

In the Court of Additional Sessions Judge-II, Bhagalpur

District- Bhagalpur (Bihar)

Criminal Appeal No.- 18 of 2022

**Present:- Deepak Kumar-I,
Additional Sessions Judge-II,**

Date of Judgment:- 12.08.2026

Naresh Mandal, age 48 years, S/o Late Bharosi Mandal, R/o village
Harnathpur, P.s. Sajour, District Bhagalpur.....**Appellant/petitioner**

Versus

State of Bihar**Respondent**

Ld. Counsel for the Petitioner/appellant :- Mr. Sunil Kumar, Ld. Adv.

Ld. Counsel for the Opposite Party :- Mr. Rajesh Kumar Singh, Ld. APP.

(Appeal against the judgment/order dated 03.02.2022 passed by Sri Ranjan Kumar Raina, Ld. A.C.J.M-VII, Bhagalpur, in connection with G.R. Case No. 2780/2005.

J U D G M E N T

1. This appeal has been preferred against the judgment dated 03.02.2022 passed by Sri Ranjan Kumar Raina, Ld. A.C.J.M-VII, Bhagalpur, vide in connection with G.R. Case No. 2780/2005. Whereby and wherein the Ld. Magistrate, Bhagalpur has convicted the appellant/petitioner namely Naresh Mandal U/s 279, 304A IPC in which convict Naresh Mandal has sentenced to rigorous imprisonment for six months and fine of Rs. 1000/- for the offence U/s 279 IPC and convict Naresh Mandal has sentenced to rigorous imprisonment for two years for the offence U/s 304A IPC and all sentences shall run concurrently.
2. Prosecution case, in brief, is that one Munna Mandal had filed a written report at Sajour P.S. stating therein that on 14.10.2005 at about 05:30

hours he was working at Cycle Shop and he was informed that her Bhabhi Kavita Devi alongwith her son Son Dablu, aged about 4 years were going by road through western side, in the meanwhile, one Tractor bearing Reg. No. BR 10C 5262 loaded with sand came rash and negligent manner and dashed to his nephew Dablu due to which Dablu died but villagers caught the said tractor anyhow and villagers had set fire in the said Tractor and the driver had been assaulted by the villagers and handed over to police. Hence, this FIR is lodged.

3. Thereafter, Ld. Court has took cognizance for the offence U/s 279, 304A IPC on 04.01.2007 against the accused and after appearance of the accused the trial of this case has been commenced. The charges in the said section have been framed against the accused on dated 29.03.2007 and the same was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried. Further on the basis of the evidence available on the record the learned trial court arrived at the conclusion that the prosecution has proved its charges U/s 279, 304A IPC against the accused and found guilty and convicted U/s 279, 304A IPC.

4. Being aggrieved and dissatisfied by the judgment order of convicted dated 03.02.2022, the appellant has preferred this appeal on the ground that entire case of the complainant is bad in law and the same ignored by the Ld. Trial Court at the time of passing this judgment and order which is subject to this criminal appeal and respondents to prove its case beyond all reasonable doubts. Further, submitted that the Ld. Court has failed to consider this aspect that the informant and I.O. has not been examined in this case and it cannot be supported to be proved and prosecution has failed to prove the case beyond any reasonable shadow of doubt and Ld. Magistrate has not applied the judicial mind at the time of passing the judgment and order ignored the Principle of law, not

only this also ignored the available evidence on record, so its can be counted that the order has been passed in mechanic way which is out of legal approach, hence the judgment and order is not at all just correct and legal from any corners of justice, hence prayed to set aside the judgment and order passed on 03.02.2022 in above G.R. case.

5. Now, the point for consideration before me is, whether the judgment and order as passed by Sri Ranjan Kumar Raina, Ld. ACJM-VII, Bhagalpur in G.R. Case No. 2780/2005 on dated 03.02.2022 is legal and justified on the basis of the evidence as available on the record ?

FINDING

6. It is evident from the Trial Court record that in order to find the charges levelled against the accused appellant, on behalf of the prosecution all together six prosecution witnesses have got examined namely PW-1 Vishundev Mandal, PW-2 Dilip Thakur, PW-3 Niranjana Mandal, PW-4 Pratima Devi, PW-5 Gauri Mandal and PW-6 Dr. Yogendra Prasad Sah.
7. On behalf of the prosecution following documentary evidences have also been adduced:-
- i. Exhibit- 1, Seizure list
 - ii. Exhibit- 2, Postmortem Report

B. Defence witness, if any:

Sr. No.	Exhibit Number	Description
-	No	-

C. Court Exhibits, if any:

Sr. No.	Exhibit Number	Description
-	No	-

D. MATERIAL OBJECTS.

Sr. No.	Material Object Number	Description
-	No	
-	No	

8. On behalf of the defence no any oral or documentary evidence has been adduced on the record.

9. PW-1 is Vishundev Mandal. This witness has deposed in his examination-in-chief that occurrence took place 5 years ago at about 5:00-5:30 p.m. He heard that the child of Niranjana Mandal has been dashed by a motor vehicle due to which the child of Niranjana Mandal died and he cannot tell on what vehicle, the child was got accident. On the request of prosecution, this witness has been **declared hostile**.

