

**Logar Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/762976](http://sooperkanoon.com/762976)

**Court :** Rajasthan

**Decided On :** Mar-16-2001

**Reported in :** 2001(3)WLC512; 2001(2)WLN397

**Judge :** Sunil Kumar Garg, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 307, 313, 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 279, 304-A, 337 and 338; [Motor Vehicles Act, 1988](#) - Sections 134 and 187; [Probation of Offenders Act, 1958](#) - Sections 3

**Appeal No. :** S.B. Criminal Revision Petition No. 70 of 2001

**Appellant :** Logar

**Respondent :** State of Rajasthan

**Advocate for Def. :** D.D. Kalla, Public Prosecutor

**Advocate for Pet/Ap. :** Sandeep Mehta, Adv.

**Disposition :** Revision Petition dismissed

**Judgement :**

ORDER

**Garg, J.**

(1). This revision petition has been filed by the accused petitioner against the judgment and order dated 19.12.2000 passed by the learned Additional Sessions Judge No.3, Udaipur in Criminal Appeal No. 32/2000 (105/2000) by which he dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 1.9.2000 passed by the learned Additional Chief Judicial Magistrate, Vallabh Nagar, District Udaipur in Criminal Case No. 55/96 whereby the learned Addl. Chief Judicial Magistrate convicted the accused petitioner for the offence under Sections 279, 337, 338 and 304A IPC and sentenced in the following manner:-

Name of accused petitioner

Convicted under Section

Sentence awarded

Logar

279 IPC

Three months SI and a fine of Rs. 100/-, in default of payment of fine, to further undergo ten days' SI.

337 IPC

Three months' SI and a fine of Rs. 100/-, In default of payment of fine, to further undergo ten days' SI.

338 IPC

Six months' SI and a fine of Rs. 200/-. in default of payment of fine, to further undergo ten days' SI.

304A IPC

One year SI and a fine of Rs. 1 000/-, in default of payment of fine, to further undergo one month SI.

All the above substantive sentences were ordered to run concurrently.

(2). The facts giving rise to this revision petition, in short, are as follows:-

One Ram Krishna made a Parchabayan Ex.P/12 on 18.12.1995 stating inter-alia that on 18.12.1995 he and PW9 Durgalal and PW8 Kanhaiyalal were waiting for Bus at Bus Stand Intali and Melador bearing No. RJ-27-G-1948 came and he alongwith PW9 Durgalal and PW8 Kanhaiyalal sat in the said Mctador and 1 km. ahead of Intali, the Metador turned because of rash and negligent driving of the vehicle by the driver, as a result of which they and other persons received injuries and one person died. On this Parchabayan, the police registered FIR No. 188/95 (Ex.P/13) at Police Station Vailabh Nagar District Udaipur for the offence under Sections 279, 337, 338 and 304AIPC and started investigation. During investigation, post mortem of the dead body of the deceased Roda was got conducted and his post mortem report is Ex.P/3. The injured person, namely, Bhanwarlat, Kanhaiyalal (PW8), Durgalal (PW 9) and Ram Krishna were got medically examined and their injury reports are Ex.P/4, Ex.P/5, Ex.P/6 and Ex.P/7 respectively. During invesligation, the police also came to the conclusion that the vehicle in question was being driven by the accused petitioner.

(3). After usual investigalion, the police submitted challan in the Court against the accused petitioner for the offence under Sections 279, 337, 338 and 304AIPC and 134/187 of Ihe Motor Vehicles Act.

(4). The contents of the charges for the offence under seclions 279, 337, 338 and 304 IPC were read over to the accused petitioner on 19.7.1996, who pleaded not guilty and claimed trial.

(5). In support of its case, the prosecution examined as many as nine witnesses and got exhibited some documents. Thereafter, the slatement of the accused petitioner under Section 313 Cr. P.C. was recorded. No evidence was led in defence by the accused petitioner.

