

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 262 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SURSING @ SURESH FATESING VASAVA

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 262 of 2003
MR HN BRAHMBHATT for Petitioner No. 1
MR KB PUWAR for Petitioner No. 1
MS MANISHA L. SHAH Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 31/07/2003

ORAL JUDGEMENT

1. This revision application is preferred against the judgment and order dated 6.12.1997 of ld. Addl.

Sessions Judge, Bharuch, Camp at Rajpipala pronounced on 8.5.2003 in Criminal Appeal No. 26/1997 whereby the ld. Addl. Sessions Judge confirmed the conviction of appellant for the charges under sec. 279 and 304A of IPC and under sec. 177 and 184 of Bombay Motor Vehicles Act in Criminal case No. 726 of 1993 by the ld. J.M.F.C., Valiya.

2. The facts leading to the filing of this revision application can briefly be stated that the incident occurred on 5.4.93 at about 7.00pm near village Moriyana. It was the case of the prosecution that the appellant driving Tractor No. GJ-16/2291 together with Tractor Trolly No. GTC 9853 employed by one Shri Jashwantsingh Tajusing was coming from the field and was going towards the road of village Moriyana. The deceased Naresh Chandrasingh was playing on the road was aged about 5 years. As per the prosecution case, due to rash and negligent driving by the applicant of the above said Tractor deceased Naresh Chandrasingh was hit and collided on the left side of the Tractor and was dragged with the Tractor for about 15 ft. The deceased Naresh Chandrasingh received serious injuries on the head and died on the spot. Uncle of the deceased Shantilal Ramsing filed a complaint before the Valiya Police Station on 5.4.1993 at 19.00 hrs. Upon complaint being filed, an offence was investigated and charge-sheet came to be filed against the present applicant in the Court of Judicial Magistrate First Class, Valiya for the offences punishable under sec. 279, 304A of the IPC as well as for the charges under sec. 177 and 184 of the Bombay Motor Vehicles Act. After examining 5 to 6 witnesses and after recording plea of not guilty of the applicant, ld. Judicial Magistrate First Class, Valiya heard both the parties and came to the conclusion that the applicant was liable for the offence committed by him for the charges under sec. 279 and 304A of IPC and under sec. 177 and 184 of the Bombay Motor Vehicles Act. After recording conviction, ld. Magistrate sentenced the present applicant for R/I of three months and imposed fine of Rs. 500/-, in default, to undergo one months S/I for the offence proved under sec. 279 of IPC. Ld. Magistrate also sentenced the present applicant for R/I of one year and fine of Rs. 500/-, in default, to undergo one month S/I, for the offence proved against him under sec. 304A of IPC. For the offence proved against the applicant under sec. 177 and 184 of the Bombay Motor Vehicles Act, the ld. Magistrate imposed fine of Rs. 200/- upon the applicant and in default, to undergo 10 days S/I.

3. Being aggrieved and dissatisfied by the above

said judgment and order of ld. Magistrate, Valiya in Criminal Case No. 726/1993, the applicant filed an appeal in the Sessions Court at Bharuch being Criminal Appeal No. 26/1997. After hearing the applicant and the State vide his order impugned dated 8.5.2003 ld. Addl. Sessions Judge, Bharuch Camp at Rajpipala was pleased to dismiss the appeal and confirmed the judgment of conviction sentencing the applicant and hence, this revision application.

4. This revision application was admitted by the order of this court recorded on 21.7.2003. Ld. advocate Mr. Brahmbhatt requested this Court to take up this matter for final hearing peremptorily because he intended to restrict his submission with regard to the quantum of the punishment. So, the matter is fixed for final hearing today.

5. Ld. advocate Mr. Brahmbhatt for the applicant and Ms. Shah ld. APP were heard.

6. So far as the merits of the case is concerned, no submissions made by the ld. advocate for the applicant but the submissions were restricted only for the quantum of the punishment awarded to the applicant. Ld. advocate for the applicant placed on record the affidavits filed by ori. complainant Shantilal Ramsing Vasava and eye witnesses Chhitubhai Abhesing and Amarsing Ramsang. Affidavits are sworn in before the Registrar, Civil Court, Zaghadia on 29.5.2003. These affidavits, upon the request of the ld. Advocate for the applicant, are taken on record. On the strength of these affidavits, ld. advocate for the applicant has vehemently urged that between the complainant and the applicant-accused compromise has taken place. Accused as well as complainant's family belonged to the same village and same caste. My attention also drawn to the facts mentioned in the affidavits that for the death of Naresh Chandrasingh in the incident, the father of the victim has been awarded compensation by MAC Tribunal, Bharuch. It is also contended that wife of the applicant is suffering from serious decease of T.B. and is bed ridden. Except one son, no else male members is in the family of the applicant to look after the wife of the applicant. Ld. advocate for the applicant also cited the decisions of the Apex Court in the matter of Surendra Nath Mohanty and anr. vs. State of Orissa, as reported in AIR 1999 SC 2181 and in the matter of Ram Lal and anr. vs. State of Jammu and Kashmir, as reported in AIR 1999 SC 895, wherein, in the case under sec. 326 the compromise was not permissible and the offence was not

