

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Rev. No.262 of 2001**

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(Application for setting aside the judgment dated 12.06.2001 passed in Criminal Appeal No.53 of 1996 by the Sessions Judge, Dumka)

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Balram Manjhi, son of Hari Ram Manjhi, resident of Goasole P.S. Masalia  
of Goasole, P.S. Masala, District- Dumka       ....       ....       ....       Petitioner

*Versus*

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

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For the Petitioner       : Mr. Rajeeva Sharma, Sr. Advocate

For the State       : Mr. Bhola Nath Ojha, Addl. P.P.

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**P R E S E N T**

**HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**  
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***By the Court:***       Heard the parties through video conferencing.

2.       This criminal revision has been filed challenging the judgment dated 12.06.2001 passed in Criminal Appeal No.53 of 1996 by the learned Sessions Judge, Dumka whereby and where under the learned appellate court below has upheld the judgment of conviction and order of sentence dated 18.07.1996 passed by S.D.J.M, Dumka in Masalia P.S. Case No.18 of 1992 corresponding to G.R. No.374 of 1992 (T.R. No.248 of 1996) whereby and where under the revision petitioner was convicted and sentenced by the trial court to undergo Rigorous Imprisonment for six months for the offence punishable under Section 279 of the Indian Penal Code and to undergo Rigorous Imprisonment for two years each for each of the offences punishable under Section 338 and 304 A of the Indian Penal Code and it was ordered that both the sentences shall run concurrently.

3.       The brief facts of this case is that the petitioner while driving a truck in a rash and negligent manner, caused the death of the son of the informant in a road accident. After investigation of the case, charge-sheet was submitted against the petitioner for having committed the offences

punishable under Sections 279, 338 and 304A of the Indian Penal Code and consequent upon his pleading not guilty to the charges, he was put to trial.

4. During the trial, the prosecution altogether examined six witnesses and however no witness was examined by the defence. The P.W.2 is the sole eyewitness to the occurrence and he has supported the case of the prosecution by deposing in detail about the rash and negligent manner of driving of the truck by the revision petitioner.

5. After considering the evidence in the record, the learned trial court below being the S.D.J.M., Dumka held the revision-petitioner guilty for having committed the offences punishable under Section 279, 338 and 304 A of the Indian Penal Code and sentenced him as already indicated above in this judgment.

6. Against the said judgment of conviction and order of sentence, this revision-petitioner preferred Criminal Appeal No.53 of 1996 before the learned Sessions Judge, Dumka and vide the impugned judgment, the learned Sessions Judge, Dumka dismissed the appeal as after independent assessment of the evidence in the record, the learned Sessions Judge held that the evidence in the record is sufficient to establish all the 3 charges faced by the revision-petitioner in the trial beyond reasonable doubt.

7. Mr. Rajeeva Sharma- learned senior counsel for the revision petitioner submits that the conviction is based on no evidence. It is next submitted that the learned courts below could not appreciate the evidence in the record in its proper perspective. It is then submitted that though the P.W-2 has not stated in his *Fardbeyan* recorded by the police that he is an eye-witness to the occurrence but in the court he claimed to be an eye-witness to the occurrence. Hence, the learned court below ought not have relied upon the testimony of the P.W-2 to come to a conclusion that the evidence in the record establishes the charges against the revision-petitioner beyond reasonable doubt. It is next submitted that the revision-petitioner is aged about 64 years and he was in custody for about 40 days after dismissal of his appeal by the appellate court; before he was granted bail by this Court in this revision application and after the cancellation of

his bail by this court in this revision application, he surrendered in the trial court on 20.10.2021 and till today he has been in custody. Hence, it is submitted that, in case his conviction is sustained, his substantive sentence be reduced to the period he has already undergone in custody; keeping in view the fact that he has been facing the rigors of criminal trial since 16.04.1992 and in lieu thereof fine may be imposed. Hence, it is submitted that the conviction and the sentence of the revision-petitioner as made by the impugned judgment of conviction returned by both the learned courts below be set aside.

8. Mr. Bhola Nath Ojha- learned Addl.P.P. appearing for the State defended the impugned judgment and submitted that the P.W.-2 who is the father of the deceased, is an eye-witness to the occurrence and he has categorically stated about the ingredients of all the three offences punishable under Section 279, 338 and 304 A of the Indian Penal Code. It is next submitted that nothing has been elicited in the testimony of the P.W-2 to discard or disbelieve his testimony and his testimony is corroborated by the testimonies of P.Ws-1, 3 and 4, of course, they are not the eye-witness to the occurrence, besides the testimony of the P.W.2 also finds support from the medical evidence that has come through the deposition of the P.W-5- the Doctor who conducted the post-mortem examination of the dead body of the deceased as also from the Investigating Officer of the case who has been examined as P.W.6. Hence, it is submitted that there is nothing in the record to discard or disbelieve the testimony of the witnesses of the prosecution and since both the courts below have returned concurrent finding of facts hence in the absence of any illegality, the same ought not to be interfered with. It is therefore submitted that this revision petition, being without any merit, be dismissed.

