

(2019) 07 RAJ CK 0028

Rajasthan High Court

Case No: Criminal Revision Petition No. 1276 Of 2018

Ram Bharose

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: July 10, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 397, 401
- Indian Penal Code, 1860 - Section 279, 304A
- Motor Vehicles Act, 1988 - Section 134, 187
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Manoj Kumar Garg, J

Bench: Single Bench

Advocate: MA Rao, SS Rajpurohit

Final Decision: Partly Allowed

Judgement

Instant revision petition under Section 397/401 Cr.P.C. has been filed by the petitioner challenging the judgment dated 17.06.2015 passed by learned

Additional Sessions Judge No.1, Jodhpur Metropolitan (hereinafter referred to as "the appellate court") in Criminal Appeal No.33/2014 by which

the appellate court dismissed the appeal of the petitioner and upheld the judgment dated 23.06.2014 passed by the learned Additional Chief

Metropolitan Magistrate, Jodhpur Metropolitan (hereinafter referred to as "the trial court") in Regular Criminal Case No.201/2014 whereby, the

learned trial court convicted the present petitioner for offence under Sections 279, 304A IPC and Section 134/187 of MV Act and sentenced as under

:

Under Section 279 IPC = Six monthsâ€™ S.I.

Under Section 304-A IPC = Two yearsâ€™ S.I and fine of Rs.2,000/- in default of payment of fine, to undergo two monthsâ€™ S.I.

Under Section 134/187 of MV Act= Fine of Rs.500/-, in default of payment of fine to undergo ten daysâ€™ S.I.

All the sentences were ordered to run concurrently.

Brief facts of the case are that on 18.08.2006 the complainant submitted a written report at Police Station Road Accident (West), Jodhpur alleging

therein that on 18.08.2006 he along with Karulal, Radheyshyam, Kanwarlal and few other persons were proceeded for Ramdevra Pilgrim as

pedestrian. When they reached near Goyalon Ki Dhani, at that time a tractor trolley came from opposite direction, which was being driven by its

driver rashly and negligently and hit Karulal, resulting thereby his brother Karulal sustained multiple severe injuries. Soon after the accident, Karulal

brought to MDM Hospital where he died during treatment.

On this complaint, the police registered the case against the accused-petitioner and started investigation. After investigation, the police filed challan

against the accused-petitioner for offence under Sections 279, 304A IPC and Section 134/187 of MV Act. Thereafter, the charges of the case were

framed against the accused-petitioner. He denied the charges and claimed trial.

During the course of trial, the prosecution examined 6 witnesses and got 10 documents exhibited. Thereafter, statements of the accused-petitioner

under section 313 Cr.P.C were recorded.

No witness was examined on the defence side.

Upon conclusion of the trial, the learned trial court vide impugned judgment dated 23.06.2014 convicted and sentenced the accused-petitioner for

offence under Sections 279, 304 IPC and Section 134/187 of MV Act as mentioned earlier.

Aggrieved by the judgment and order dated 23.06.2014, passed by the learned trial court, an appeal was preferred before the learned appellate court,

which came to be dismissed vide judgment dated 17.06.2015. Hence this revision petition against the conviction of the accused-petitioner.

At the threshold, learned counsel for the accused-petitioner does not challenge the finding of conviction but it is submitted that the occurrence relates

back to year 2006 and the accused-petitioner is in judicial custody since 29.06.2018 and since then he has served a period of more than one year of

sentence out of total sentence of two years for offence under Section 304A IPC. Counsel further submits that for offence under Section 279 IPC and

Section 134/187 of MV Act, the petitioner has already served the sentence. In such circumstances, it is prayed that the substantive sentence awarded

to the accused-petitioner for the offence under Section 304A IPC may be reduced to the period already undergone by him.

On the other hand, the learned Public Prosecutor opposed the submissions made by the learned counsel for the accused-petitioner. The learned PP

submitted that there is neither any occasion to interfere with the sentence awarded to the accused petitioner nor any compassion or sympathy is called

for in the said case.

Since the petitioner's counsel does not challenge the petitioner's conviction, this Court need not go into the merits of the case and accordingly,

the conviction of the accused-petitioner as recorded by the learned courts below for the offence under Sections 279, 304A IPC and Section 134/187

of MV Act is maintained.

I have perused the evidence of the prosecution as well as defence and the judgment passed by the courts below regarding conviction of the accused-

petitioner.

In the matter of Puttaswamy vs. State of Karnataka & Anr. : 2009 (1) WLC (SC) (Cri.) 623,) the Hon'ble Supreme Court, in the matter where the

accused person was convicted for committing offence punishable under Secs. 279 and 304A IPC, reduced the sentence to that already undergone and

enhanced the fine from P.s. 2,000/- to Rs. 20,000/-, where the accused caused death of a 7 years old girl on account of his rash and negligent driving

tractor.

In the present case, due to rash and negligent driving of tractor and trolley by the petitioner, the brother of complainant, Karulal died. However,

undisputedly the occurrence has taken place in the year 2006 and the accused-petitioner has so far undergone a period of one year incarceration out

of the total two yearsâ€™ S.I. for offence under Section 304A IPC so also suffered the agony and trauma of protracted trial. Thus, looking to the over-all circumstances and the fact that the accused-petitioner has remained behind the bars for considerable time, it will be just and proper if the sentence awarded by the trial court for offence under Section 304A IPC and affirmed by the appellate court is reduced to the period already undergone by him while maintaining the amount of fine in the sum of Rs. 2,000/-.

Accordingly, the criminal revision is partly allowed. While maintaining the petitionerâ€™s conviction and sentence for offence under Sections 279, 304A IPC and Section 134/187 of MV Act, the sentence awarded to him for offence under Section 304A IPC is reduced to the period already undergone, however the amount of fine is hereby maintained. The sentence for offence under Section 279 IPC and Section 134/187 of MV Act has already been served by the accused-petitioner. The petitioner is inside the Jail. On depositing the fine amount, the petitioner may be released immediately.

The record of the courts below be sent back forthwith.