(6). After recording evidence and conclusion of trial, the learned Additional Chief Judicial Magistrale, Vallabh Nagar, District Udaipur vide his judgment and order

dated 1.9.2000 convicted the accused petitioner for the offence under Sections 279, 337, 338 and 304A IPC and sentenced in the manner as indicated above, holding inter alia that the prosecution has proved its case beyond reasonable doubt against the accused petitioner. Against the said judgment and order of the learned Addl. Chief Judicial Magistrate, Vallabhnagar, District Udaipur dated 1.9.2000, the accused petitioner preferred an appeal before the learned Additional Sessions Judge No.3, Udaipur, who vide his judgment and order dated 19.12.2000 dismissed the appeal of the accused petitioner and confirmed the judgment and order dated 1.9.2000 passed by the learned Addl. Chief Judicial Magistrate, Vallabhnagar, District Udaipur.

(7). Aggrieved from the aforesaid judgments and orders of the courts below, this revision petition has been filed by the accused petitioner.

(8). In this revision petition, the following submissions have been made by the learned counsel for the accused petitioner:-

1. That the prosecution in this case has failed to prove by any admissible evidence that the accused petitioner was driving the vehicle at the relevant time.

(2) That the prosecution has failed to prove that the accused petitioner was driving the vehicle rashly and negligently and it was due to rash and negligent driving of the vehicle by the accused petitioner that the alleged accident took place.

3. That looking to the facts and circumstances of the present case, lenient view be taken in awarding sentence to the accused petitioner.

(9). On the other hand, the learned Public Prosecutor supported the impugned judgments and orders of the courts below.

(10). I have heard the learned counsel for the accused petitioner and the learned Public Prosecutor and perused the records of the case.

(11). Before proceeding further, necessary ingredients to prove the charge for the offence under Sec. 304A IPC may be stated here. The following requirements must be satisfied before conviction is recorded under Section 304A IPC:-

1. Death of any person must have been caused;
2. It must have been caused by rash or negligent act; and
3. Such act must not amount to culpable homicide.

(12). So far as the facts of the present case are concerned, it may be stated here that in the alleged accident, one Roda died and his post mortem report is Ex.P/3 and one Ram Krishna, who lodged the report Ex.P/12, also received injuries, simple as well as grievous and his injury report is Ex.P/7 and PW8 Kanhaiyalal and PW9 Durgalai also received injuries and their injury reports are Ex. P/5 and Ex.P/6 respectively. Thus, there is evidence and findings of both the courts below that in the alleged accident, one person died and some other persons received injuries simple as well as grievous.

(13). The learned Additional Sessions Judge No. 3, Udaipur in his judgment and order dated 19.12.2000 has clearly held that the fact that Melador was being driven by the accused petitioner at the lime of alleged accident is not in dispute and the same has been admitted by the accused petitioner himself. Apart from this, the learned Addl. Chief Judicial Magistrate, Vailabhnagar, District Udaipur in his judgment and order dated 1.9.2000 has also held that the notice under Section 133 of the [Motor Vehicles Act, 1988](#) and reply to it have also been admitted by the accused petitioner where owner of the Metador in question has specifically stated that on the date of accident, the Metador was being driven by the accused petitioner and thus, from this point of view also, the fact that Metador was being driven by the accused petitioner at the time of alleged accident, stands well proved. Thus, both the courts below have concurrently held that vehicle in question was being driven by the accused petitioner at the time of alleged accident.

(14). The learned Addl. Chief Judicial Magistrate, Vailabhnagar has further observed in his judgment and order dated 1.9.2000 that material witnesses have stated that the vehicle in question was being driven by the accused petitioner rashly and negligently. In coming to this conclusion, he specifically placed reliance on the statements of PW2 Ramesh and PW3 Ramlal and injured witnesses,

namely, PW 8 Kanhaiyalal and PW9 Durgalai. This finding of the learned Additional Chief Judicial Magistrate was confirmed by the learned Additional Sessions Judge No.3, Udaipur in appeal vide his judgment and order dated 19.12.2000. Thus, both the courts below have concurrently held that the vehicle in question was being driven rashly and negligently by the accused petitioner and as a result of which accident took place.

