

THE HIGH COURT OF MADHYA PRADESH
Criminal Revision No.2512/2021
Devendra Valmiki Vs. State of M.P.

Gwalior, Dated: 12-11-2021

Shri Rajnish Sharma, Advocate for applicant.

Shri Lokendra Shrivastava, Public prosecutor for respondent/State.

Heard on the question of admission.

2. This Criminal Revision under Sections 397, 401 of Cr.P.C. has been filed against the judgment and sentence dated 15/9/2021 passed by First Additional Sessions Judge, Ganjbasoda, Link Court Kurvai, District Vidisha in Criminal Appeal No.03/2020, thereby affirming the judgment and sentence dated 18/12/2019 passed by the Chief Judicial Magistrate First Class, Kurvai, District Vidisha in Regular Criminal Trial No.173/2014, by which the applicant has been convicted for the following offences:-

Conviction U/s	Sentence	Fine	Default (in lieu of fine)
279 of IPC	6 months RI	500/-	10 days RI
338 of IPC	6 months RI	500/-	10 days RI
304-A of IPC	1 year RI	1,000/-	10 days RI

3. It is submitted by the counsel for the applicant that according to the prosecution case, on 3/10/2013 the Government Hospital, Ganjbasoda, District Vidisha, sent an information to the SHO Ganjbasoda, District Vidisha that Chandrashekhar and Priti have

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been brought to the hospital in dead condition. Accordingly, Marg No.0/2013 was registered, Panchnama of the dead bodies were prepared and they were sent for postmortem. The statements of the witnesses were recorded and it was found that on 3/10/2013 Mahendra alongwith his sister Priti and cousin brother Chandrashekhar were coming from village Parsora and when they took a turn from Bhalbamora Chauraha towards Mandibamora, then the present applicant, who was riding his motorcycle No.UP 94 J 3106, hit the bike of the deceased in a rash and negligent manner, as a result, Chandrashekhar and Priti sustained grievous injuries and ultimately succumbed to the same. The injured Mahendra Singh also sustained injuries on his hand, forehead and mouth. 108 ambulance was called on the spot. Injured / deceased were sent to the Civil Hospital, Basoda, where Priti and Chandrashekhar were declared dead.

4. The police after recording the statements of the witnesses and concluding the investigation, filed the charge-sheet for offence under Sections 279, 337, 304-A, 338 of IPC read with Sections 3/181 and 5/180 of the Motor Vehicles Act.

5. The Trial Court by order dated 8/10/15 framed charges u/s. 279, 304-A of IPC read with Sections 3/181 of Motor Vehicles Act. Thereafter by order dated 24.10.2019, additional charge u/s. 338 of

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IPC was framed. Charge U/s. 5/180 of Motor Vehicles Act was framed against co-accused Rajeev.

6. The prosecution in order to prove its case, examined Rambabu Dangi (PW-1), Ashok Joshi (PW-2), Manjeet Singh Rajput (PW-3), Dr. R.K. Chidar (PW-4), Harishankar Sharma (PW-5), B.S. Bhadoriya (PW-6), Deepak Kumar (PW-7), Mahendra Singh Rajput (PW-8), Hameer Singh (PW-9), Umesh Dubey (PW-10), Achal Singh (PW-11).

7. The applicant examined himself as DW-1 under Section 315 of Cr.P.C.

8. The Trial Court by judgment and sentence dated 18/12/2019 convicted and sentenced the applicant for the above-mentioned offences and acquitted the co-accused Rajeev.

9. Being aggrieved by the judgment and sentence passed by the Trial Court, the applicant preferred a Criminal Appeal No.3/2020, which too has been dismissed by judgment dated 15/9/2021 passed by First Additional Sessions Judge, Ganjbasoda, Link Court, Kurvai, District Vidisha.