10. PW-2 is Dilip Thakur. This witness has deposed in his examination-in-chief that occurrence took place in the year 2005 and he has no remember about the date and month and at that time, he was at Bhagalpur and heard that accident took place in the village. The accident took place of child of Niranjana Mandal and his aged about 5-6 years and when he went there then he came to know that the said child was died. He found sand loaded tractor at the place of incident and incident took place near road of temple of Kanjhiya Hulas Asthan and he has seen the dead body of the deceased and he has not seen the driver and at that time the crowd was end.

During his cross-examination, this witness has stated

that he has not seen the incident with his own eyes and he cannot tell by which vehicle the accident took place and cannot tell about the driver.

11. PW-3 is Niranjan Mandal. This witness has deposed in his examination-in-chief that occurrence took place 5 years ago at about 05:00 to 05:45 p.m. He was engaged in Election Prachar and he has received information that his son was got accident and occurrence took place near his house on the road. When he returned his home then he saw that his son was lying dead and accident took place by Tractor. He saw the sand loaded Tractor and he has no remember the registration number of Tractor and scuffle took place between driver and public and when he came then he saw that police has seized the said Tractor and the said Tractor was belong to JHA JL.

During his cross-examination, this witness has stated that he has not seen the accident with his own eyes and the Registration of vehicle is BR 10B 5262.

12. PW-4 is Pratima Devi. This witness has deposed in her examination-in-chief that occurrence took place 5 years ago at about 5:00 p.m. in the evening and there was a shop on the road and she was going with her son Dablu (deceased), aged about 4 years. Thereafter, a Tractor rash and negligent manner came and dashed her son Dablu and crossed and her son Dablu died on the spot. Thereafter, the said vehicle was set fire by crowd and Munna Mandal had lodged regarding this incident. She claims to identify the driver after seeing him.

During her cross-examination, this witness has stated that incident took place before her and there was road in North-South and there is road in East and there is her shop in the West.

She does not know the number of said vehicle and incident took place at about 5:00 p.m. in the evening.

- 13. PW-5 is Gauri Mandal.** This witness has deposed in his examination-in-chief that occurrence took place 5-6 years ago in the evening. When he went to his house then he saw that his grandson was died. Thereafter, he came to know that the deceased died due to accident by Tractor. Thereafter, police came and seized the said Tractor which is marked as Ext.-1.

During his cross-examination, this witness has stated that he was not present at the time of incident and there is main road in the North South, there is Peeple Tree in the East and there is bicycle shop in the West. He has no remember about the vehicle number of said vehicle.

- 14. PW-6 is Dr. Yogendra Prasad Sah.** This is medical witness. This witness has deposed in his examination-in-chief that on 15.08.2005 he was posted at JLNMCH, Bhgalpur and on that day he has examined the dead body of deceased Dablu Mandal and found following injuries :-

1. Crush injury of head with disfigurement of head was found. The brain matter was found outside. All the brains of skull was found broken.

Opinion :- The above noted injury was antemortem, grievous and was caused by hard and blunt substance.

Cause of death :- Hemorrhage and shock.

He identified his writing and signature on injury report which is marked as **Ext.-2**.

During his cross-examination, this witness has stated that this injury may be happened due to fall on hard surface.

- 15. Heard, the submissions of Ld. Counsel for the**

appellant/petitioner. It is submitted by the Ld. Counsel for the appellant/petitioner that six prosecution witnesses had not seen the occurrence and the informant has not been examined in this case and the I.O. who had submitted the charge-sheet against the accused, has not been examined in this case by the prosecution and I.O. has submitted charge-sheet without any material and improper investigation and no any witnesses are corroborate the statement of Pratima Devi and other witnesses of the case are hearsay witness. Further, submitted that it has not been established during the trial that the appellant was driving the vehicle by rash and negligence manner and thus prosecution has measurably failed to prove the case beyond the reasonable doubt and prosecution has not adduced important and star witness of the case of the informant and the I.O. of this case. Further, there is absolutely no evidence against the appellant connecting with the alleged offence. There is no any eye witness of this case. At last defence has argued that the appeal may kindly be allowed and impugned judgment and order on sentence may be kindly be set aside.

