

**(2024) 11 JH CK 0047**

**Jharkhand High Court**

**Case No:** Criminal Appeal (S.J.) No. 1405 Of 2006

Prakash Kumar Mahto

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

**Date of Decision:** Nov. 19, 2024

**Acts Referred:**

- Indian Penal Code, 1860 - Section 304, 304A

**Hon'ble Judges:** Pradeep Kumar Srivastava, J

**Bench:** Single Bench

**Advocate:** Prabhat Kr. Sinha, Kumari Ranjana Singh, Diwakar Jha, Prabir Chatterjee

**Final Decision:** Partly Allowed

**Judgement**

Pradeep Kumar Srivastava, J

1. Heard Mr. Prabhat Kumar Sinha, learned counsel for the appellants and Mr. Prabir Chatterjee, learned Spl.P.P. appearing for the State.

2. Above named appellants have preferred this criminal appeal challenging their judgment of conviction and order of sentence dated 31.08.2006

passed by learned Additional Sessions Judge, Fast Track Court No. 7, Hazaribag in Sessions Trial No. 545 of 2004, whereby and whereunder, the

appellants have been held guilty for the offence under Section 304A of the I.P.C. and sentenced to undergo S.I. for two years.

**FACTUAL MATRIX**

3. The factual matrix giving rise to this appeal in a narrow compass is that on 19.06.2004 Saturday at about 12:20 hours the informant Suresh Mahto

with his nephew Rahul Kumar and son Pappu Kumar had gone to visit Rath Mela at Barakagaon. In the meantime, the nephew of the informant

Rahul Kumar went to buy gram neaby and a Jhula which was projected near the gram shop, broken down of axle wheel roller fell on forehead of

Rahul Kumar and due to that he died on the spot and several other persons were inflicted serious injuries.

4. On the basis of above information, FIR being Barkagaon P.S. Case No. 50 of 2004 was registered for the offence under Section 304 of the I.P.C.

against the owner of the said Jhula namely, Padum Mahto and his two sons.

5. After completion of investigation, the I.O. of the case has submitted charge sheet under the same section. After submission of charge sheet, the

cognizance was taken and the case was committed to the court of Sessions, where the charge was framed under Section 304 of the I.P.C., to which

the appellants pleaded not guilty and claimed to be tried.

6. In order to substantiate the charges leveled against accused person, altogether ten witnesses were examined by the prosecution.

7. Apart from oral evidence of ocular witnesses, following documentary evidences were also adduced.

Exhibit-1:Â Post mortem report.

Exhibit-2:Â Inquest Report.

Exhibit-3:Â Formal F.I.R.

8. The case of defence is that appellants are innocent persons and have committed no offence at all.

However, no oral or documentary evidence has been adduced by the defence.

9. The learned trial court, after evaluating the evidence available on record, held the appellants guilty for the offence under Section 304A of the I.P.C.

and sentenced as stated above.

10. Being aggrieved with the impugned judgment of conviction and order of sentence dated 31.08.2006, this Criminal Appeal has been preferred on

behalf of the appellant.

11. Learned counsel for the appellants has submitted that appellant nos. 1 & 2 are the young boys around 25 years old at the time of relevant

misfortunate

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happenings. The hindola (jhula) fitted with wheel chair was being operated by appellant no. 3 i.e. father of the appellant no. 1 & 2. It is further

submitted that since the appellant nos. 1 & 2 were also present for fetching mela with their father, hence, they have also been roped in this case

without any negligence on their part. Therefore, conviction and sentence of appellant nos. 1 & 2 is not legally sustainable. It is further submitted that

appellant no. 3 is about 70 years old at present and his movement is restricted due to illness and sickness. It is a case wherein appellant no. 3 was

running a hindola (jhula) in a village fare and in course of operating jhulla, axle wheel roller was broken down and the same fell down upon the nearby

standing nephew of the informant namely, Rahul Kumar, aged about 08 years who died and some other children were injured.

12. It is further submitted that the aforesaid happening was absolutely unfortunate accident without any gross negligence on the part of appellant no. 3.

The appellants have been awarded sentence for a maximum imprisonment for two years, out of which appellant no. 3 has undergone three weeks

imprisonment during trial. He has also compensated to the victim. The appellants are ready to further compensate the victim in terms of money as

may be imposed by this Court, instead of undergoing to remaining sentence of imprisonment. Accordingly, this appeal may be disposed of with

modification / alteration in sentence.

13. On the other hand to the above restricted point of argument, learned Spl.P.P. has raised no serious objections, but defended the judgment on merits.

14. It appears that during course of trial altogether ten witnesses were examined in this case. The important witness in this case is informant (P.W.-1),

P.W.-4 Dr. Binod Narayan and P.W.-8, who is the I.O. of this case.

15. P.W.-1 Suresh Mahto is the informant and uncle of the deceased namely, Rahul Kumar. He has stated that the deceased and his cousin were

purchasing gram nearby the Jhula which broke down due to which Rahul Kumar (deceased) sustained injury on his temple who was brought to the

hospital and died.

In para-3 of his cross-examination, he has stated that the Jhula was fitted properly, but all of a sudden broke down due to disorder of axle.

16. P.W.-4 Binod Narayan is the Doctor, who has conducted the post mortem and prepared post-mortem report of the dead body of the deceased. He has found one hametoma of right side of skull.

17. P.W.-8 Krishna Singh is the Investigating Officer of the case. He has stated that accident occurred in Mela where Rahul Kumar sustained injury and was brought to Hospital where he died. At para-4, he has stated that jhula was not seized and at para-7, he has stated that he cannot say under whose management the mela was organized. He has further stated that he is not an expert, as such, cannot say about jhula.

18. It appears from the trend of prosecution evidence that no cogent material has been collected during investigation showing that the alleged hindola (jhula) was being operated in partnership or with cooperation of appellant nos. 1 & 2, rather it appears that they have been made accused because they happen to be the sons of appellant no. 3 and were present in the village fare at the time of accident. The accident has also taken place in sudden manner, which appears to be beyond control of the appellant no. 3.

19. Under such circumstances, the maximum imprisonment awarded to the appellants requires to be reduced by enhancing the monetary compensation to the dependents of the victim.

20. Considering the overall aspect of the case, the conviction and sentence of appellant nos. 1 & 2 does not appear to be justified under law in absence of cogent and reliable evidence. Hence, conviction and sentence of appellant nos. 1 & 2 is hereby set aside. Appellant nos. 1 & 2 are acquitted from the charges levelled against them.

21. So far appellant no. 3 is concerned, his conviction is upheld, but sentence of imprisonment is reduced to the period already undergone by him.

22. The appellant no. 3 is directed to pay Rs. 50,000/- as victim compensation to the family members of the deceased child. The learned trial court shall identify the family members entitled for compensation and disburse the amount of compensation to them. The appellant no. 3 is directed to deposit the compensation amount within a period of three months from the date of this judgment before the learned trial court.

23. Accordingly, this appeal is partly allowed with aforesaid observation.

24. The appellant nos. 1 & 2 are on bail, as such, they are discharged from liability of bail bond and sureties shall also discharged on merits with modification in sentence as stated above.

25. So far appellant no. 3 is concerned, the appeal on his behalf is hereby dismissed.

26. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.