10. Challenging the findings recorded by the Courts below, it is submitted by the counsel for the applicant that four persons, i.e. two male and one woman were riding on a motorcycle alongwith a minor girl and thus, it is clear that they themselves were negligent as only

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two persons can ride on a motorcycle. It is further submitted that in fact no accident had taken place from the motorcycle of the applicant. The driver of the motorcycle could not control the motorcycle and it slipped, as a result, two persons riding on the said motorcycle died on the spot. It is further submitted that even otherwise, the jail sentence awarded to the applicant may be reduced to the period already undergone by the applicant, as he is in jail from the date of dismissal of his appeal, i.e.15/9/2021.

11. *Per contra*, the revision is vehemently opposed by the counsel for the State. It is submitted that the applicant has not pointed out any legal flaw in the judgments passed by the Courts below and this Court in exercise of its revisional powers cannot interfere with the findings of facts unless and until they are perverse or contrary to record.

12. Heard learned counsel for the parties.

13. Rambabu Dangi (PW-1) and Ashok Joshi (PW-2) have stated that they reached on the spot after the accident took place. Ashok Joshi turned hostile as he did not support the seizure of motorcycles vide seizure memo Ex.P/2 and P/3, however, he admitted his signatures on the said documents. Similarly, Rambabu Dangi (PW-1) has admitted that the spot map Ex.P/1, seizure memo Ex.P/2 and P/3 bear his signatures. But, one thing is clear that since Rambabu (PW-

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1) did not support the prosecution case as an eyewitness, therefore, he was declared hostile. Nothing substantial could be elicited from the evidence of Rambabu Dangi (PW-1) and Ashok Joshi (PW-2), which may support the prosecution case.

14. Manjeet Singh Rajput (PW-3) has stated that the motorcycle which was in front of him had hit the motorcycle coming from the opposite direction, as a result, two persons fell on the ground and died on the spot and they are Pritibai and Chandrashekhar. This witness has further stated that he has seen the driver of the motorcycle, who disclosed his name as Devendra and he also stated that the person standing in the dock appears to be the driver of the offending motorcycle. He further submitted that the driver of the motorcycle was under the influence of alcohol. In cross-examination, he has stated that he had seen the driver of the offending motorcycle from his back. He further stated that when the by-passers enquired about the deceased persons, then this witness disclosed that the lady is the resident of his village and the deceased his her brother. He further stated that he had seen the driver of the offending motorcycle after the accident and since the accident took place 2½ to 3 years back, therefore, today he has some suspicion as to whether the person present in the dock is the same person or not. He further stated that the registration number of the offending vehicle is UP 94 J 3106. He

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further admitted that the deceased Priti is his aunt.

15. Mahendra Singh Rajput (PW-8) is the wife of the injured, who was sitting on the motorcycle. He has stated that the motorcycle was being driven by Chandrashekhar and the deceased Chandrashekhar, Priti, this witness and a minor girl were riding on the motorcycle. The applicant who was also on a motorcycle came from the opposite direction in a rash and negligent manner and hit the motorcycle, as a result, Chandrashekhar and his sister Priti died on the spot, whereas this witness also sustained injuries on his face. In cross-examination, he admitted that three adults and one minor child were sitting on the motorcycle and the deceased Priti was also having one bag with her. He further stated that even after sustaining injuries on the accident, he did not lose his consciousness and he was well oriented. He further stated that immediately after the accident, he came to know about the name of the driver of the offending motorcycle, as lot of persons, who had gathered there, were knowing the driver of the offending motorcycle. Even the driver of the offending motorcycle had disclosed his name. The applicant was driving the motorcycle in a very rash and negligent manner and at a high speed. He denied that the accident took place all of a sudden. He further stated that the deceased Chandrashekhar was riding his motorcycle in the right direction, whereas the applicant came from a wrong direction and hit

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the motorcycle. He further stated that the child of Chandrashekhar has received a compensation of Rs.12,00,000/- in a motor accident claim case, whereas this witness has received Rs.50,000-60,000/- in a claim case. A specific suggestion was given that on account of the accident, the applicant is still admitted in the hospital. However, it was stated by this witness that the applicant had suffered minor injuries.

