for a period from 14.11.2014 and was directed to be enlarged on bail by a Co-ordinate Bench of this Court on 05.01.2015. The learned counsel submits that the petitioner has already served the sentence to the extent of 52 days during the pendency of this case before this Court and more than 11 years have elapsed from the date of the incident. He has submitted that it has been recorded in the judgement passed by the learned trial court that there is no previous conviction of the petitioner. The learned counsel submits that in view of the aforesaid circumstances some lenient view may be taken and sentence be modified.

Arguments of the opposite party-State

5. The learned counsel appearing on behalf of the opposite party-State opposes the prayer and submits that all the witnesses have supported the prosecution case and there is no scope in the revisional jurisdiction to re-appreciate the evidences

and come to a different finding unless the same suffers from perversity or illegality. He also submits that in case this Court is inclined to modify the sentence of the petitioner, then some victim compensation may be fixed as P.W.-2 is the victim and P.W.-3 is the wife of the deceased (another victim) and such victim compensation may not be less than a total of Rs. 20,000/-.

Findings of this Court

6. After hearing the learned counsel for the parties, this Court finds that the present case was instituted upon the fardbeyan of the informant (P.W.-3) recorded by Sub-inspector of Bandgaon Police Station on 29.03.2009 at 11:30 hours. As per the prosecution case, the informant along with her husband at was travelling on a tractor on 28.03.2009 at 5:00 p.m. from Chaki Bazar to her home Karika which was driven by Guddu of Village Lagura and 10 to 15 persons were also seated on the tractor. Further case is that when the tractor reached between Hirni fall and Bandi ghati, the driver of the tractor, driving the tractor in a rash and negligent manner, overturned the tractor in a pitch north to the road, as a result of which her husband and one Rana Munda of her village were thrown out of the tractor in the field and when the informant reached to rescue her husband, she saw severe injuries on the right eye, cheeks, face, legs of her husband who succumbed to injuries by the time they reached home.

7. It further appears that the prosecution has examined altogether seven witnesses in support of its case. P.W.-2 (Rana Munda) is the victim and P.W.-3 is the informant whose husband had died in the accident. P.W.-1 is the hearsay witness who had stated that the incident is of 28.03.2009 at 5:00 p.m. while he was at home, he heard that a tractor had overturned. However, he has exhibited Ext.-1 and Ext.-2 which is his signature on the fardbeyan and on the death inquest report

respectively and this witness has identified the petitioner in the court. P.Ws.-2 and 3 have also fully supported the prosecution case and they have also identified the petitioner in the court and during their cross-examinations, they had stated that at the time of incident it was getting dark and the road was not smooth and had potholes. They have also stated that it was possible that the accident had taken place due to over-crowded vehicle which was overturned.

8. In view of the evidence of P.Ws.-1, 2 and 3 and also the fact that the charge-sheet was filed in the name of Sanika Mundri @ Guddu and the petitioner was identified by the aforesaid witnesses are concerned, this Court is of the considered view that the identity of the petitioner that he was driving the vehicle in question cannot be disputed. This aspect of the matter has been properly considered by the learned courts below and there is no illegality or perversity so far as this aspect of the matter is concerned and accordingly it requires no interference.

9. So far as the allegation of driving the vehicle rashly and negligently is concerned, this Court finds that the P.Ws.-2 and 3 who were also travelling in the same tractor/trailer have fully supported the prosecution case and the persons who were travelling on the vehicle had suffered the injuries and the husband of P.W.-3 was also travelling on the same tractor. In view of the aforesaid aspect of the matter and the consistent evidences of P.Ws.-2 and 3 and that they have also deposed that the accident had taken place due to over-crowd on the vehicle which overturned, this Court is of the considered view that the basic ingredients for constituting an offence under Section 304-A of IPC was duly satisfied and the learned courts below have rightly convicted the petitioner under the said section.

10. So far as the ingredients of offence under Sections 279, 337 and 338 of IPC are concerned, no argument has been advanced by the learned counsel appearing on behalf of the petitioner. Upon perusal of the impugned judgements, this Court finds that the basic ingredients of the said offence were also present and the learned trial court has rightly convicted the petitioner under the aforesaid sections. i.e. Sections 279, 337 and 338 of IPC, which has been upheld by the learned lower appellate court.

11. Considering the aforesaid facts and circumstances of this case, the arguments advanced on behalf of the petitioner on both the points are hereby rejected. This Court finds no illegality or perversity in the impugned judgments and accordingly the same do not call for any interference.

12. However, so far as the point of sentence is concerned, this Court finds that it is not in dispute that it had come in the judgment of the learned trial court itself that there was nothing on record to show any previous conviction of the petitioner and the incident is of the year 2009 and accordingly, the petitioner has suffered the rigors of the criminal case right from the year 2009 and now more than 11 years have elapsed. This Court also finds that the petitioner has remained in custody at least for a period of 52 days during the pendency of this case before this Court and the petitioner was granted bail during trial on 20.04.2009 upon his surrender before the learned trial court.

13. Considering the aforesaid facts and circumstances of this case, this Court is of the considered view that the ends of justice would be served if the total sentence of the petitioner for the offence under Sections 279, 337, 338 and 304-A of Indian Penal Code is reduced to three months with total fine amount of Rs. 20,000/- to be deposited before the learned trial court within a period of two months from the date of communication of this

order to the learned trial court. If the aforesaid fine amount is not so deposited, the petitioner would serve the sentence as awarded by the learned trial court and confirmed by the learned lower appellate court.

14. The fine amount is directed to be remitted to P.Ws.-2 and 3 to the extent of Rs. 5,000/- Rs. 15,000/- respectively by way of victim compensation by the learned trial court upon proper identification.

15. Accordingly, the present criminal revision application is hereby disposed of with the aforesaid modification of sentence.

16. The bail bond furnished by the petitioner is hereby cancelled.

17. Interim order, if any, stands vacated.

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

19. Let the lower court records be immediately sent back to the court concerned.

20. Let a copy of this order be communicated to the learned Court below through 'FAX/e-mail'.