9. Having heard the rival submissions made at the bar and after carefully going through the record, this Court finds that the P.W.-2 who is the father of the deceased, is an eye-witness to the occurrence and he has categorically supported the case of the prosecution and he has deposed about eye-witness account of the occurrence that the truck being rashly

and negligently driven by the revision-petitioner crushed his son resulting in his death, which establishes all the ingredients required to bring home the charges for the offences punishable under Section 279, 338 and 304 A of the Indian Penal Code. Nothing has been elicited in the cross-examination of the P.W.2 to discredit his testimony. His testimony is trustworthy and reliable and both the courts below have returned concurrent finding of fact that the evidence in the record is sufficient to establish the charges for all the three offences punishable under Section 279, 338 and 304 A of the Indian Penal Code beyond reasonable doubt. It is pertinent to mention here that the First Information Report is not the encyclopaedia of the case of the prosecution. So when the testimony of a witness who is also the informant of the case is trustworthy and reliable, the same cannot be disbelieved merely for the reason that it is specifically not mentioned in the First Information Report / *Fard beyan* of the informant, that the informant is the eyewitness to the occurrence more so because there is also nothing in the First Information Report to suggest that the informant was not the eyewitness to the occurrence, in respect of which offence he has lodged the First Information Report.

10. It is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of ***Rattan Singh v. State of Punjab, (1979) 4 SCC 719*** that it is fair to apply the rule of *res ipsa loquitur*, of course, with care in case of the offence punishable under section 304A of the Indian Penal Code resulting from motor vehicle accidents by observing thus in paragraph 3:

*3. This, however, does not excuse the accused from his rash driving of a "blind Leviathan in berserk locomotion". If we may adapt the words of Lord Greene, M.R. : "It scarcely lies in the mouth of the truck driver who plays with fire to complain of burnt fingers". Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under Section 304-A IPC and under the rubric of Negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of res ipsa loquitur, of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, we are convinced that the present case deserves no consideration on the question of*

*conviction.*(Emphasis supplied)

11. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Ravi Kapur Vs. State of Rajasthan** reported in **(2012) 9 SCC 284** that the preliminary conditions for applicability of Section 279 IPC are that: (a) the manner in which the vehicle is driven; (b) it is to be driven either rashly or negligently, and (c) such rash or negligent driving should be such as to endanger human life and once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted. Similarly, the law enunciated by the Hon'ble Supreme Court of India in that case is that "Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do.

12. As already indicated in this judgment above in the foregoing paragraphs of this judgment, the P.W-2 has categorically stated that the petitioner was driving the vehicle in a rash and negligent manner and crushed his son resulting in his death. He has further deposed that he recognizes the petitioner and there is no challenge to his testimony in respect of his identifying the revision-petitioner to be the person who has committed the offences for which charges were framed against him and for which the revision-petitioner faced the trial.

13. Accordingly, this Court does not find any justifiable reason to interfere with the judgment passed by the learned court below so far as the conviction of the revision-petitioner for the offences punishable under sections 279, 338 and 304 A of the Indian Penal Code is concerned. Accordingly, the conviction of the revision-petitioner for the offences punishable under Sections 279, 338 and 304 A of the Indian Penal Code as made by the two learned courts below is confirmed.

14. So far as the sentence of the revision-petitioner is concerned, it is pertinent to mention here that the Hon'ble Supreme Court of India in the case of *Sukhdev Singh v. State of Punjab*, **(1982) 2 SCC 439** in the facts of that case where the appellant had already been in jail for a period of four

and a half months reduced the substantive sentence to the period already undergone and enhanced the fine by observing thus in paragraphs 1 and 2 of the said judgment which reads as under:

*1. We are of the view that having regard to the facts and circumstances of the present case and in view of the fact that Jagdish Chander died as a result of the accident leaving a family behind him and also taking into account the fact that the appellant has already been in jail for a period of four and a half months, it would meet the ends of justice if the sentence of imprisonment imposed upon the appellant is reduced to that already undergone by him and instead the fine of Rs 2000 which has been imposed upon him is enhanced to Rs 10,000 in order that the widow and the children of the deceased Jagdish Chander may be compensated by payment of the amount of the fine to them.*

*2. We accordingly allow the appeal to this limited extent and reduce the sentence of imprisonment imposed upon the appellant to that already undergone by him and enhance the sentence of fine to Rs 10,000 and direct that the entire amount of the fine be paid over to the widow and children of the deceased Jagdish Chander. This payment will be without prejudice to the right of the widow and children of the deceased Jagdish Chander to claim damage for the death of Jagdish Chander, though, if any such damages are awarded this payment may be taken into account in assessing such damages.*

Now coming to the facts of the case, keeping in view of the fact that the revision-petitioner has been in custody for about four and half months and he is facing the rigors of criminal trial since the year 1992 and he is an old man aged about 64 years, the substantive sentence for the offences punishable under Section 279, 338, 304 A of the Indian Penal Code is reduced to the period in custody as already undergone. But in respect of the offence punishable under Section 304 A of the Indian Penal Code besides the substantive sentence a fine of Rs.20,000/-is imposed upon the revision-petitioner and in default of payment of fine, the revision-petitioner has to undergo simple imprisonment of six months. This Court also directs that the entire amount of the fine be paid over to the informant who is the father of the deceased and in case he is not available,

to any other legal representatives of the deceased.

15. This criminal revision petition is disposed of with the modification of sentence only.

16. Let a copy of this judgment be sent to the learned court below forthwith.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi  
Dated the 28<sup>th</sup> of January, 2022  
AFR/ Smita-Animesh