16. Hameer Singh (PW-9) is a hearsay witness. He did not support the prosecution case and stated that later on he came to know about the accident and, therefore, he was declared hostile.

17. Dr. R.K. Chidar (PW-4) had medically examined the injured Mahendra (PW-8) and found a lacerated wound over tongue, 3 cm. X 3 cm. upto skin deep with bleeding.

18. Deepak Kumar (PW-7) had found fracture on the left mandible condyle bone of injured Mahendra and accordingly, he was operated upon for inter maxillary fixation on 7/10/2013 and he was discharged on 11/10/2013.

19. The record of the Trial Court also contains bed head ticket of injured Mahendra, according to which, he was operated upon, but unfortunately those documents remained unexhibited, therefore, they cannot be read.

20. Dr. R.K. Chidar (PW-4) had also conducted the postmortem of

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the deceased Priti Rajput as well as Chandrashekhar.

21. As per the postmortem report of Priti, one abrasion over right mandible bone was found with fracture and one lacerated wound was found over right occipital region with fracture. The postmortem report is Ex.P/7.

22. As per the postmortem report Ex.P/8 of deceased Chandrashekhar, the following injuries were found:-

- i. One lacerated wound over right eyebrow frontal bone with fracture, size 10 inch X 3 inch with bone deep.
- ii. Fracture of mandible right side.
- iii. Fracture of right cleical side.
- iv. Multiple fracture of ribs of left side.
- v. Abrasion of both legs.
- vi. Abrasion over both hands.

23. Cause of death of both the deceased was due to shock and hemorrhage.

24. Thus, it is clear that the deceased Priti and Chandrashekhar sustained multiple external and internal injuries including multiple fracture, as a result, they died on the spot and, therefore, death of both persons is accidental in nature, whereas Mahendra (PW-8) had also sustained injuries.

25. The applicant entered into the witness box as DW-1 and stated

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that the motorcycle on which the deceased persons and the injured were riding was moving at a speed of 40-45 km. Per hour and as they slipped, therefore, the persons riding on the motorcycle fell on the ground. The minor girl also fell on the road, who was picked up by this witness and thereafter he called the 108 ambulance and took away the injured, whereas the minor girl was taken away by her family members, as he handed over her to them. He further stated that the minor girl did not sustain any injury. He further stated that he did not sustain any injury as no accident had taken place with his motorcycle. He further stated that Mahendra was driving the motorcycle, which fell on the ground. He further stated that after some time, the police also reached on the spot and enquired about the name of the injured persons as well as the name of the applicant. He further stated that the police had asked him to park his motorcycle in the premises of the petrol pump. He further stated that no accident had taken place from his motorcycle, but on the contrary he had helped the injured persons.

26. The police had prepared the spot map and from the spot map, it appears that the accident took place on the extreme side of the road. Thus, the evidence of the witnesses that the deceased was driving the vehicle on the extreme left side, whereas the applicant hit the

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motorcycle by coming from the wrong side appears to be correct. Furthermore, the applicant (DW-1) himself has stated that the motorcycle on which the deceased persons and injured Mahendra were riding came from the side of village Bhalbamora and turned towards Mandibamora. It is clear from the spot map, Ex.P/1, that the accident took place on the extreme left side of the road, which is to be used by a motorcyclist, going towards Mandibamora. Thus, according to the applicant himself, the deceased persons were on their left side and since the accident took place on the extreme left side of the road, therefore, it is clear that the applicant was driving the motorcycle in a wrong direction and hit the motorcycle of the deceased Chandrashekhar, while they were on the extreme left side of the road. Thus, it is the applicant who was at fault. Merely because three male persons and one minor girl were riding on the motorcycle, would not give any authority to the applicant to hit the said motorcycle by coming from the wrong direction. Furthermore, the applicant (DW-1) himself has admitted his presence on the spot.