compoundable, but having regard to the facts of those cases, the Apex Court was pleased to reduce the sentence. Therefore, it is urged that the sentence of imprisonment which is awarded to the applicant be reduced to three months so far as the charge under sec. 304A of IPC is concerned. It is also submitted that accused is in jail right from the date of the pronouncement of the judgment of ld. Addl. Sessions Judge, Bharuch, Camp at Rajpipala in the said Criminal Appeal No. 26 of 1997 on 8.5.2003, almost the applicant has undergone imprisonment of two months and 22 days approximately. It was also urged that the sentence of imprisonment awarded for the offence charged under sec. 279 of IPC and sentence of imprisonment awarded for the charge under sec. 304A of IPC be made to run concurrently which has not been done by the ld. Judicial Magistrate First Class or Appellate Court in the said appeal.

7. Ld. APP Ms. Shah on behalf of State was heard.

8. Since no submissions have been advanced on merits of the matter, the only issue before this Court is whether in the facts and circumstances of this case in revisional jurisdiction of this court, sentence awarded to the applicant by the ld. Judicial Magistrate First Class, Valiya be reduced, and if reduced, to what extent?

9. It is true that the offence under sec. 304A and under sec. 279 of IPC are not compoundable under sec. 320 of Code of Criminal Procedure, 1973 even then as laid down by the Apex Court that the compounding of the offence may not be permissible but the said fact can be taken into consideration while deciding the quantum of compensation. In para-8 of the decision in the matter of Surendra Nath Mohanty and anr. v. State of Orissa, (supra) the Apex Court observed as under:

"8. We reiterate that the course adopted in Ram Pujan v. State of U.P. (AIR 1973 SC 2418:1973 Cri LJ 1612) and Mahesh Chand v. State of Rajasthan, (AIR 1988 SC 2111:1989 CriLJ 121) (supra) was not in accordance with law. However, considering the fact that parties have settled their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that appellants have already undergone 3 months imprisonment as per the sentence imposed on them, we think that ends of justice would be met if the sentence of imprisonment is reduced to the period already

undergone besides imposing a fine of Rs. 5,000/on each of the accused under Section 326 read with Section 34, IPC. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellant concerned shall undergo simple imprisonment for a further period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs. 9,000/- also be paid to the injured as compensation."

10. While in the matter of Ram Lal and anr. v. State of Jammu and Kashmir(supra), the Apex Court has observed in paras-4 and 5 as under:

"4. It is apparent that when the decision in Mahesh Chand (AIR 1988 SC 2111) (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in Y. Suresh Babu (1987(2)JT (SC) 361) (supra) drawn. Hence, those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

5. However, considering the fact that parties have come to a settlement and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith."

11. In the above view of the matter, since the parties have executed compromise and having regard to the facts and circumstances of this case especially the complainant's family has received compensation for the death of victim Naresh and having regard to the fact that wife of the applicant is suffering from serious disease like T.B., it would be just and reasonable to reduce the

sentence awarded upon the applicant by ld. Judicial Magistrate First Class, Valiya and as confirmed by the Appellate Court. At the same time, it would be in the fitness of the thing and according to law, if the sentence awarded for the charges under sec. 279 and 304A of IPC are made to run concurrently. The fact that the offence was committed on 5.4.1993, almost before 10 years also required to be considered.

11. In the above view of the matter, this revision application stands allowed to the following extent:

1. The punishment of imprisonment awarded for the charges under sec. 279 and under sec. 304 of Indian Penal Code upon the applicant is directed to run concurrently.

2. No interference is called for so far as quantum of punishment for the charge under sec. 279 of Indian Penal Code is concerned as well as no interference is called for the quantum of punishment awarded upon the applicant for the charges under sec. 177 and 184 of the Bombay Motor Vehicles Act.

3. Sentence of R/I of one year awarded to the applicant for the charge proved against him under sec. 304A of Indian Penal Code, as confirmed by the Appellate Court, is revised and the same is reduced to three months instead of one year R/I as awarded by the ld. Judicial Magistrate First Class, Valiya. The imposition of fine by the ld. Judicial Magistrate First Class, Valiya of Rs. 500/- on this count is increased to Rs. 1500/-. The default punishment of nonpaying of fine would be 15 days S/I.

12. When the applicant serves the sentence as above said, he shall be released forthwith from the jail, if he is not required to be detained for any other offence.

13. This revision application stands disposed of in above terms and rule is made absolute to the aforesaid extent only. DS Permitted.

(J.R. VORA, J.)

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