

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

**ORDER**

Hamid Khan                      Versus                      State of Rajasthan.

S.B.CRIMINAL REVISION NO. 48/2006  
against the judgment & Order dated  
07.01.2006 passed by Additional Sessions  
Judge, Banswara in Criminal Appeal  
No.55/2004.

Date of Order                      :                      28/4/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Rakesh Arora for the petitioner.  
Mr. J.P.S.Choudhary, public prosecutor for the State.

**BY THE COURT:-**

This criminal revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), is directed against the judgment and order dated 07.01.2006 passed by Additional Sessions Judge, Banswara (for short 'the appellate court' hereinafter) in Criminal Appeal No. 55/2004, whereby the appeal filed by the petitioner against the judgment and order dated 24.6.2004 passed by Judicial Magistrate, Bagidora, district Banswara (for short 'the trial court' hereinafter), was dismissed. However, while, maintaining the

conviction of the petitioner for the offences under Sections 279 and 304-A IPC, the substantive sentence of imprisonment awarded by the trial court for the offence under Section 279 IPC was reduced from six months' to three months' simple imprisonment and for the offence under Section 304-A IPC, the substantive sentence of imprisonment was reduced from one year to six months' simple imprisonment. Aggrieved by the judgment and order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and public prosecutor for the State. Carefully gone through the judgment and order of the appellate court as well as of the trial court and record of the trial court.

The petitioner was put to trial for the offences under Sections 279 and 304-A IPC on a report lodged by PW-3 Nand Kishore, Constable, who at the relevant time of the accident, was posted at outpost Anas police Chouki, Police Station Sallopat. He witnessed the occurrence while performing the duty at the police chouki and stated that while he was standing by the side of the police chouki, a truck bearing No.M.P. 14/C-4600 came at a great speed which was being driven rashly and negligently, hit a person standing at the road side, who was crushed under the

rear wheel of the truck. The truck was chased and a wireless messages were also sent to police station, Kushalgarh and Kalinjara. The truck was intercepted and seized by the police; the petitioner was arrested and he has been identified by PW-3 and other witnesses. PW-3 stated that it was the petitioner, who at the relevant time of occurrence, was driving the truck at a great speed rashly and negligently and hit a person, who was standing at the road side. The first information report was promptly lodged by PW-3 giving entire details including the vehicle number. The medical evidence and the post-mortem report Ex.P-5 show the cause of death due to the injuries suffered in the road accident.

PW-1 Bhawani Singh, another police constable, who was also at the police chouki at the relevant time of occurrence, witnessed the occurrence and stated that the truck No. M.P. 14/C-4600 came at a great speed which was being driven rashly and negligently, hit a person standing at the road side. The truck was chased and ultimately apprehended. He has identified the present petitioner in the Court and stated that it was the petitioner, present in the Court, who was driving the truck at the relevant time of occurrence.

A notice was served on the owner of the truck

requiring him to disclose the name of the person who at the relevant time of occurrence was driving the truck. The owner of the truck stated that at the relevant time of occurrence, it was the petitioner who was driving the truck in question.

On appreciation of the cogent and reliable evidence, the trial court convicted the petitioner for the offences under Sections 279 and 304-A IPC and sentenced him to undergo six months' simple imprisonment and a fine of Rs. 500/-, in default of payment of fine further to undergo one month's simple imprisonment for the offence under Section 279 IPC and one year's simple imprisonment and a fine of Rs. 1000/-, in default of payment of fine further to undergo two months' simple imprisonment for the offence under Section 304-A IPC. However, the appellate court while dismissing the appeal and maintaining the conviction of the petitioner, reduced the substantive sentence of imprisonment from six months' simple imprisonment to three months' simple imprisonment for the offence u/s 279 IPC and one year's simple imprisonment to six months' simple imprisonment for the offence u/s 304-A IPC.

Learned counsel for the petitioner submits that the sentence awarded may be reduced to the period of imprisonment already undergone by the petitioner.

There is concurrent finding of facts recorded by both the courts below convicting the petitioner. The conclusion recorded by the courts below is based on sound and proper appreciation of the evidence. Learned counsel for the petitioner could not point out any illegality in the judgment and orders impugned. The appellate court took a lenient view and reduced the sentence of imprisonment from one year to six month's simple imprisonment for the offence u/s 304-A IPC and from six months' to three month's simple imprisonment for the offence u/s 279 IPC. In my view, no further reduction is warranted keeping in view the manner in which the accident has been caused resulting in death of a person aged about 35 years.

In the circumstances, therefore, I do not find any error, illegality or perversity in the judgment and order impugned warranting interference in revisional jurisdiction.

In the result, the revision petition fails and is hereby dismissed. The application seeking suspension of sentence also stands dismissed.

**(H.R.PANWAR),J.**

rp