27. Both the Courts below have given concurrent findings of facts about the negligent act of the applicant. Even this Court has also considered the evidence led by the parties and has come to a conclusion that it was the applicant himself, who was driving the offending vehicle and by coming from the wrong side, hit the

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motorcycle of the deceased, resulting in death of two persons. As the findings of facts recorded by the Courts below cannot be said to be perverse or contrary to record, accordingly, the conviction of the applicant for the offences under Sections 279, 338 and 304-A of IPC is hereby affirmed.

28. So far as the question of sentence is concerned, it is submitted by the counsel for the applicant that the applicant is in jail for the last two months and, therefore, he may be sentenced to the period already undergone.

29. Considered the submissions made by the counsel for the applicant.

30. In the present case, it has been categorically found that it was the applicant, who hit the motorcycle of the deceased by coming from the wrong side. Two persons have lost their lives and one sustained injuries on his jaw, as a result, he was operated upon. The Supreme Court in the case of **State of Punjab Vs. Saurabh Bakshi, reported in (2015) 5 SCC 182** has held as under :

“1. Laws can never be enforced unless fear supports them.”

Though the aforesaid statement was made centuries back, it has its pertinence, in a way, with the enormous vigour, in today's society. It is the duty of every right-thinking citizen to show veneration to law so that an orderly, civilised and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos.

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It is totally intolerant of anarchy. If anyone defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognises. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain crimes assume more accent and gravity depending on the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalised. In this context one may recapitulate the saying of Justice Benjamin N. Cardozo “Justice, though due to the accused, is due to the accuser too.” And, therefore, the requisite norm has to be the established principles laid down in precedents. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices.

23. In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the

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fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, is worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental.

24. Needless to say, the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign mistress” and “queen of virtue” as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

25. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilised persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish.

The Supreme Court in case of **State of Madhya Pradesh vs.**

Surendra Singh reported in (2015) 1 SCC 222 has held as under:-

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“13. We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

14. In a recent decision in *State of M.P. v. Bablu* [(2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1] , after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.

The Supreme Court in the case of **State of Karnataka vs.**

Sharanappa Basanagouda Aregoudar reported in **(2002) 3 SCC**

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738 has held as under:-

5. It may be noted here that the respondent had raised a plea before the learned Magistrate as well as before the appellate court that the accident might have occurred due to the bursting of the right front tyre of the car as a result of which the car went to the right side of the road and dashed against the lorry. But this plea was not accepted by the trial court as well as the appellate court. A suggestion to this effect was put to the Motor Vehicles Inspector who had examined the vehicle after the accident. However, the Inspector also declined the suggestion that the accident might have occurred as a result of bursting of the tyre and he opined that the tyre would have burst due to the collision between the two vehicles. The possibility of the car having gone to the extreme right side is also ruled out by the evidence. The observation made by the revisional court is not based on the evidence on record.

6. We are of the view that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the courts below. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is

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probably the most public face of the criminal justice system.

Thus the Court should not award flea-bite sentence for offence under Section 304-A of IPC by showing undue sympathy. In the present case, two persons have lost their lives and it was the applicant who was solely negligent in causing accident by hitting the motorcycle by coming from the wrong direction. Accordingly, this Court is of the considered opinion that no case is made out even for reduction of the jail sentence. The Courts below have already adopted a very lenient view in the matter and accordingly, the sentence awarded by the Courts below does not call for any interference.

31. Accordingly the judgment and sentence dated 15/9/2021 passed by First Additional Sessions Judge, Ganjbasoda, Link Court Kurvai, District Vidisha in Criminal Appeal No.03/2020 and judgment and sentence dated 18/12/2019 passed by the Chief Judicial Magistrate First Class, Kurvai, District Vidisha in Regular Criminal Trial No.173/2014 are hereby affirmed.

32. The applicant is in jail, he shall undergo the remaining jail sentence.

33. The Registry is directed to send back the record of the Courts below alongwith a copy of this judgment for necessary information and compliance.

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34. The revision fails and is hereby **dismissed**.

**(G.S. Ahluwalia)
Judge**

Arun*