16. On the other hand, Ld. Additional P.P. for the state has submitted that the impugned judgment and order on sentence call for no interference as the same is based on legal evidence. Further, submitted that all witnesses have supported manner of occurrence and mother of deceased has also fully supported the allegation as alleged in the FIR and stated that her son died to road accident by a Tractor and Doctor has also proved the injury report (Ext.-2) of deceased and stated that Crush injury of head with disfigurement of head was found. The brain matter was found outside. All the brains of skull was found broken and Doctor has opined that the above noted injury was antemortem, grievous and was caused by hard and blunt substance. It has further been submitted by the Ld.

A.P.P. that the appeal lacks merit and the same may kindly be dismissed.

17. Having heard the submissions of Ld. Counsel for the appellant and the Ld. Additional P.P. for the state, I have given my anxious consideration on entire evidence as available on the Trial Court record and on its careful scrutiny, I find that in the instant case total six prosecution witnesses have been examined on behalf of the prosecution to establish its case. **PW-1** has deposed in his deposition that occurrence took place 5 years ago at about 5:00-5:30 p.m. He heard that the child of Niranjan Mandal has been dashed by a motor vehicle due to which the child of Niranjan Mandal died. **PW-2** has deposed in his deposition that accident took place in the village and in the accident the child of Niranjan Mandal, aged about 5-6 years got injured and when he went there then he came to know that the said child was died. **PW-3 (father of deceased child)** has deposed in his deposition that occurrence took place 5 years ago at about 05:00 to 05:45 p.m and he received information that his son was got accident and occurrence took place near his house on the road and when he returned his home then he saw that his son was lying dead and accident took place by Tractor. He saw the sand loaded Tractor and scuffle took place between driver and public and when he came then he saw that police has seized the said Tractor and the said Tractor was belong to JHA II. **PW-4** (mother of deceased child and eye-witness of this case) has deposed in her deposition that occurrence took place 5 years ago at about 5:00 p.m. in the evening and she was going with her son Dablu (deceased), aged about 4 years. Thereafter, a Tractor rash and negligent manner came and dashed her son Dablu and crossed and her son Dablu died on the spot. Thereafter, the said vehicle/tractor was set fire by crowd and Munna Mandal had

lodged this case regarding this incident. **PW-5** is medical witness and this witness has proved the prosecution case and this witness has deposed in his deposition that he has examined the dead body of deceased Dablu Mandal and found that crush injury of head with disfigurement of head was found. The brain matter was found outside. All the brains of skull was found broken and opined that the above noted injury was antemortem, grievous and was caused by hard and blunt substance and cause of death is Hemorrhage and shock and he identified his writing and signature on injury report (**Ext.-2**). Further, during the course of investigation, police has seized the the said Tractor bearing Reg. No. BR 10C 5262 in which sand was loaded and seizure list of said seized tractor was exhibited as Ext.-1 by PW-5. The defence stated in its defence during the trial that the prosecution had not examined the informant of this case, in this regard, the Court holds that the absence of evidence alone cannot be a justification for the denial of the entire prosecution evidence and all other prosecution witnesses have supported the entire prosecution story in their testimonies. *Section 134 of Indian Evidence Act provides that “no specific number of witnesses shall be required to prove any fact in a case” and PW-4 Pratima Devi is an eye-witness of this case who fully corroborated the prosecution story.* All prosecution witnesses have also supported the time of occurrence, place of occurrence and manner of occurrence.

From the facts and circumstances as discussed above, I find that there is no any illegality, irregularity, incorrectness or impropriety in the impugned order dated 03.02.2022 passed by Ranjan Kumar Raina, Ld. A.C.J.M-VII, Bhagalpur.

Hence, I hold the impugned judgment dated 03.02.2022 legal, correct, proper and regular. Resultantly, this appeal stands **dismissed** with some modification. Therefore, it is

Ordered

that the **convict Naresh Mandal** shall undergo simple imprisonment for six months and fine of Rs. 1000/- U/s 279 of IPC and convict is further sentenced to **simple imprisonment for one year *in place of two years* and also pay a fine of Rs. 1000/- and in default of payment of fine additional simple imprisonment for one month.**

O/C is directed to send back the Trial Court Record to the concerned Court and the appellant/petitioner as appeal filed by appellant namely **Naresh Mandal** is hereby **dismissed** and judgment passed by Ranjan Kumar Raina, Ld. A.C.J.M-VII is **confirmed** with aforesaid modification.

Dictated and Corrected by me.

**Sd/-
Additional Session Judge-II,
Bhagalpur.
Dated 12.08.2026**

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Additional Session Judge-II,
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