(15). The question that arises for consideration is whether the above concurrent findings of fact recorded by both the courts below can be re-appreciated by this Court while exercising revisionai jurisdiction?

(16). In *State of Karnataka vs. Appa Balu Ingale (1)*, it has been held by the Hon'ble Supreme Court that ordinarily, it is not open for the High Court to interfere with the concurrent findings of the courts below specially by reappreciating the evidence in its revisionai jurisdiction.

(17). A Court of revision is not entitled to re-assess and re-appraise the evidence unless it finds that the judgment to be revised suffers from some illegality or perversity or when there is glaring defect in procedure. The revisional Court cannot weigh the sufficiency of evidence.

(18). The High Court while sitting in revisionai jurisdiction under Sec. 397 of the Code of Criminal Procedure shall not and cannot re-appreciate and re-appraise the evidence and the finding of fact recorded by the two courts below can only be interfered with if such findings are perverse or based on no evidence or suffered from any error of law.

(19) In *State of Orissa vs. Nakula Sahu (2)*, the Hon'ble Supreme Court held that although the revisional power of the High Court is as wide as the power of court of appeal, it is now well settled that normally this jurisdiction of the High Court is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. In spite of the wide language of Section 397, the High Court is not expected to act under Section 397 or Section 401 as if it is hearing an appeal.

(20). In the present case, both the courts below have concurrently held that the accused petitioner was driving the vehicle in question at the time of accident and that the accused petitioner was driving the vehicle rashly and negligently, as a result of which, accident took place. These findings of fact are based on correct appreciation of evidence. It cannot be said that these findings are perverse or based on no evidence or suffered from any error of law.

(21). Thus, in the present case, scrutiny having been made by both the Court of Magistrate and the Court of Sessions and the same having been based on cogent material and proper appreciation of evidence, it is not permissible to re-appreciate the same in the revisional jurisdiction.

(22). For the reasons stated above, the concurrent findings recorded by both the courts below holding the accused petitioner guilty for the offence under Sections 279, 337, 338 and 304AIPC are based on evidence, warranting no interference.

(23). Hence, the arguments No.1 and 2 of the learned counsel for the accused petitioner stand rejected.

On sentence for the offence under Section 304A IPC

(24). The argument No.3 made by the learned counsel for the accused petitioner is that lenient view be taken in awarding sentence to the accused petitioner.

(25). A question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere with it. Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch.

(26). In *Rattan Singh vs. State of Punjab* (3), the Hon'ble Supreme Court held as under:-

'Penal Code (1860) S. 304A. Rash and negligent driving. Fatal accident. Sentence. No compassion to be shown.'

(27). In State of Karnataka vs. Krishna alias Raju (4), the Hon'ble Supreme Court held that:-

'Criminal P.C. (2 of 1974). S. 377, Enhancement of sentence. Driver convicted for killing one person and injuring another for offence under S. 304A and under other provision. Sentence of fine of Rs. 250/-Refusal of High Court to enhance sentence. Not proper.'

(28). The Hon'ble Supreme Court in the latest judgment in Dalbir Singh vs. State of Haryana and ors. (5), has held as under-

'Probation of Offenders Act (20 of 1958), S. 3-Penal Code (45 of 1860). S. 304A. Benefit of probation-Not to be extended to persons convicted of offence of causing death by rash and negligent driving.'

(29). Looking to the above authorities and taking into consideration the entire facts and circumstances of the present case, it cannot be said that the sentence awarded by both the courts below to the accused petitioner for the offence under Section 304A IPC is excessive. It is not a fit case for taking lenient view in awarding sentence.

(30). Thus, the argument No.3 of the learned counsellor the accused petitioner also stands rejected.

(31). For the reasons stated above, the revision petition filed by the accused petitioner fails and is hereby dismissed, after confirming the impugned judgments and orders of both the courts below.

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